In This Issue

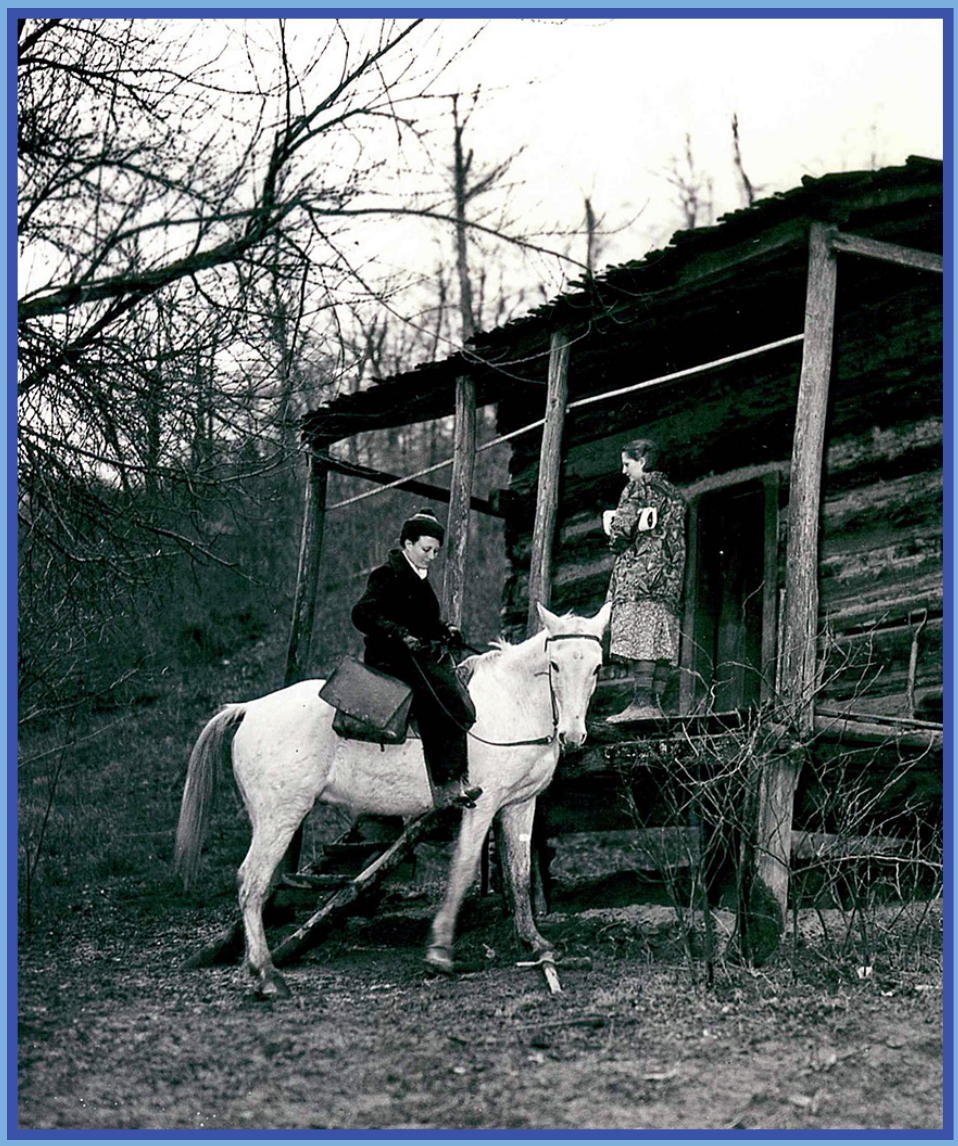
- The Military Child Care Act of 1989
- Evaluating Transparency During ICE Detainee Records Disposition
- Food Loss Waste in the United States Food Supply Chain
- Price Gouging During a Pandemic

DttP

Documents to the People

Winter 2020 | Volume 48, No. 4 | ISSN 2688-125X

INTERNATIONAL · U.S. FEDERAL · STATE · LOCAL
GODORT



DttP: Documents to the People (ISSN: 2688-125X) is published quarterly in spring, summer, fall, and winter by the American Library Association (ALA), 50 East Huron Street, Chicago, IL 60611. It is the official publication of ALA's Government Documents Round Table (GODORT).

DttP features articles on local, state, national, and international government information and government activities of GODORT. The opinions expressed by its contributors are their own and do not necessarily represent those of GODORT.

Distribution Manager: ALA Subscription Department, 50 E. Huron St., Chicago, IL 60611; 1-800-545-2433, press 5; fax: (312) 280-1538; subscriptions@ala.org

Subscriptions: *DttP* is accessible to ALA/GODORT members on a per volume (annual) basis. For subscriptions, prepayment is required in the amount of $35 in North America, $45 elsewhere. Checks or money orders should be made payable to "ALA/GODORT" and sent to the Distribution Manager.

Contributions: Articles, news items, letters, and other information intended for publication in *DttP* should be submitted to the Lead Editor. All submitted material is subject to editorial review. Please see the website for additional information: https://journals.ala.org/index.php/dttp/about/editorialPolicies#focusAndScope.

Indexing: Indexed in Library Literature 19, no. 1 (1991) and selectively in PAIS 33, no 1 (2005). Library, Information Science & Technology Abstracts (2004). Full text also available in HeinOnline 1, no.1 (1972).

Editorial Production: ALA Production Services—Tim Clifford, Chris Keech, and Lauren Ehle.

DttP
Documents to the People
Winter 2020 | Volume 48, No. 4 | ISSN 2688-125X

Columns

Features

About the Cover: "Photograph of Pack Horse Librarian," Federal Works Agency, Work Projects Administration, Division of Information, 1938. From the WPA Information Division Photographic Index, ca. 1936–ca. 1942. NARA Record Group 69: Records of the Work Projects Administration, 1922–1944. https://catalog.archives.gov/id/148728424.

Editor's Corner

Laura Sare

This is our student paper issue and I would like to thank all the professors who submitted papers this year: Emily Rogers, Andrea Morrison, and Jennifer Morgan. I would also like to thank the editorial board for all their hard work this year reviewing articles. Well done everyone!

There is so much going on politically it is impossible to cover any one topic well. I was very saddened by the passing of Ruth Bader Ginsberg. Her work on the Women's Rights Projects of the American Civil Liberties Union fought against gender-based discrimination. She served for twenty-seven years on the Supreme Court and was the second woman to serve on the Court. Unfortunately, her legacy is overshadowed by partisan politics. Senate Majority Leader Mitch McConnell in 2016 refused any consideration of President Obama's Supreme Court nominee claiming that the upcoming presidential election (that was several months away) would allow voters to influence the kind of justice they wanted. Now with an election weeks away, he hypocritically is not applying that same logic now. To learn more about McConnell's efforts on control of the Supreme Court watch *Frontline*'s episode on this topic.[1]

The Decennial Census is wrapping up and redistricting will soon start. Redistricting takes place every ten years after the federal decennial census. District boundaries for federal, state and local elected offices are redrawn to reflect new population data and shifting populations. Many jurisdictions cover redistricting. An example at the state level is Florida after the last census: https://www.flsenate.gov/Session/Redistricting/2012. A county-level example is San Diego, California: https://www.sandiegocounty.gov/content/sdc/redistricting.html. My home state of Texas has a history of redistricting that includes lawsuits: https://redistricting.capitol.texas.gov/history.

Redistricting is very important and can have a decade long effect. That is why getting an accurate census count is so vital. Unfortunately this is in jeopardy with the Trump Administration meddling with deadlines and counting. At first the Census posted it would extend counting past the traditional July 31 deadline to October 31 due to the coronavirus pandemic. *NPR* has a story with a timeline that the Census Bureau is now ending the count on September 30 rather than October 3.[2] Currently there is legislation to revert back to the October deadline.[3] This time frame affects those states that rely on getting census data early in the year following the census with constitutional requirements or deadlines for redistricting.[4] The accuracy of data is not just affected by time to count. Trump recently issued a memorandum to exclude illegal aliens from the count, even though the 14th Amendment says to count all "persons" and since the first census citizens and noncitizens—regardless of immigration status—have been included in the country's official population counts.[5]

I have attended many zoom meetings with colleagues in California who point their computers to their windows that show what seems to me like a Martian landscape. The wildfires in California and the Pacific Northwest are devastating. In August the Governor of California and the USDA Forest Service signed an MOU for stewardship to restore the forests that includes "Sustainable Vegetation Treatments" such as expanding prescribed fire, thinning dense stands, timber harvesting and more.[6] *ProPublica* did a story on the wildfires covering the history of fire management, especially fire suppression, over the past century has led to these mega fires.[7]

Any of these stories could be the lead story of any newscast, but they are all occurring simultaneously, and it is overwhelming. As government information professionals we can help citizens learn what agencies to contact and what news is trustworthy. We have a hard road ahead of us, especially when agencies that are supposed to be apolitical are appearing to be influenced such as the CDC and FDA recently.[8]

Here is hoping for a better 2021. And if you need something to do during the holidays, help out with the End of Term Presidential Harvest: https://digital2.library.unt.edu/nomination/eth2020/.

References

1. *Frontline*, episode 14, "Supreme Revenge," produced by Michael Kirk et al., aired May 21, 2019, on PBS, https://www.pbs.org/wgbh/frontline/film/supreme-revenge/.
2. Hansi Lo Wang, "How Trump Officials Cut the 2020 Census Short Amid the Pandemic," NPR, September 18, 2020, https://www.npr.org/2020/09/18/911960963/how-trump-officials-cut-the-2020-census-short-amid-the-pandemic.
3. Don Young, "Young, Gallego Introduce Bicameral, Bipartisan Bill to Extend Census Deadline, Ensure Fair and Accurate Count," press release, September 15, 2020, https://donyoung.house.gov/news/documentsingle.aspx?DocumentID=401730.

4. Ben Williams, "California Circumvents Census Calamity," *The NCSL Blog*, July 21, 2020, https://www.ncsl.org/blog/2020/07/21/california-circumvents-census-calamity.aspx.
5. Donald J. Trump, "Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census," July 21, 2020, https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/; Hansi Lo Wang, "With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress' Seats," NPR, July 21, 2020, https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat.
6. "Agreement for Shared Stewardship of California's Forest and Rangelands" August 12, 2020, https://www.gov.ca.gov/wp-content/uploads/2020/08/8.12.20-CA-Shared-Stewardship-MOU.pdf.
7. Elizabeth Weil, "They Know How to Prevent Megafires. Why Won't Anybody Listen?" *ProPublica*, August 28, 2020, https://www.propublica.org/article/they-know-how-to-prevent-megafires-why-wont-anybody-listen?utm_source=sailthru&utm_medium=email&utm_campaign=event&utm_term=20200929_Pulitzer%20Center%20Event_Targeted%20Invite%20List.
8. Jamie Gumbrecht et al., "CDC Abruptly Removes Guidance About Airborne Coronavirus Transmission, Says Update 'Was Posted in Error,'" CNN, updated September 22, 2020, https://www.cnn.com/2020/09/21/health/cdc-reverts-airborne-transmission-guidance/index.html; "After Criticism, C.D.C. Reverses Covid-19 Guidelines on Testing People Who Were Exposed," *New York Times*, September 18, 2020, https://www.nytimes.com/2020/09/18/world/covid-coronavirus.html; Kevin Liptak and Kaitlan Collins, "Trump Puts Pressure on FDA for Coronavirus Silver Bullet Ahead of Election Day," CNN, updated September 3, 2020, https://www.cnn.com/2020/09/03/politics/white-house-fda-coronavirus-vaccine/index.html.

GODORT Needs You to Report Notable Documents

DttP
Documents to the People

The Notable Documents Panel is requesting nominations for Notable Government Documents produced in 2019 and 2020. "Documents" include print and digital media, websites, videos, and more that are produced by the US and Canadian governments; state, provincial, and local and international governments; or international agencies like the United Nations or NATO.

Please make your nomination at https://library.unt.edu/forms/godort-notable-document-nomination-form/.

Nominations will be accepted through January 8, 2021. Please check out our column in the May 2021 issue of *Library Journal*.

From the Chair

Lynda Kellam

Dear GODORT Members,

I am excited to serve as the chair of GODORT for this year. And what a year to serve! For those unfamiliar with me, I am the senior data librarian at the Cornell Institute for Social and Economic Research, where I've been since July 2019. Before that, I was the data and government information librarian at the University of North Carolina at Greensboro (UNCG) for fourteen years. At UNCG I was the Federal Library Depository Program selective depository coordinator and, while I no longer work directly with documents, I remain committed to the use, preservation, and continuity of access to government information.

I know many of you are experiencing a "new normal," especially with fall semester reopenings. I've continued the tradition of Friday chats started by our past chair, Susanne Caro, when lockdowns began. The chats cover a variety of topics and have been incredibly useful to me and others. We've talked about reopening our libraries, international government resources, and fugitive documents. The chair of the Depository Library Council, Alicia Kubas, visited us to talk about the work of Council and answer questions. We have a lot more planned for the year, but I would love to entertain topics from our members as well. Come and chat with GODORT!

In addition to building community in GODORT, I am interested in civic engagement discussions. As a doctoral candidate in American history, I study public initiatives to support humanitarian endeavors in the late nineteenth century. A common refrain in that literature is the power of an informed and engaged public, and that idea holds true today. As government information librarians, we are uniquely placed to connect users with the information that can help them become active participants in our society. GODORT has had or will have several events and initiatives connected to ideas of civic engagement. The main event was our webinar on September 17 called Libraries and Voter Engagement in 2020 and Beyond organized by Kian Flynn and the GODORT Education Committee. We also have an exciting conference session planned for the ALA Annual Conference that delves into issues around civic engagement.

The elections will be over by the time you are reading this, but as librarians we will continue to support the right to access government information. I look forward to working with our GODORT leadership and members over the next year as we continue to provide access to government information of all kinds.

Lynda Kellam (lmk277@cornell.edu), Senior Data Librarian, Cornell Institute for Social and Economic Research

Get to Know . . . Julia Stewart

Megan Graewingholt

Many readers may recognize Julia from her role as author of the "Get to Know" column, writing articles on GODORT members and their work in Documents to the People since 2008. Reflecting on her work, Julia reported that the best aspect of writing the "Get to Know . . ." column was meeting the amazing people in the library community and learning from their research projects. Having experience in a number of industries, from working in a publishing house to being a high school teacher, Julia believes that librarians are the most supportive community of professionals. "While we all work with government information, there's a lot of people doing a lot of different things," says Stewart. If there was a new or emerging trend, like digitization, interviewing colleagues provided an opportunity to reach out and learn from other professionals in the field.

As a librarian at Southern Methodist University (SMU), Julia served a diverse campus of 12,000 students, including undergraduate users in public policy and political science, law school students, and the surrounding community. Julia noted that like many in the profession, her role in government documents has grown over the years. As a faculty member, she began as a reference librarian and left as a research librarian, emphasizing that changes are always happening within government documents librarianship. "The more you outreach to people, the more collection use grows. We're always looking for ways to highlight great parts of our collections and connect to the community," says Stewart. From celebrating Constitution Day to partnering with faculty across campus for election events or debates, she consistently served as a resource to help students become more informed on the issues.

On the subject of collection weeding, Julia notes, "While it sometimes feels like the collection is slipping through your fingers, there are always documents you connect with." Julia's favorite print documents were the Statistical Abstract, making sure to get out a ruler to examine the various data tables. She also loved looking at historical census tracks, pulling out folded maps by neighborhood to explore local Texas towns. She recalls many fun Constitution Days using teachable items like the Civics and Citizenship Toolkit and the Civics Flashcards for the Naturalization Test.

Since leaving SMU Libraries, Julia has relocated to Tulsa, Oklahoma, to be closer to family members and to start her next career adventure: working as an enumerator for the 2020 Census. As a government information professional who worked frequently with census material, she is very excited to be on the front lines, knocking on doors, verifying addresses, and becoming more familiar with the Tulsa community at the track level. While it may seem like very detailed work that won't be finalized for some time, Julia knows firsthand how essential this process is for building a foundation for future scholars and for her community. "I know how to use the census, but this will give me a bigger appreciation for how the data is collected. While the census gets picked on, you can do so much with the data and it can really tell you a lot about your community." During her training, Julia learned about the history of the census and the importance of giving a good impression. In what is arguably the most important census in recent memory, this eight-week adventure will make Julia an important part of Tulsa history.

Julia Stewart, former social science and government documents research librarian at Southern Methodist University Libraries, is ready for the next adventure in her professional life. After being in an academic library for fifteen years, she now moves on to an exciting new role assisting with the 2020 Census.

Once her census work has concluded, she hopes to explore local opportunities and possibly enter into archival work in Tulsa. There are several archival and public history projects underway in Tulsa at the moment, from the creation of the Bob Dylan Archive to the hundred-year anniversary of the Tulsa Race Massacre in 1921. Since her previous library work was primarily in a public services role, she would love to engage in the archival side and explore the fundamentals of developing and showcasing collections. Julia notes, "It's a great thing about Tulsa that there is so much unique, independent, and fun places." Julia aims to use her skills, in both government documents and census experience, to help contribute to the museums, libraries, and organizations that make her community an amazing place to live.

In recognition of her contributions in service to *DttP* and the government documents professional community, it is wonderful to finally get to know Julia herself. Wishing her all the best as she explores this new chapter in her life and career.

Megan D. Graewingholt (mgraewingholt@fullerton.edu), Social Sciences and Government Documents Librarian, Paulina June and George Pollak Library, California State University Fullerton

Tales from the Trenches—Part 4

Kenya Flash and Dominique Hallett

This is the final installment of stories and tales as told by government information professionals as part of the "Who are 'We the People'?" survey conducted by Kenya Flash and Dominique Hallett. We would like to thank you for joining us on this journey through the stories from those in the trenches. We hope you have recognized yourselves in some, giggled and/or shaken your head at others, and overall, simply enjoyed these tales. Our pilot survey has provided us with so much insight and information, but these stories really cut to the heart of our profession and what it is like being a government information p8rofessional. Thank you for your time and your tales.

In library school, during the very first class, my GovDocs professor, Cassandra Hartnett, told us all this story about how one of her students had loved the class so much that he got the FDLP logo tattooed on him. I thought it was a bit ridiculous, but it was also my first day in that class; how little did I know. Upon graduating with my MLIS, I too got the FDLP logo tattooed on my forearm as both a graduation gift to myself, and as a reminder of my love for the FDLP and the information it provides us, and as a reminder to myself to spread the word.—Charlie Amiot

My favorite story is a personal experience I had when weeding the collection. I came across a publication about Heceta Head Lighthouse in Oregon and found that at one time the property had two keeper's houses. I love this lighthouse and have visited many times, but I never knew there had once been two homes on the property.

A history professor needed a Civil War–era Supreme Court decision. He was sure it was going to be difficult to impossible to access. He was delighted to learn that it was available digitally via the Libraries, and now can do some of the digging around himself.

A local patron was looking for import information for his business which competes with China and Taiwan. He found resources available for purchase, but that information would have cost thousands of dollars. After a little research we located the same information through the FDLP and the patron was able to access the needed information for free.

I moved 200k documents by myself and relocated them to another area due to a renovation/relocation project. Took me two weeks but it allowed for me to be able to put the documents in SuDoc order, and properly preserve and display them in a much nicer location. I felt very accomplished.—Angel S

One of my favorites . . . a patron asked for the religious make-up of Ethiopia and Eritrea. Eritrea was a relatively new country at that time. I checked several commercial reference books, but the one that had the answer was the CIA *World Factbook*.

Another one: Back in 2011, a masters student in Sweden contacted our library (because of a US government series we had digitized) to ask "for data on US crude oil imports Iran for the period 1965–1974." This person said they had contacted several different US federal agencies, including the Census Bureau and the Energy Information Administration. I managed to find the information in volumes of the Statistical Abstract. Back then, the only free electronic resource for Stat Ab was PDF volumes from the Census Bureau. Via email, I walked the patron through how to get the tables they were interested in. The Swedish patron sent a very nice thank-you email. But the topper was that they sent me a bouquet of flowers a couple of weeks later as a thank-you!

We once had a visit from someone who wanted to check out "everything you have on NASA," oh, and hurry, I have a taxi waiting. Since we had about three five-section ranges of NASA stuff at the time, plus drawers of microfiche, he left fairly disappointed.

Finding the rank and regiment information relating two of my ancestors who served in the Civil War in the National Park Service's Soldiers and Sailors Database.

My favorite story is the time when someone was looking at vital statistics going back to the first annual report done by our state in the 1850s. Both the researcher and I spent hours reading the report which gave an incredible snapshot of the time. What people were dying from gave a big insight into the times and what conditions were like. Also, the style of writing, the text wasn't written in governmentese. Someone wrote with passion and

involvement. Something that government information reports are lacking today. Reports are written by humans for consumption by humans. The lack of that contact makes for dull reading and an attitude by the public that the "government" doesn't care. As Abraham Lincoln said "that government of the people, by the people, for the people, shall not perish from the earth." we need to keep that fact that government information is communication between people. Not faceless bureaucrats talking to the great unwashed masses.

Once a disabled veteran had contacted our depository. He was looking for information from the *Federal Register*—once I identified what he needed, I discovered we no longer had that information in print. I called a colleague from another nearby depository, and she was able to help him complete his task. Depositories working together to help patrons-it's one of the things I love about my job!

Finding an answer in a *print* government resource. Older are better sometimes!

Not so much a story as it is a realization. Coming into government documents, I knew little as to what type of documents were considered "government." Expecting endless pages of congressional hearings (which there are) but then ending up with so much more, has been incredibly satisfying. There are publications ranging from Architecture in Alaska to FBI cases, US Army campaigns during WWI to the illustrated history of the Eisenhower executive office building. There are even NASA technical reports on the math and science used pre moon landing. Amazing stuff that many don't know exists or that they even have access to.

Kenya Flash (kenya.flash@yale.edu), Political Science, Global Affairs & Government Information Librarian, Yale University, and **Dominique Hallett** (dhallett@astate.edu), Government Information and STEM Librarian, Arkansas State University.

Problematic Global Metrics

Jim Church

An added benefit of doing library instruction is you learn things from students and faculty. This knowledge informs both collection development and research consultations. It is especially interesting when a new faculty member arrives and issues a revised syllabus for a popular course. One such class at UC Berkeley is in the Global Poverty and Practice (GPP) minor, founded by Professor Ananya Roy ten years ago. Her book, *Poverty Capital: Microfinance and the Making of Development*, makes the uncomfortable point that people and institutions profit from poverty: it is a lucrative business. But there are also those who attempt to create and influence "poverty knowledge." The 1998 subtitle of the World Bank's flagship publication, the *World Development Report*, was "Knowledge for Development." In 2017 the World Bank wrote a feature news article (about itself) as a "knowledge institution."[1] There are articles that trace the history of the World Bank's vision of itself as a "knowledge bank," a term I find both amusing (do they charge "interest"?) and problematic.[2] Yet a library is also a knowledge institution, and what we purchase or recommend influences the thinking and research of students and scholars.

Poverty Capital was published in 2010, and much has changed since. The primary text for the revised GPP course is *The Divide: Global Inequality from Conquest to Free Markets*, by Jason Hickel, which I recently purchased, read, and highly recommend. *The Divide* interrogates several key measures (such as the GINI Coefficient and the Millennium Development Goals) that many of us have taken at face value for years.[3] In a spirit of skeptical inquiry, it is our duty as information professionals to question these metrics and encourage our users to do the same. What follows are examples of some problematic global metrics that have been challenged by scholars and recently caught my attention.

The Doing Business Index

One of the World Bank's key publications is *Doing Business*. The stated purpose of this annual publication is to investigate "the regulations that enhance business activity and those that constrain it" for 190 countries.[4] Each country receives an annual "DB" rank: in 2020 New Zealand placed first with a DB of 86.8; the United States was sixth, and Somalia placed last, with a DB of 20.0.[5] The World Bank naturally explains its methodology: the metric is a "composite index" (typically a number from 0 to 100 comprising weighted components) and includes "starting a business," "dealing with construction permits," "getting credit," and "enforcing contracts," among others.[6]

Some of you may be thinking of the *US News and World Report* "best colleges" rankings. For as long as I can remember no public university was included in the top ten national universities: every so often a public school makes the top twenty. The "best" ones always seem to be the rich privates. It is true that there is an additional index for "global universities" where publics do better. But at the end of the day, the ranking seems to many critics little more than a proxy for wealth, fame, and SAT scores. The rankings have also, according to Cathy O'Neil (author of *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy*), encouraged schools to cheat: "Bucknell University lied about SAT averages from 2006 to 2012, and Emory University sent in biased SAT scores and class ranks for at least eleven years, starting in 2000."[7]

The same thing could be argued about *Doing Business*. Wealthy countries generally rank high: developing countries cluster toward the bottom. In the 2020 report only two countries in Africa south of the Sahara made the top fifty. No Latin American countries were included. There is again an incentive to cheat and tinker with the data: some countries actually *pay* the World Bank for advice on raising their rankings.[8] But regardless of the methodology, how does this index help the poorest countries? As noted by Jayati Ghosh, professor of economics at Jawaharlal Nehru University, "the index has already caused huge damage to developing countries, and it should be scrapped" and "the overall thrust of Doing Business is . . . the fewer regulations a country has, the better it performs on the index."[9] Or as Isabel Ortiz and Leo Baunach observe, "A country ranks better when its social security contributions are low."[10]

The index was also questioned by Paul Romer, formerly chief economist at the World Bank and 2018 recipient of the Nobel Prize in Economics. He noticed that the ranking for Chile fluctuated depending on which political party was in power (when socialist president Michelle Bachelet was elected it fell, and when she left office it rose.)[11] Romer later retracted his claims, but questions about the DB methodologies remain: my favorite is from a blog post by Sandefur and Wadwha, who quip, "On almost all dimensions, a Hobbesian state of nature would get the best possible Doing Business score."[12] The criticism mounted again in 2020, which led the World Bank to issue a statement noting "A number of irregularities have been

reported regarding changes to the data in the Doing Business 2018 and Doing Business 2020 reports . . . that were inconsistent with the Doing Business methodology."[13] The publication has been paused as a result.

The Corruptions Perception Index

Years ago, I presented on NGO data at a Documents Association of New Jersey conference. At that time the NGO Transparency International (TI) was making waves and I thought they were fantastic: here was an emerging nonprofit fearlessly reporting levels of global corruption. What's not to like? Corruption—so we have been taught—is a serious issue (in developing economies) and a significant reason why development assistance fails. I will never forget the reaction of the audience when I showed TI's signature *Corruptions Perception Index* (CPI) country map: several people gasped and laughed. Per Jason Hickel, this map "depicts most of the global south smeared in the stigmatizing red that paints a high level of corruption. By contrast, rich western countries, including the United States, and the United Kingdom are painted in happy yellow, suggesting very little corruption at all."[14]

Whenever you evaluate metrics, look for biases. What is being measured, and according to whom? According to TI's website, the "CPI scores and ranks countries/territories based on how corrupt a country's public sector is perceived by experts and business executives."[15] So the CPI measures elite institutional *perceptions* of corruption: it does not present an objective measure.[16] Not surprisingly, the CPI shows a "highly significant correlation with real gross domestic product per capita."[17] It also does not evaluate the private sector: the global financial institutions who keep getting caught assisting criminals with tax evasion and money laundering are not included. Yet the index remains widely quoted and accepted by governments, businesses, and news organizations. The University of Pennsylvania ranked TI twentieth in its *2019 Top Think Tanks Worldwide (NON-US)*, and in January 2020 the European Commission noted with evident pleasure that the "European Union continues to be the best performing region in the world."[18]

To be clear, the CPI has received its fair share of criticism.[19] TI are also not above giving developed countries a hard time: they have an online library with reports critical of business, national governments, and international organizations.[20] The organization also works on other projects, including the Global Corruption Barometer (https://www.transparency.org/en/gcb), which includes a series of regional reports that measure corruption as perceived by ordinary citizens. They have helped to elevate the issue of corruption into the public consciousness. But to many the CPI remains problematic, given its exclusion of the private sector, its oversimplification of a complex problem, and its reliance on elite respondents.

Global Poverty Measures

The number of people living in poverty has been a subject of interest for decades. It is one thing, the story goes, to tell stories, take pictures, and interview people, but the best measure of poverty is data. But how does one measure poverty? How does one define it? Who is making these definitions, creating the metrics, and to what extent are they influenced by ideologies or institutional reputations?

Many of us are aware of the pervasiveness of statistical shenanigans. But until I came across discussion about this in *The Divide*, I did not know about the revision of the United Nations Millennium Development Goal, Target 1 (MDG-1), which was to halve world poverty. As Hickel relates with a mixture of anger and flair, the first version was drafted in the *Millennium Declaration* adopted at the conclusion of the UN Millennium Summit in September 2000.[21] This declaration is a General Assembly Resolution (A/RES/55/2) and states the world will aspire to

> Halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day.[22]

But the version published in the 2008 UN Millennium Development Goals Report states

> Halve, between 1990 and 2015, the proportion of people whose income is less than $1 a day.[23]

The original version makes no mention of the year 1990. The UN backtracked the baseline ten years, taking credit for a decade of growth (mostly in China) before the MDGs were even implemented (facepalm). These metrics are also proportions (not absolute numbers) thus taking advantage of the higher population growth in the developing world: for more information, see the discussions by Hickel and Pogge.[24]

Even more fraught is the debate about the World Bank's *International Poverty Line* (IPL). The current version, which the Bank uses to count the number of people living in "extreme poverty" worldwide, was revised in October 2015 and stands at $1.90 a day. How is this amount arrived at? According to the Bank's most recent report, it is based on the "national poverty lines of the same countries that previously defined the $1.25 line" in 2008. These are the fifteen poorest countries in the world, whose poverty lines are set by their national governments.[25] As Pogge notes, "It is unclear why political decisions

made by rulers or bureaucrats in a few poor countries should be thought a reliable indicator of what 'poverty' means to poor people all over the world."[26] Naturally, this leads to significant discrepancies between the poverty counts reported by other national governments. To be fair, the World Bank includes the alternative poverty baselines of $3.20 and $5.50 a day PPP (as well as national government levels) in its famous *World Development Indicators* database.[27] If you change the measure you get very different poverty counts. But the most widely quoted figures are based on the IPL.

The UN Food and Agriculture Organization's (FAO) *State of Food Insecurity in the World* provides another disquieting example. In 2009, the FAO reported the number of hungry people worldwide at 1.02 billion people, which made it difficult for the UN to claim it was on the road to halving poverty and hunger by 2015.[28] But in 2012 the FAO also changed its methodology, stating that "improved undernourishment estimates, from 1990, suggest that progress in reducing hunger has been more pronounced than previously believed" and that "the revised results imply that the Millennium Development Goal (MDG) target of halving the prevalence of undernourishment in the developing world by 2015 is within reach."[29] The new headcount thus stood at 870 million—appalling, but still a reduction. But as Hickel elaborates, the revised measure is only valid if you calculate hunger based on the caloric needs of a sedentary lifestyle—hardly appropriate for those engaged in the manual labor prevalent in poor countries. If the FAO were to calculate the levels for a "normal" lifestyle, in 2012 between 1.5 billion and 2.5 people would have been hungry.[30]

I am not an international statistician. But I am reasonably numerate, and these methodologies seem problematic. Skepticism is always in order when examining and quoting important metrics that governments use to create policy. I am also not claiming that all the tremendous work put in by IGO and NGO employees to alleviate poverty was in vain, or that no progress has been achieved. Many of the gains accomplished during the Millennium campaign and other initiatives are tremendous accomplishments, and should be justly celebrated. What I am saying is we always need to question the methods used to collect statistics, and to teach this skill to our users.

Jim Church (jchurch@library.berkeley.edu), University of California, Berkeley

Notes

1. World Bank, "The World Bank—a Knowledge Institution," www.worldbank.org/en/news/feature/2017/05/03/the-world-bank-provider-of-knowledge.
2. Teresa Kramarz and Bessma Momani, "The World Bank as Knowledge Bank: Analyzing the Limits of a Legitimate Global Knowledge Actor," *Review of Policy Research* 30, no. 4 (2013): 409–31, https://doi.org/10.1111/ropr.12028.
3. The Gini coefficient is an indicator of income inequality ranging from zero to one: zero indicates perfect equality, one perfect inequality. For more information on the eight UN Millennium Development Goals (MDGs) see https://www.un.org/millenniumgoals/.
4. World Bank, *Doing Business 2020*, https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020.
5. World Bank, *Doing Business*, 4.
6. World Bank, *Doing Business*, 17.
7. Cathy O'Neil, "How Big Data Makes Applying to College Tougher, Crueler, and Ever More Expensive," *Slate Magazine*, September 15, 2016, https://slate.com/business/2016/09/how-big-data-made-applying-to-college-tougher-crueler-and-more-expensive.html.
8. According to *The Economist*. See "The World Bank's Business-Rankings Mess," *The Economist*, September 3, 2020, https://www.economist.com/finance-and-economics/2020/09/03/the-world-banks-business-rankings-mess.
9. Jayati Ghosh, "Stop Doing Business," Project Syndicate, September 10, 2020, https://www.project-syndicate.org/commentary/world-bank-should-scrap-doing-business-index-by-jayati-ghosh-2020-09.
10. Isabel Ortiz and Leo Baunach, "It Is Time to End the Controversial World Bank's Doing Business Report," International Development Economics Associates (IDEAs), September 3, 2020, https://www.networkideas.org/news-analysis/2020/09/it-is-time-to-end-the-controversial-world-banks-doing-business-report/.
11. Josh Zumbrun and Ian Talley, "World Bank Unfairly Influenced Its Own Competitiveness Rankings," *Wall Street Journal* (online), January 12, 2018.
12. Justin Sandefur and Divyanshi Wadhwa, "Chart of the Week #3: Why the World Bank Should Ditch the 'Doing Business' Rankings—in One Embarrassing Chart," Center for Global Development, January 18, 2018, https://www.cgdev.org/blog/chart-week-3-why-world-bank-should-ditch-doing-business-rankings-one-embarrassing-chart.

13. World Bank, "Doing Business—Data Irregularities Statement," August 27, 2020. https://www.worldbank.org/en/news/statement/2020/08/27/doing-business---data-irregularities-statement.
14. Jason Hickel, *The Divide: Global Inequality from Conquest to Free Markets*, First American edition (New York: Norton, 2018), 209.
15. Transparency International, "Corruption Perceptions Index," https://www.transparency.org/en/cpi.
16. These are listed at https://images.transparencycdn.org/images/2019_CPI_SourceDescription_EN-converted-merged.pdf and include, among others, the World Economic Forum, the EIU, the World Bank, Freedom House, and HIS Global Insight.
17. Paul G. Wilhelm, "International Validation of the Corruption Perceptions Index: Implications for Business Ethics and Entrepreneurship Education," *Journal of Business Ethics* 35, no. 3 (February 1, 2002): 177, https://doi.org/10.1023/A:1013882225402.
18. James McGann, "2019 Global Go to Think Tank Index Report," June 18, 2020, p. 61, https://repository.upenn.edu/think_tanks/17/; European Commission, "The Corruption Perception Index 2019: The EU Is the Best Performer in the World," January 27, 2020, https://ec.europa.eu/regional_policy/en/newsroom/news/2020/01/27-01-2020-the-corruption-perception-index-2019-the-eu-is-the-best-performer-in-the-world.
19. Stuart Campbell, "Perception Is Not Reality: The FCPA, Brazil, and the Mismeasurement of Corruption," SSRN Scholarly Paper, February 21, 2013, https://papers.ssrn.com/abstract=2210019.
20. See, for example, https://www.transparency.org/en/publications/governance-international-maritime-organisation and https://www.transparency.org/en/publications/g20-leaders-or-laggards.
21. Hickel, *The Divide,* 36–39.
22. United Nations, General Assembly, Fifty-fifth session, 2000, United Nations General Assembly Resolution 55/2, United Nations Millennium Declaration, UN Doc. Symbol A/RES/55/2, https://undocs.org/A/RES/55/2, p. 5.
23. United Nations, "Millennium Development Goals Report 2008," https://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/mdg%20reports/MDG_Report_2008_ENGLISH.pdf, p. 6.
24. Hickel, *The Divide,* 37; Thomas Pogge, "How World Poverty is Measured and Tracked," in Elke Mack, Stephan Klasen, and Thomas Pogge, eds. *Absolute Poverty and Global Justice: Empirical Data, Moral Theories, Initiatives. Law, Ethics and Economics* (Farnham, England; Burlington, Vt.: Ashgate, 2009), 51–65.
25. World Bank, *World Bank 2015 Global Monitoring Report*, 2015, pp. 5 and 10, http://pubdocs.worldbank.org/en/109701443800596288/PRN03Oct2015TwinGoals.pdf.
26. Pogge, "How World Poverty is Measured," 56.
27. PPP = Purchasing Power Parity, a measure to calculate the actual "purchasing power" of different countries' currencies.
28. Food and Agriculture Organization of the United Nations, *The State of Food Insecurity in the World, 2009,* p. 2, http://www.fao.org/3/i0876e/i0876e00.htm.
29. Food and Agriculture Organization of the United Nations, *The State of Food Insecurity in the World, 2012*, http://www.fao.org/3/a-i3027e.pdf. See introduction ("key message").
30. Hickel, *The Divide,* 45.

The Military Child Care Act of 1989

Michelle M. Bessette

The Department of Defense (DoD) operates the largest employer-sponsored child care in the nation. For Soldiers, Sailors, Airmen, Marines and more, the Military Child Care Act (MCCA) of 1989 was enacted to establish law-mandated standards for all branches.[1] Providing high-quality, available child care to service members helps maintain a mission ready force. Before the passing of the MCCA, the services' child care programs were tainted with poor oversight, deplorable conditions and child abuse scandals detailed in GAO reports and congressional hearings. Investigations and legislative activity leading up to the passing of the MCCA, which became law under the National Defense Authorization Act of 1990 and 1991, forced the DoD to take responsibility for a new breed of service members—the military family.

As a military spouse with children and employee of the DoD who co-supervises a child development center (CDC), I understand the importance of the MCCA and am able to witness DoD's investment in their military families. The history of abhorrent conditions has all but vanished, due in part to public access of government publications. The timeline of this legislation in combination with nongovernment publications helps tell the story of the how the military model of child care became one in which the civilian sector strives to accomplish. My decade long career of federal service, my desire to be more knowledgeable of the original MCCA and my interest in military history inspired my research. My intended audience are those unfamiliar to military child care and those who may not understand the needs and sacrifices of our nation's military families.

In 1982, the General Accounting Office—now Government Accountability Office (GAO)—reported military child care research to Defense Secretary Weinberger with recommendations for service-wide improvements.[2] The report was littered with unsafe findings: old buildings—repurposed to use for child care—failed to meet fire and safety codes, sanitation standards, had too many children with a single caregiver, and suffered from a lack of both educational materials and nutritional meal guidance. In addition, staff had not been properly trained and parent fees were questioned. The Army response was the implementation of Army Regulation 608-10, effective October 1983, that detailed core program requirements of the Child Development Services (CDS).[3] These improvements, coupled with increasing numbers of service members having children, added to the demand for military child care across all military branches.

By 1984, the reputation of military child care was vilified to an even greater extent. Air Force and Army installations faced serious allegations of both physical and sexual abuse by members of its caregiving staff.[4] To remedy the pain and suffering of the families, legislation was developed. In March 1985, H.R. 1681 was introduced followed by a related bill in May, S. 1163.[5] Titled the Military Family Act (MFA) of 1985, these bills came to be the gateway for the Military Child Care Act (MCCA). Enacted on November 8, 1985, the MFA created numerous resources for military parents including military spouse employment options, child abuse reporting procedures, food programs, a Military Family Resource Center, and more.[6]

The result of these horrific incidents brought on plenty of news headlines as well as a Department of Defence (DoD) conference held in September of 1985 on policy development regarding child sexual abuse.[7] Nearly a week after the conference, a study by the Cato Institute claimed that ineffective government regulations jeopardized the health and safety of children in a way that gave parents a "false sense of security."[8] This remark rang true in 1986 when more allegations of physical and sexual abuse were made against the Navy and Air Force. Perhaps the most infamous headline came from an Army facility in San Francisco, where more than sixty young victims were believed to have experienced ongoing sexual abuse between 1985 and 1987.[9] Military parents of victims banded together to bring public attention to what they believed was improper

handling of events by Army leaders. Suddenly, after years of being deemed "the ghetto of American child care," persistent child abuse allegations and multiple lawsuits, the services' ineptness at managing the operations of quality military child care centers rightfully garnered the attention needed to prompt an investigation at the request of Congress from the Pentagon.[10] The Director of Army Staff (DAS) created an action group and evaluation team to determine if all Army child cares were meeting DoD standards. DAS and the action group were briefed by the evaluation team in November 1987 following their first major inspection of the Presidio child care center. Needless to say, the immediate closure of the facility was recommended.[11]

1988: Pre-MCCA

Congress was taking action to attempt to understand and solve the military child care crisis that was making national headlines while Army child care inspections continued worldwide.[12] After a US district judge dismissed the second attempt to charge the main suspect in the Presidio case, many were left bewildered and frustrated with the justice system.[13] The House of Representatives Armed Forces Committee intervened by calling for congressional hearings that took place on three separate dates in 1988.[14] Led by Chairperson Beverly Byron (MD), members of the Military Personnel and Compensation Subcommittee called witnesses to provide testimonial statements and appear before of the House of Representatives Committee on Armed Services.

Each hearing had a specific focus. The first hearing held June 16 called for DoD officials and military branch representatives to explain their military child care programs. At the second hearing, August 2, the subcommittee heard from civilian child care program authorities to offer comparisons to military child care programming. The third hearing was held August 9, which focused on how the military handled abuse cases in its child care programs and what the efforts were for prevention. At this final hearing, parents of the Presidio victims and other branches were invited to share their experiences.

At the third hearing, Rep. Barbara Boxer (CA) presented a newspaper article to be included in her testimonial statement. The gruesome story had been published between the first and second hearings detailing the Presidio abuse scandal.[15] The victims' parents shared their story with the author, from first discovering their children's abuse to the Army leaders and law officials who they believe blatantly mishandled the investigation from the start. According to the Boxer, the purpose of presenting this news article was to highlight the importance of the problem, for "Congress not to sweep the issue of child abuse under the rug" like the installation level-military officials had attempted to do.[16] Further in her testimony, Boxer called out a member of the Judiciary Committee because the second indictment of the child care suspect occurred when the judge would not allow the testimony of a three-year-old child, calling it hearsay. When many different children clearly described their abuse, named their abuser, and were even tested positive for a sexually transmitted disease—all with FBI involvement—she believed the system failed these families.

The Subcommittee, with Representatives Boxer and Benjamin Gilman (NY), then questioned two Department of Justice and DoD panel members. Main topics focused on the justice process between federal and state jurisdiction in the context of child abuse at a military child care center, and, analyzing the broken military child care system that allows institutionalized abuse to go unnoticed. Following this panel, the parents of the victimized children shared their experiences of reporting the abuse at various military installations. Multiple solutions were suggested for immediate improvements to mitigate the risk for future abuse, i.e., installing video cameras in all classrooms, requiring more thorough background clearance checks when new employees are hired, training employees on correct child abuse reporting procedures, increasing the number of inspections, and more.[17]

Chairperson Byron closed the final day of the Child Care Programs congressional hearings with a hopeful perspective. With her compassionate words to those in attendance, she made a wise observation—if military child care workers were better compensated, they would feel more valued for the hard work they perform, rather than the services spending money on acquiring the latest and greatest technology. She specified, "I think the child care providers should be the ones . . . compensated adequately for their day-to-day involvement with a very precious natural resource we have, and that is our children."[18] The potential for serious improvements in the military child care structure gained momentum following the 1988 hearings. House leaders aimed to honor the victims and families who suffered from injustices resulting from ineffective DoD leadership. An overhaul of the system was in the works with Byron in the driver's seat.

1989: The Military Child Care Act

Fiscal Year 1989 began October 1, 1988. While military branches faced civil lawsuits for negligence in the military child care system, Byron advocated to improve it by preparing her case. Almost seven months after the final Child Care Programs hearing, Byron introduced H.R. 1277 on March 6, 1989. The bill, named the Military Child Care Act of 1989, proposed a solution to the military child care crisis.[19] Nine

sections detailed significant requests: $157 million in military child care funding, extensive employee requirements, uniform regulations for fees and family priority, child abuse prevention, parent partnerships, the food program extending to overseas military child care, follow up reports on child care demand, and definitions. It also tied in employment preferences for military spouses according to the MFA and amended the National School Lunch Act to include overseas programs.[20] H.R. 1277 was immediately referred to the House Committee on Armed Services and the House Committee on Education and Labor. Four days later, H.R. 1277 was referred to the Subcommittee on Military Personnel and Compensation, and simultaneously requested an Executive Comment from DoD.

While fellow Congress members reviewed H.R. 1277, a Senate and House requested report by GAO was published, although publicly released two months later.[21] Linda G. Morra, a witness at the August 2, 1988, congressional hearing, directed the report that was based on a service-wide survey capturing the current state of military child care and those using it. The report measured the availability of care, showing its vast limitations that resulted in lengthy wait lists, especially for CDCs who cared for infants to five-year-olds. Of the 213 bases with CDCs, 185 had waiting lists with more than 25,000 children and included "unborn" children who would need infant care six weeks after birth (four-week-old infants are allowed in Family Child Care [FCC]). Also, while military parents waited for available space at the CDC, they often utilize other means of child care i.e., less qualified babysitters or unregulated home daycares. These key findings supported previous Congressional testimony that readiness and retention of the military forces is affected by a lack of quality child care. Much of this information was presented in the 1988 testimony and panel appearance by Linda G. Morra, where she informed the 100th Congress, "Currently, all the children of active duty service members requesting center-based care cannot be served." [22] Byron was able to include this information in her bill where she requested 3,700 new staff positions to be created.

In April, another congressional hearing was held to specifically discuss military child care.[23] Byron was looking for information and input on her bill, inviting back previous witnesses as well as military service representatives. Her opening remarks were used to clarify the intent of each section of her bill and create a logical yet beneficial solution to the DoD child care issue. Feedback from principal witnesses were mostly in agreeance with the bill, however, the amount of funding was questioned. The amount was actually $78 million above what was already budgeted for child care, but according to Byron, the original budget would not be enough to give employee raises and subsidize child care fees for lower enlisted service members.

Deputy Assistant Secretary of Defense for Family Support, Education, and Safety Barbara Pope shared developments in training and staff to child ratios since the last hearing, and that improved standards had been established in the recent DoD Instruction. Plus, justice was being served more effectively in three recent abuse cases. Still, the budget was too large, and it was unfeasible to hire almost 4,000 qualified staff within such a short time. Following additional questioning and gathering feedback from fellow panel members, the hearing closed. This same day marked the last action of H.R. 1277, and by May 2, 1989, Byron garnered twenty-three cosponsors, to include Rep. Boxer and Rep. Pat Schroeder (CO), the Judiciary Committee and Armed Forces Committee member who was on the receiving end of Boxer's inquiry. By May 24, H.R. 1277 was included in H.R. 2461 under Division A Title XV Sec. 1501, the bill proposing the National Defense Authorization Act of 1990 and 1991.[24]

It was August by the time H.R. 2461 reached the Senate, where it was passed. As Fiscal Year 1990 quickly approached, the bill was still undergoing conference committee actions. Finally, on November 7, the conference report accompanying H.R. 2461 was released.[25] Few changes affected the Military Child Care Act of 1989, now listed as Title XV. According to the report, the main mark-up was the funding. The originally requested $157 million was cut back to $102 million, a fair increase from the original child care budget of $78 million, not to mention an additional $26 million allotted for other child care services while parent fees paid for employee wages.[26] The number of staff to be hired was also refigured. Instead of 3,700 by September 1990, CDCs would have until September 1991, thus giving the DoD two years to fulfill the originally requested job numbers. The closures of facilities that failed inspections remained the same, an area Deputy Pope had disagreed with during the April hearings. Minor changes also included FCC subsidies, a goal for fifty early childhood programs to be accredited by a national agency by 1991, requests for various reports including one from the Department of Justice, and the new placement of the overseas food program, which now fell under Miscellaneous Programs in Division A, Title III, Part C, Sec. 326 (a).

From the time the conference report was filed to the day it passed Congress, eleven days had gone by. Five days later, it was presented to President George H. W. Bush. Finally, on November 29, 1989, H.R. 2461—which included the Military Child Care Act of 1989—was enacted as Public Law No. 101-189.[27] History had been made. Within a decade, the one-time

child-abuse-ridden ghetto of daycares would be receiving accolades from the child care industry nationwide.[28]

1990–1993: Post-MCCA

The hot topic in the military child care world was the MCCA.[29] Anticipated changes for current child care leadership were on the horizon and the uncertainty of meeting compliance was significant. Valid concerns were yet to be realized, i.e., how funding would be allocated knowing that commander discretion overruled how base funding was dispersed, the organizational structure of leadership, and even the delivery of services. One aspect in the MCCA's child care employee section was the provision for at least one training and curriculum specialist at each center, a degree-required position focused on the prevention of child abuse. Before trainers get every staff person (including managers and new hires) up to speed, they themselves must first learn the policies, regulations, and standard operating procedures on child abuse. In a center of seventy-five employees, this is quite a feat, but the benefit is much greater—strict guidance was essential to prevent child abuse.

The MCCA also helped curb CDC staff turnover, cutting rates in half within six months—from as high as 300 percent down to less than 25 percent.[30] Raises were given to employees, a concern of Byron's during the congressional hearings. Staff retention was likely improved after finally being compensated with livable wages, not to mention a revitalized feeling of value among employees. Additionally, military spouse preference was incorporated as a test program and specifically referenced the MFA. In three short years, the quality of military child care services improved, and military parent fees were more affordable.[31]

Notably missing from the MCCA were pay increases for FCC providers and improvements to school-age and youth activity programs.[32] Having learned of the benefits of FCC for military families, Congress included § 1508, 103 Stat. 1595 in the MCCA for FCC subsidies. Still, operating a child care in one's own home that serves the same age range as the CDC has requirements above and beyond that of their CDC counterparts; therefore, wage increases for FCC providers would have been appreciated. For youth program services, the MCCA should have been applied—especially because military children are not allowed to be home alone until a certain age. Financial support from DoD for youth programming was overlooked until the year 2000.[33] This additional funding for military youth activities and wage increases for employees would have boosted the morale just as it did for CDC caregivers. Instead, CDCs ended up making huge gains, leaving military youth programs overlooked for years.

As demand for care continued and a desire to expand was now possible, more CDCs were being constructed. Plus with the DoD in charge, past installation-level issues of how to operate a quality child care were alleviating. Every branch was required to do their part although some succeeded faster than others. Some aspects were easier to accomplish for the services than others in just three years. Creating and filling new General Schedule positions were most challenging because of appropriated funding issues. In fact, much of MCCA implementation had to do with the initial lack of immediate appropriations, but the natural mission-driven mind of the services eventually made it happen, and over time they successfully implemented a new model of child care.[34]

The need for Congress to intervene on behalf of all military children was clearly a necessity. Soldiers, airmen, marines, and sailors hardly envision being responsible for child care facilities when joining the military, but this is exactly what senior leaders were required to do. Gone were the days of a single soldier military, where if anyone wanted wives they'd have been issued. The new military mindset was evolving, just as it began welcoming women service members. It would soon become a family friendly employer, providing quality of life services to retain its skilled service members. The MCCA was an innovative creation, derived out of necessity. It quickly became the saving grace for many military children with parents in the armed forces.

Dissemination of Information and Access Issues

The dissemination of government publications to the public is the responsibility of the agencies and programs who rely on them. For military child cares, official guidance is wide ranging. For example, DoD Instruction (DoDI) provides exact measures to be followed by all military child development programs and is intentionally designed to reduce subjective interpretation across the services.[35] The Child and Youth Services parent handbook lists laws and regulations referred to in times of uncertainty—the MCCA is referenced as its 1996 Amendment.[36] This government publication list is provided for transparency and, while we do not supply families with copies of each, they can be shown how to locate them on government or nongovernment websites. Most of these publications are available for immediate release since they are meant to be implemented immediately. One exception is DoDI 6060.02, the newest issuance reflecting changes in military child care priority levels, effective September 1, 2020. Few government publications I discovered were not up for immediate release. An interesting finding was in the CIA electronic reading room where FOIA documents were

listed. The Cato Institute reported on ineffective government regulations in 1985, but it was not allowed to be released to the public until 2011. Reading the report, I cannot understand nor explain the secrecy of it, but I suppose President Reagan had his reasons.

I had many successes and challenges gaining research access. First, I had a difficult time accessing the 1985 DoD Child Abuse Conference publication. I originally found the classification listing in the Catalog of Government Publications (CGP), but there was no accompanying URL to access it online. After much digging, I discovered a print copy at University of Washington Libraries (closed due to COVID-19) to whom I sent an email requesting a scan of the twenty-six-page document. Thankfully, a helpful librarian replied and shared the report via UW's subscription to HathiTrust.

Second, as a person who is somewhat familiar with judicial system processes, I spent an exorbitant amount of time on Nexis searching for the two separate cases where the main suspect of the Presidio child abuse case was charged. I knew they were both dismissed, but I did not know that upon dismissal no record of the hearing is kept. I also know that many civil court cases were filed against the United States by victimized families because it was discussed in the 1988 congressional hearings; unfortunately, I did not have time to find these.

Lastly, it is confusing when a bill is introduced in the House or Senate and becomes a law under a different bill number. On Congress.gov, for example, H.R. 1277 stops listing its actions in May 1989, although it was added to H.R. 2461 (the bill introducing the NDAA of 1990 and 1991), which became a law. The introductory bill number seems to disappear once consolidated into a new bill, only to live on when someone like me conducts historical or legislative research. I believe the actions listed for the bill should state when it was absorbed into another bill (especially if enacted as law) and where to locate it.

The resources I discovered via government websites were extremely helpful to fill gaps in telling my research story. For example, the MCCA continued to be active beyond its enactment into law. The Military Family Act of 1985 and the MCCA were actually merged in Pub. L. 104-106, Title V, § 568 (1996)—an Amendment to the National Defense Authorization Act (1996) that revised and recodified the two into Chapter 88, Military Family Programs and Military Child Care. Also in the 104th Congress, two reports were included in P. Law 104-201 § 1043 and 1044 highlighting the success of the MCCA and the need for youth program support, respectively. Knowing the MCCA overlooked youth programming, this was an exceptional finding.

Conclusion

My research for the MCCA went beyond anything I could have imagined. From learning of its origins to fully grasping how it positively impacted the military child care system is beyond remarkable. The military child care system successfully turned itself around, but that doesn't mean it has developed an immunity to tragedy. While supportive of the MCCA and its advancements, I am not ignorant to recent issues surrounding failed employee background checks, state vs. federal child abuse reporting (resulting in Talia's Law, 10 U.S. Code 1787 (2016)), and unauthorized FCC homes where two children have died in the last two years. Just as tragedy struck military institutions pre-MCCA, these events have been investigated and will be resolved as swiftly as possible. Sadly, the pain that comes with these resolutions will not subside for many military families—their painstaking efforts to make change in military child care settings may benefit future children and families, but it won't change what happened to them. As a supervisor in military child care, I can honor their families by keeping their experiences close to me and remaining diligent as a mandated reporter of institutional and familial child abuse.

The type of research I have conducted proves that there is a need for this historical information. The persistency of unavailable care is a constant stress for single and dual military parents as they wait impatiently for a CDC space. In February 2020, however, a beacon of hope came from Secretary of Defense Mark Esper, who outlined new policies for priority of military child care. These changes are currently outlined in the aforementioned DoDI 6060.02. Since the MCCA recognized the value of its employees by giving mandated raises in 1989, today's DoD recognizes their child care employee's need for child care, making them equal in priority to single and dual military parents. (This is HUGE—thank you for recognizing and prioritizing the hard-working parents who need child care to come to work.)

The MCCA was born out of tragedy, but Rep. Beverly Byron listened to the parents, the experts, and the leaders of the armed forces to improve the quality of life for military children, families, and employees. As the chairperson of the Armed Forces Committee in the 100th Congress, she made real change that continues to play a vital role in the lives of our military families.

Michelle M. Bessette (mimabe06@uw.edu), LIS 526: Government Publications

Notes

1. *Military Child Care Act of 1989*, P.L. 101-189, Title XV § 1501 (1989), https://www.govinfo.gov/app/details/STATUTE-103/STATUTE-103-Pg1352.
2. General Accounting Office, GAO-FPCD-82-30, *Military Child Care Programs: Progress Made, More Needed* (1982), https://www.gao.gov/products/FPCD-82-30.
3. Department of the Army, *Child Development Services: Army Regulation 608-10* (October 15, 1983).
4. Sue McMillin, "Families Win Suit against Air Force, Service Ruled Negligent in Day-Care Child Abuse," *Gazette Telegraph*, July 4, 1990; Robert McFadden, "Allegations of Child Abuse Studied at West Pt. Center," *New York Times*, September 24, 1990.
5. Military Family Act, H.R. 1681, 99th Cong. (1985), https://www.congress.gov/bill/99th-congress/house-bill/1681?s=1&r=47; The Military Family Act, S.1163, 99th Cong. (1985), https://www.congress.gov/bill/99th-congress/senate-bill/1163.
6. *Department of Defense Authorization Act of 1986*, Pub. L. 99-145, Title VIII (1985), https://www.govinfo.gov/app/details/COMPS-10454.
7. Department of Defense Child Sexual Abuse Policy Development Conference, *Child Abuse*, September 18–19, 1985.
8. Karen Lehrman ane Jana Pace, "Day-Care Regulation: Serving Children or Bureaucrats?" *Policy Analysis: Cato Institute,* No. 59 (1985): 1–23, https://www.cia.gov/library/readingroom/docs/CIA-RDP88G00186R000400410024-1.pdf.
9. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, p. 372 (letter to parents from Army Col. Joseph V. Rafferty, July 24, 1987); Kathleen Maclay, "FBI Investigates Presidio Child Molest Case," *Associated Press*, August 10, 1987.
10. Linda D. Kozaryn, "DoD Child Care: A Model for the Nation," *DoD News: American Forces Press Service*, April 25, 1997, https://archive.defense.gov/news/newsarticle.aspx?id=40948; Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, p. 235 (statement of Jay A. Armstrong, August 9, 1988); Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, p. 67 (testimony of Rep. Benjamin A. Gilman, August 9, 1988).
11. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, pp. 364–71 (memorandum for the Chairman, Army Child Care Action Group [ACCAG], November 19, 1987); "Army Will Close Child-Care Center," *New York Times*, November 16, 1987.
12. "Child Abuse Investigation to Spread, Army says," *United Press International*, November 6, 1987.
13. Pamela A. MacLean, "Presidio Molestation Case Collapses," *United Press International*, February 17, 1988.
14. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988.
15. Linda Goldston, "Army of the Night," San Jose Mercury, July 24, 1988, in Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, pp. 106–14.
16. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, p. 115 (statement of Rep. Barbara Boxer, August 9, 1988).
17. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, pp. 126–45 (testimony of Barbara Pope, August 9, 1988).
18. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Child Care Programs*, 100th Cong. 2nd sess., June 16, August 2 and 9, 1988, p. 388 (Closing comments of Chairman Beverly B. Byron, August 9, 1988).
19. Military Child Care Act of 1989, H.R. 1277, 101st Cong. (1989), https://www.congress.gov/bill/101st-congress/house-bill/1277?q=%7B%22search%22%3A%5B%22H.R.+1277%22%5D%7D&s=8&r=1.
20. H.R. 1277, 101st Cong. 1, Sec. 3. (d) (1989); *National School Lunch Act*, 42 U.S.C. § 1751 et.seq., https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter13&edition=prelim.

21. General Accounting Office, GAO-HRD-89-3, *Military Child Care: Extensive, Diverse, and Growing* (1989), https://www.gao.gov/products/HRD-89-3.
22. General Accounting Office, GAO/T-HRD-88-28, *Observations on the Military Child Care Program* (1988) (statement of Linda G. Morra, August 2, 1988), https://www.gao.gov/products/T-HRD-88-28.
23. Military Personnel and Compensation Subcommittee of the Committee on Armed Services House of Representatives, *Military Child Care*, 101st Cong. 1 (1989) (hearing held April 13, 1989).
24. National Defense Authorization Act for Fiscal Years 1990 and 1991, H.R. 2461, 101st Cong. (1989), https://www.congress.gov/bill/101st-congress/house-bill/2461?q=%7B%22search%22%3A%5B%22H.R.+2461%22%5D%7D&s=6&r=1.
25. Authorizing Appropriations For The Fiscal Year 1990 For Military Activities of The Department of Defense, For Military Construction, And For Defense Activities of The Department of Energy, To Prescribe Personnel Strengths For Such Fiscal Year For the Armed Forces, and For Other Purposes: *Conference Report to Accompany H.R. 2461*, 101st Cong. 1 (1989).
26. *Military Child Care Act*, 10 U.S.C. 113 § 1502 (a)(1) (1989).
27. *Military Child Care Act of 1989*, Pub. L. 101-189, Title XV § 1501 (1989).
28. Nancy D. Campbell et al., "Be All That We Can Be: Lessons from the Military for Improving Our Nation's Child Care System," National Women's Law Center (2000).
29. Gail L. Zellman, Anne S. Johansen, and Lisa S. Meredith, "Improving the Delivery of Military Child Care: An Analysis of Current Operations and New Approaches," R-4145-FMP (1992) p. viii, https://www.rand.org/content/dam/rand/pubs/reports/2007/R4145.pdf.
30. Zellman, Johansen, and Meredith, "Improving the Delivery of Military Child Care," x.
31. Gail Zellman and Anne Johansen, "The Armed Services' Response to the Military Child Care Act," RB-7521 (1998), https://www.rand.org/pubs/research_briefs/RB7521.html.
32. Zellman, Johansen, and Meredith, "Improving the Delivery of Military Child Care," ix.
33. Zellman and Johansen, "The Armed Services' Response to the Military Child Care Act"; *National Defense Authorization Act for Fiscal Year 2000*, P.L. 106-65, Title V § 584 (1999).
34. "A Model Child Care System," *New York Times*, May 19, 2000.
35. Department of Defense Instruction, *Child Development Programs*, Number 6060.02, Effective September 1, 2020, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/606002p.pdf?ver=2020-03-06-140335-683.
36. United States Army, Child and Youth Services, *Joint Base Lewis-McChord Parent Handbook* (2018), https://jblm.armymwr.com/application/files/5615/3660/1900/JBLM_CYS_Parent_Handbook_2018.pdf.

Evaluating Transparency During ICE Detainee Record Disposition

Tori Stanek

In December 2019, the National Archives and Records Administration (NARA) approved an Immigration and Customs Enforcement (ICE) Schedule DAA-0567-2015-0013 request for disposition of detainee records that included sexual assault and abuse allegation information. Despite receiving a record number of objections, NARA did not change the temporary status of the documents in question. This essay examines ICE record creation and NARA record handling policies, as well the Freedom of Information Act's role in the transparency of both entities.

In December 2019, the National Archives and Records Administration (NARA) approved an Immigration and Customs Enforcement (ICE) Schedule DAA-0567-2015-0013 request for disposition of detainee records that included sexual assault and abuse allegation information.[1] As part of NARA's attempt to achieve transparency, public review and comment on these schedules forms a critical part of the agency's consideration process, and DAA-0567-2015-0013 received an unprecedented amount of feedback. After weighing the practicality of long-term record preservation and other ways to access the material against potential litigative needs of individuals, NARA did not change the temporary status of the records in question. While the agency's decision seems logical, concerns about disposal of sensitive and difficult to access records speaks to the complexity of the problem. In addition to the controversiality of record disposal, record creation and access at immigration detention centers is potentially problematic.

Records Schedule DAA-0567-2015-0013 contains eleven sets of temporary records. Sequence 0001 is particularly controversial and is defined as follows:

> Records relating to sexual abuse and assault between detainees as well as by employees, contractors, or volunteers against detainees. Records include, but are not limited to statistical data on sexual assaults, information papers, case summaries, and extracts of pertinent information.

This record set was reported unavailable in any other electronic format.[2]

Schedule DAA-0567-2015-0013 was originally proposed to NARA in October 2015. After the Archives published notice of the pending schedule in the *Federal Register* in July 2017, the agency received a record number of public comments. In June 2019, NARA consolidated the comments and published them with a revised schedule and appraisal memorandum on regulations.gov, where the public was given forty-five days to comment specifically about items proposed for disposition.[3]

To summarize the interaction, NARA reported considering multiple congressional letters, UltraViolet and American Civil Liberties Union petitions, phone calls, and other written feedback. The response countered concerns that records were needed for ICE accountability, government transparency, research, and future litigation.[4] Though the agency adjusted the retention period from twenty to twenty-five years to ensure protection of legal rights and interests, NARA ultimately determined the temporary status of Sequence 0001 records was appropriate, largely because the extended retention period was in excess of the minimum time established by Federal regulation.[5] NARA also upheld the regulation that protected records required to fulfill Freedom of Information Act (FOIA).[6]

Federal Records and NARA's Role in Record Management

In 2014, public law broadened the definition of federal record to include all recorded information received by a federal agency regardless of form.[7] The legislation clarified the requirement for federal agencies to establish economical record management programs under the Federal Records Act (FRA).[8] Programs are established in conjunction with NARA, which has authorization

to establish and operate record centers, develop facility standards, and manage disposition.[9] The Archive relies on eighteen Federal Record Centers (FRCs) that use a fee-for-service model to store and provide access to more than 29 million cubic feet of material.[10] Because disposition constitutes a key part of the record management process, federal agencies must develop a schedule for permanent record storage or disposition at an FRC.[11] Additionally, record content must be studied at agency level.[12]

ICE Sexual Abuse and Assault Record Standards

Within the Department of Homeland Security (DHS), ICE is the only entity with detention facilities.[13] In the last two decades, the average daily population (ADP) among all facility types has grown from 7,500 to more than 38,000 detainees.[14] In detention centers, the records in question are created in accordance with a series of standards.

National Detention Standards (NDS) were established in 2000 to define confinement conditions in ICE centers.[15] NDS evolved to Performance-Based National Detention Standards (PBNDS) in 2011 when the DHS focused on detainee safety outcomes. The following year, a series of ICE and DHS-derived initiatives formed the basis for Agency Directive 11062.1; Sexual Abuse and Assault Prevention and Intervention (SAAPI).[16] This order established procedures to prevent, report, and track abuse and assault allegations and ensured there was a protocol for management of multiple report types.[17]

Abuse allegation management standards were revisited in 2014, when President Obama issued a Memorandum requiring federal agencies to apply Prison Rape Elimination Act (PREA) standards to immigration facilities.[18] In response, the DHS produced the regulation, "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," which built upon existing assault and abuse policies, outlined reporting protocols, and required detention facilities to maintain abuse data for at least ten years.[19] These new standards were also implemented in SAAPI Policy No. 11062.2 via a requirement for thorough responses to allegations at detention facilities that have yet to upgrade to DHS PREA.[20]

According to the Fiscal Year 2017 progress report, ICE implemented PBNDS 2011 standards at thirty-one facilities, or nearly 60 percent of its ADP. At the same time, DHS PREA Standards were said to be binding at thirty-eight facilities that house 67 percent of FY 2017 ADP.[21]

ICE Record Collection and Maintenance

Sexual Abuse and Assault Prevention and Intervention (SAAPI) requires full incident files to be maintained in a secure offsite location. Second copies are to be expunged of law enforcement sensitive information and maintained in an on-site incident reporting system.[22] The records currently subject to disposal are maintained in the Sexual Abuse and Assault Prevention and Intervention Case Management (SAAPICM) system.[23]

To facilitate data collection for internal use, the DHS developed the Significant Event Notification system (SEN). This reporting and law enforcement intelligence transmission system allows field agents to produce Significant Incident Reports (SIRs) that contain brief narratives, as well as the suspect and victim's biographical, citizenship, and residency information. As noted in the 2010 Department of Homeland Security privacy risk assessment, ICE supervisors may review SIRs before submission to ensure accuracy. However, these reports are not used for evidence or to make decisions that will affect individuals.[24] For these purposes, the agency often relies on Joint Integrity Case Management (JICMS) system records, which include information from resources and officials beyond ICE law enforcement.[25]

SIRs remain in the SEN system for twenty-five years and are transferred to an FRC for fifty years before they are destroyed. The DHS has assigned temporary status to this information because longer retention violates the Fair Information Principle of minimization.[26] By contrast, the JICMS privacy assessment indicates those records have no retention risk. JICMS records are destroyed according to NARA schedules.[27]

Systemic Improvements to Data Collection

The FY 2017 DHS Appropriations Act and its accompanying Senate Report withheld $25,000,000 from the agency budget to ensure ICE developed a plan for better data collection.[28] To comply, ICE published the "Comprehensive Plan for Immigration Data Improvement" in July 2018. In assessing current immigration recordkeeping practices, ICE attributed the following difficulties to compromised record quality:

- The creation of the DHS aligned immigration and customs enforcement services as a single agency (ICE), so adjusting to a single model of data and information technology processes resulted in data gaps.
- ICE has had to alter operations, data collection, and reporting practices in response to different policies and presidential administrations.
- The agency relies on multiple information systems, databases, spreadsheets, and paper-based solutions to exchange information. Redundant data results in process inefficiencies and data-quality degradation.
- Agency activities rely on several IT systems that have become challenging to maintain due to age.

To address these issues, the agency created a Data Governance Framework (DGF) that detailed elimination of data redundancy through database streamlining.[29] In reviewing this plan, the 2020 Senate Committee commended ICE for its efforts to continue to develop and execute an enterprise data management strategy and recommended allotment of $6 million to continue improvement in this area.[30]

Public Record Access

In accordance with Sexual Abuse and Assault Prevention and Intervention (SAAPI), ICE provides quarterly reports to the ICE Detention Monitoring Council (DMC) and monthly reports to a subcommittee.[31] According to the FY 2015 abuse and sexual assault allegations report, there were fifty-two allegations against CBP employees.[32] This is the only report currently published on the agency website.

Providing transparency, or access to government information and records, is a congressional requirement that has characterized the US Government throughout history. FOIA grants presumed public access to the executive branch records not protected by nine exemption categories.[33] As a federal agency, ICE must comply with these regulations, and the agency has a goal to process FOIA requests within twenty business days. Responses include full grants, full denials, or partial grant/partial access denials.[34]

FOIA and ICE govern rights to information held in the agency's legal custody and ICE tracks information requests and responses. According to the 2009 annual report, 388 of 6,736 ICE FOIA requests were granted in full (5.76 percent), and 3,559 were partially granted (52.8 percent), while 176 full denials were based on the nine exemptions. Of the 2,613 non-exemption-based rejections, 195 (7.46 percent) were denied due to the agency not having records.[35] A decade later, requests skyrocketed to 66,029. Of these, 2,648 were fulfilled in full (4.01 percent), 54,432 partially granted (82.44 percent), and 850 fully denied based on exemptions. Of the 8,099 non-exemption-based rejections, the majority (63.98 percent) were due to absence of records.[36]

Detainee Record Disposal: Practical, Economic, and Social Considerations

As NARA's Consolidated Report noted, the twenty-five-year record-retention period exceeded the statute of limitations and ensures protection of detainee legal rights. Furthermore, all records stored in the FRC will be accessible by FOIA prior to disposal. The report reiterated the desired data is encapsulated in long-term temporary Significant Event Notification (SEN) system Significant Incident Report records, and the DHS Office of Civil Rights and Civil Liberties (CRCL) generates annual reports that exist as permanent records.[37] While NARA justifies disposal of Sequence 0001 records based on the claim that much of the content exists elsewhere, this logic runs counter to the Archive's 2021 objective to "encourage customers to seek NARA as their preferred destination for authentic sources of information."[38]

However, financial costs must also be factored into the feasibility of long-term record keeping. Maintenance and disposition costs incurred by federal agencies and Federal Record Center shipping and retention vary based on material. The current disposal rate is $5.50 per standard-size box of text-based material and $35.00 for nontextual records.[39] These expenses must factor into the DHS budget request, and figure 1 shows the DHS budget breakdown.[40]

Though retention expenses are paid by ICE, the NARA Transition to Electronic Record Memorandum explains, "the Federal Government spends hundreds of millions of taxpayer dollars and thousands of hours annually to create, use, and store Federal records in analog (paper and other non-electronic) formats."[41] As a result, NARA's current budget request identifies the transition to electronic record keeping as an opportunity, and the June 2018 Administrative Reform Plan included a proposal to cease NARA acceptance of paper records by December 31, 2022.[42] Because maintaining records in any form is not without cost, the expense must be considered in the context of the NARA budget as well. Some of the Archive's $11 million budget reduction between fiscal years 2020 and 2021 are attributable to the Agency and Related Services sector, which encompasses the federal agency records management and FOIA services. Construction and maintenance of storage locations and supporting faculty and technologies must also be factored into this budget sector.[43]

NARA's Consolidated Reply relied on litigative factors, other occurrences of records, and budgetary restrictions to justify temporary record status. However, multiple commenters voiced concern that the twenty-five-year retention period is too short when factors including inadequate investigation and poor access to legal counsel are considered. It is not uncommon to assign temporary status to sensitive subject matter. For example, Domestic Violence, Sexual Assault, and Stalking (DVSAS) Workplace Protection Program records are scheduled for disposal in as few as seven years in the current NARA Schedule.[44] Though the problems associated with record content fall outside of the Archive's scope, examination of the difficulties concerning record creation and access are better considered at agency level.

Problems with ICE Recordkeeping

The Prison Rape Elimination Act (PREA) committee found the immigrant population is at higher risk for sexual abuse and

assault by staff because detainees are confined by an agency with the power to deport them.[45] In an exploration of perpetual abuse cycles on this population, Maunica Sthanki noted the Supreme Court decisions that absolved private prison corporations of liability made abuse allegations increasingly difficult to address.[46] The ramifications of low accountability in private facilities is important to consider. ICE routinely outsources immigration detention centers to corporations to accommodate fiscal and capacity needs, and three-fourths of detainees were held in private facilities by November 2016.[47] While ICE detainee conditions have been described "as bad or worse than those faced by imprisoned criminals," private facilities can pose even more problems and "are even more secretive and publicly unaccountable than public departments of corrections."[48] The 2016 Community Initiatives for Visiting Immigrants in Confinement (CIVIC) evaluation provides evidence that problems associated with privatization are not specific to abuse.

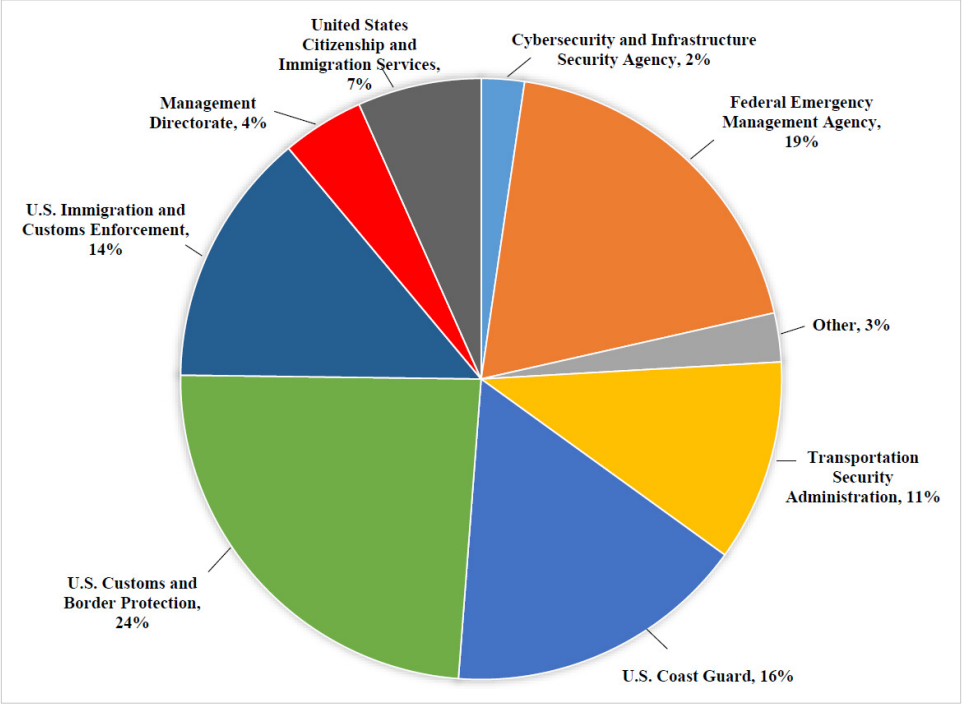


Figure 1. ICE receives a portion of the DHS budget, which has a FY 2021 request for $49.7 billion. The agency lists staffing and ADP increases, facility repairs, migrant transportation, and recruitment and retention program development as budget highlights.

The decision to adhere to National Detention Standards (NDS), Performance-Based National Detention Standards (DPBNDS), or DHS Prison Rape Elimination Act (PREA) standards also varies between detention centers. This inconsistency was a point of contention during the Government Accountability Office (GAO)'s investigation of the initial Sexual Abuse and Assault Prevention and Intervention (SAAPI) directive. The resulting GAO report noted inconsistencies in ICE's application of standards for nearly half of the twenty facilities surveyed. Because inspector reports failed to assess all SAAPI provisions mandated by inspection protocols, the GAO felt it hindered ICE's ability to accurately assess compliance in all facilities.[49]

Since the 2012 GAO inspection, numerous policies have been created to address its problematic findings. However, the ICE FY 2017 Report to Congress confirms inconsistencies still exist. In this report, facilities are categorized by adherence to various standards. Each standard approaches sexual abuse and assault allegations and record creation processes with differing levels of rigor. For those operating using standards predating PBNDS 2011, ICE provides the following explanation:

> ICE believes that pursuing adoption of PBNDS 2011 at a majority of existing NDS facilities would be cost-prohibitive and have a negative impact on operations through the extensive negotiations required and the likelihood of losing facilities that would not comply with the standards or where an agreement on cost could not be reached.[50]

As the GAO report originally noted, failure to use a consistent control set hinders the agency's ability to determine optimal performance levels. Further, because SAAPI policy regulations do not apply to facilities that fall outside ICE ownership, the mass privatization of Intergovernmental Service Agreement (IGSA) facilities becomes problematic.[51]

Though the Office of the Inspector General (OIG) took differences in standards into account when assessing ICE's performance accountability measures in 2019, the report still found the agency neglected their responsibility to hold facility contractors accountable for failing to meet performance standards. The OIG review focused on the 106 private facilities whose contractors were the recipients of $3 billion since FY 2016.[52] As illustrated in figure 2, ICE relies on a multi-layered system to oversee contract management and facility operations.

After completing an investigation, inspectors report deficiencies to ICE headquarters and issues should be addressed

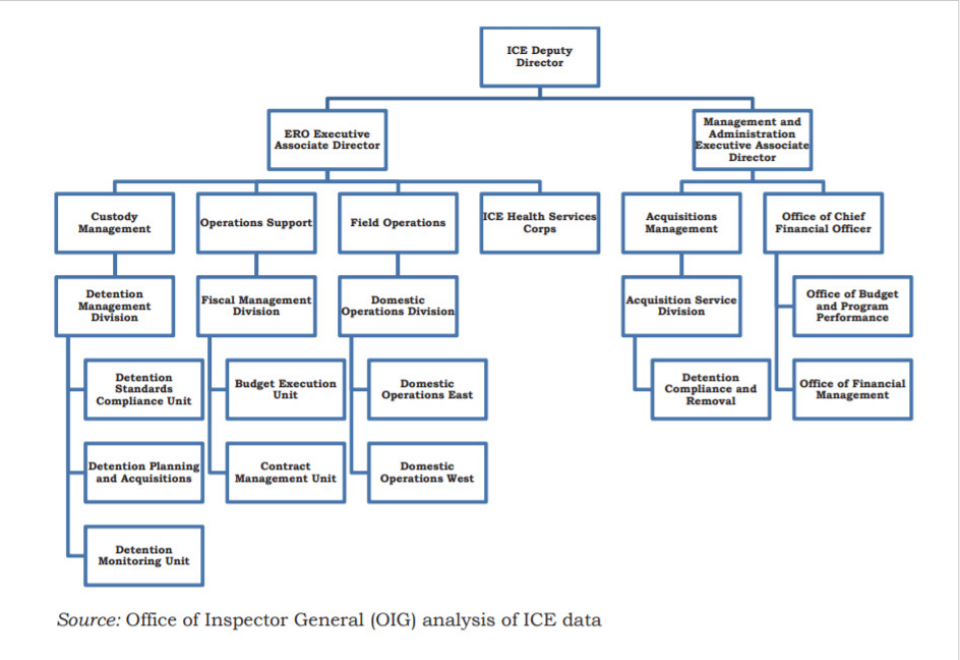


Figure 2. ICE organizational structure for contract management and oversight.

via contract or through uniform corrective plans issued by the Detention Standards Compliance Unit. The 2019 OIG investigation found this process largely ineffective. The report noted ICE failed to consistently use contract-based quality assurance tools. Furthermore, despite documentation of thousands of failures to comply with standards between October 2015 and June 2018, financial penalties for deficiencies were only imposed twice. In lieu of punishment, ICE issued waivers ungoverned by policy. The agency also allowed officials without clear authority to grant waivers and failed to ensure key stakeholders had access to them. To address these issues, the OIG recommended ICE begin imposing penalties for failure to adhere to standards and to develop waiver policies that ensure officials do not circumvent the terms of their contracts.[53]

Within ICE, there is also evidence of questionable record keeping. The Senate Committee on Homeland Security and Governmental Affairs requested information on assaults toward ICE law enforcement officers between fiscal years 2010 and 2017. While the response report involved assaults against law enforcement officers instead of detainees, it is suggestive of poor agency-level record keeping practices in general. For example, the report acknowledged unreliable data, inconsistent definitions of "assault," informal methods of documentation, and failure to make required reports.[54]

When records are created, there is no guarantee the public will be able to access them easily. To adhere to the Presidential and Attorney General's FOIA Memorandums of January and March 2009, as well as the DHS Chief FOIA Officer's Memorandum on Proactive Disclosure, ICE posts logs and FOIA records that have been or are likely to become the subject of at least three requests.[55] While the page was updated in 2020, the agency's FOIA disclosures site contains dated information. For example, the list of facilities is from 2015.[56] As stated earlier, the agency website also only contains one Sexual Abuse and Assault Allegations report from FY 2015. However, the Humanitarian Standards for Individuals in Customs and Border Protection Custody Act mandates the DHS post quarterly aggregate data on its website.[57] This bill passed the House vote in July 2019. In the event of its ratification, the resulting data will provide an interesting point of comparison. The data currently available varies considerably from annual studies of human rights groups and media sources.[58]

Inconsistencies in timely record accessibility and accuracy have also been reported. While the DHS website has a posted goal to respond to requests within twenty-five days, the *Intercept*'s FOIA request for detainee abuse records reportedly took two years. The *Intercept* noted only 43 of 1,224 complaints filed between January 2010 and September 2017 were investigated. Of these documents, analysts said officials applied single, unique classifications to reports with variances, that, among others, included "non-criminal misconduct," "criminal misconduct," "coerced sexual conduct," or "detainee reported sexual abuse/sexual assault." These accounts were also said to be inconsistent in detail, redactions, and often failed to mention if the alleged perpetrator was an enforcement officer.[59]

Conclusion

Through a complex system of checks and balances, citizens of the United States are encouraged to provide feedback on the multiple scheduling drafts NARA constructs with federal agencies. In the end, a consolidated response addresses all changes, as well as any remaining concerns prior to record disposition. While records are stored in Federal Record Centers, they can be accessed with FOIA requests. This is how transparency is achieved. ICE, by contrast, has a history of complex standard and policy development, variances in detention center ownership and a multilayered self-checking organizational structure that make transparency more difficult to assess.

This is a complex topic that requires more information regarding record construction and maintenance under each standard and record keeping system. Using this information in conjunction with the budget feasibility of implementation of each standard could drive record management and investigative process improvement through determination of a single best practice.[60] Further research on ICE's FOIA request response procedure and the agency's method of determining permanent and temporary records is also required to evaluate previous claims of insufficiency.

Tori Stanek (tstanek@uw.edu), MLIS University of Washington iSchool, LIS 526 Government Publications

References

1. "Immigration and Customs Enforcement Scheduled Approved," National Archives and Records Administration, https://bit.ly/NARAapprovedschedule.
2. "Request for Records Disposition Authority," National Archives and Records Administration, https://bit.ly/NARAdispositionauthority, p. 3.
3. "Request for Records Disposition Authority," National Archives and Records Administration.
4. "ICE Detainee Record Schedule Nears Completion," National Archives and Records Administration, https://www.archives.gov/press/press-releases-2.
5. "Consolidated reply DAA-0567-2015-0013," National Archives and Records Administration, https://bit.ly7/consolidatedreply.
6. *Data Storage, Publication, and Destruction*, 6 C.F.R. §115.89 (2020).
7. 36 C.F.R. §1230.3 (2018).
8. *Definition of Records*, 44 U.S.C. §3301 (2018); *Presidential and Federal Records Act Amendments of 2014*, P.L. No. 113-187§ 128 Stat 2010 (2014).
9. *Establishment of Program of Management*, 44 U.S.C. §3102 (2018).
10. *Administrative Provisions*, 44 U.S.C. §2104a, 2907, 2904, and 3102 (2018).
11. "Federal Records Centers," National Archives and Records Administration, https://www.archives.gov/frc.
12. 36 C.F.R. §1220.18 (2019).
13. "Celebrating the History of ICE," Department of Homeland Security, https://www.ice.gov/features/history.
14. US Immigration and Customs Enforcement, *Progress in Implementing PBNDS Standards and DHS PREA Requirements at Detention Facilities* (2018), https://bit.ly/ICEprogress.
15. US Immigration and Customs Enforcement, *2000 Detention Operations Manual* (2000), https://www.ice.gov/detention-standards/2000.
16. Dora Schriro, "Immigration Detention Overview and Recommendations," Department of Homeland Security, 2009, https://bit.ly/2009overview.
17. "Progress in Implementing PBNDS Standards and DHS PREA Requirements at Detention Facilities," Department of Homeland Security; "11062.1: Sexual Abuse and Assault Prevention Intervention," US Immigration and Customs Enforcement, https://tinyurl.com/SAAPI-1; "Immigration Enforcement PREA," US Immigration and Customs Enforcement, https://www.ice.gov/prea.
18. "Presidential Memorandum—Implementing the Prison Rape Elimination Act," The White House, https://bit.ly/Obamamemorandum; *Prison Rape Elimination Act of 2003*, P.L. 108–79§ 117 Stat. 980 (2003), https://www.govinfo.gov/content/pkg/PLAW-108publ79/pdf/PLAW-108publ79.pdf.
19. Proposed Rule, 77 *Federal Register* 75300 (2012); "Immigration Enforcement PREA," US Immigration and Customs Enforcement; *Standards for Immigration Detention Facilities*, 6 C.F.R. §115a (2019), https://www.govinfo.gov/app/details/CFR-2016-title6-vol1/CFR-2016-title6-vol1-part115.
20. "11062.2: Sexual Abuse and Assault Prevention and Intervention," US Immigration and Customs Enforcement, https://www.ice.gov/doclib/detention-reform/pdf/saapi2.pdf.
21. "Progress in Implementing PBNDS Standards and DHS PREA Requirements at Detention Facilities," Department of Homeland Security.
22. "Standard 2.11: Sexual Abuse and Assault Prevention and Intervention," US Immigration and Customs Enforcement, https://www.ice.gov/doclib/detention-standards/2019/2_11.pdf.
23. "Request for Records Disposition Authority," National Archives and Records Administration.
24. "Privacy Impact Assessment for the Significant Event Notification (SEN) System," Department of Homeland Security, https://bit.ly/SENeval.
25. "Privacy Impact Assessment for the Joint Integrity Case Management System (JICMS)," Department of Homeland Security, https://bit.ly/JICMS.

26. "The Fair Information Practice Principles (FIPPs) In the Information Sharing Environment (ISE)," National Public Safety Partnership, https://bit.ly/FIPPDHS.
27. "Privacy Impact Assessment for the Joint Integrity Case Management System (JICMS)," Department of Homeland Security, https://bit.ly/JICMS.
28. *Department of Homeland Security Appropriations Act of 2017*, P.L. No. 115–31§ 131 STAT. 404 (2017); Senate Committee on Appropriations, Department of Homeland Security Appropriations Bill, 2017, 114th Cong., 2d Sess., 2016, S. Rep 264, http://purl.fdlp.gov/GPO/gpo68540.
29. "Comprehensive Plan for Immigration Data Improvement," US Immigration and Customs Enforcement, https://www.dhs.gov/sites/default/files/publications/ICE%20-%20Comprehensive%20Plan%20for%20Immigration%20Data%20Improvement.pdf.
30. Senate Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2020*, 116th Cong., 1st Sess., 2019, S. Rep. 125, at 49, https://purl.fdlp.gov/GPO/gpo126341.
31. U.S. ICE, *Progress in Implementing PBNDS Standards and DHS PREA Requirements at Detention Facilities*.
32. U.S. Customs and Border Protection, *Annual Report on Sexual Abuse and Sexual Assault by CBP Employees* (2016) https://www.dhs.gov/sites/default/files/publications/Customs%20and%20Border%20Protection%20-%20Sexual%20Abuse%20and%20Sexual%20Assault%20Annual%20Report%20-%20FY%202016.pdf.
33. FOIA; 5 U.S.C. §552 (1966).
34. "Submitting a FOIA Request," US Immigration and Customs Enforcement, https://www.ice.gov/foia/request.
35. Department of Homeland Security, *Annual Report: 2009 Freedom of Information Act Report to the Attorney General of the United States* (2009), https://bit.ly/2009FOIA.
36. "Department of Homeland Security 2019 Freedom of Information Act Report."
37. "Consolidated reply DAA-0567-2015-0013," National Archives and Records Administration.
38. "Mission, Vision, and Values," National Archives and Records Administration, https://www.archives.gov/about/info/mission.
39. "The FRC Toolkit," National Archives and Records Administration, https://www.archives.gov/frc/toolkit.
40. "FY 2021 Budget in Brief," Department of Homeland Security, https://bit.ly/DHSbudget.
41. Russell T. Vought and David S. Ferrio, "Memorandum for Heads of Executive Departments and Agencies: Transition to Electronic Records," National Archives and Records Administration, https://tinyurl.com/recordmemo.
42. Vought and Ferrio, "Memorandum for Heads of Executive Departments and Agencies."
43. "National Archives FY 2021 Congressional Justification," National Archives and Records Administration, https://bit.ly/NARAbudget.
44. "Request for Records Disposition Authority," National Archives and Records Administration, https://bit.ly/DVASsched.
45. US Government Accountability Office, *Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse*, (2013) US Government Accountability Office, https://www.gao.gov/assets/660/659145.pdf.
46. Maunica Sthanki, "Deconstructing Detention: Structural Impunity and the Need for an Intervention," *Rutgers Law Review* 65, no. 2 (Winter 2013): 44–504, https://tinyurl.com/rutgerLR; Minneci v. Pollard, 565 U. S. 118 (2012), 10–1104; Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 66 (2001).
47. Lilly Chapa, "Detention Tension," *Security Management* 61, no. 3 (2017): 22, https://tinyurl.com/lillychapa.
48. P. Enns and M. Ramirez, "Privatizing Punishment: Testing Theories of Public Support for Private Prison and Immigration Detention Facilities," *Criminology* 56, no. 3 (2018): 546–73.
49. US GAO, *Immigration Detention*.
50. "Progress in Implementing PBNDS Standards and DHS PREA Requirements at Detention Facilities," Department of Homeland Security, 12.
51. Sthanki, "Deconstructing Detention."
52. Office of Inspector General, Department of Homeland Security, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (January 29, 2019), https://permanent.fdlp.gov/gpo116773/OIG-19-18-Jan19.pdf.
53. Office of Inspector General.
54. "Assaults on CBP and ICE Law Enforcement Officers." Department of Homeland Security, https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-76-Sep18.pdf.
55. "Memorandum for Distribution," Department of Homeland Security (June 13, 2007), https://www.dhs.gov/xlibrary/assets/privacy/privacy_PIIPrimaryActionMemo_20070615.pdf.

56. "FOIA Proactive Disclosures," US Immigration and Customs Enforcement, https://www.ice.gov/foia/proactive.
57. Humanitarian Standards for Individuals in Customs and Border Protection Custody Act, 3239 at 4, 116th Cong. (as passed by House, 2019) https://www.congress.gov/bill/116th-congress/house-bill/3239.
58. Alice Speri, "1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention, Half of Those Accused Worked for ICE," *Intercept* (2018), https://tinyurl.com/ICEinter; Hunton Andrews Kurth, "New York Times Features Suzan Kern in Coverage of Sexual Assault Inside ICE Detention," Business Insights: Global (2018): 4, https://www.huntonimmigrationlawblog.com/2018/08/articles/humanitarian-relief/new-york-times-features-suzan-kern-coverage-sexual-assault-inside-ice-detention/.
59. Alice Speri, "1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention. Half of Those Accused Worked for ICE," *Intercept* (2018), https://tinyurl.com/ICEinter.
60. Office of Inspector General, Department of Homeland Security, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, OIG-19-18, 2019, https://purl.fdlp.gov/GPO/gpo116773.

Food Loss Waste in the United States Food Supply Chain

An Analysis of Its Functions, Oversight, and Recent Impacts from the Coronavirus Pandemic

Anna L. Price

Government oversight of the food supply chain consists of a complicated regulatory framework involving multiple executive branch agencies, congressional committees, and state governments. The agencies primarily involved with food safety issues are the Food and Drug Administration (FDA), the Food Safety and Inspection Service (FSIS), the US Department of Agriculture (USDA), the Environmental Protection Agency (EPA), and the National Marine Fisheries Service (NMFS). Although the above entities divide responsibility for different aspects of food safety and quality, according to a 2019 Government Accountability Office (GAO) report, the patchwork of statutes and regulations has led to "inconsistent oversight, ineffective coordination, and inefficient use of resources."[1]

This article focuses on the USDA's oversight of the American food supply chain. Because this topic is so vast, this report narrowly focuses on issues related to food waste in the supply chain and recent developments on this issue. This article also aims to summarize how this aspect of the food supply chain is regulated, which, due to its complexity, has been criticized for lacking transparency.

America's Food Supply System

The American food supply chain is a complex juggernaut with little uniformity across regions and sectors. Generally, the food supply chain begins at a farm. Later stages may include processing; retail; food service; institutional food service for entities like schools, hospitals, and correctional facilities; and households.[2] After the products depart the farm, they can have widely varying routes, depending on the type of product. Highly perishable products generally move faster than storage produce like garlic and potatoes. Additionally, the routes that foods take in the supply chain are highly complex. A recent research study tracking the food supply chain found 9.5 million links between American counties where food products were farmed and how they found their way to retailers.[3] See figure 1 for a visualization of the researchers' findings.

It is important to remember, however, that products generally do not have a direct path from farms to retailers or consumers. As one of the above report's authors explained in a follow-up article, "a shipment of corn starts at a farm in Illinois, travels to a grain elevator in Iowa before heading to a feedlot in Kansas, and then travels in animal products being sent to grocery stores in Chicago."[4] In other words, the supply chain of food across the nation is a complicated, variable maze.

To add to its complexity, one must keep in mind that this research did not account for imports and exports of food products. In 2019, agricultural imports were valued at approximately $131 billion.[5] In April 2020 alone, food exports totaled $10.6 billion, while food imports amounted to $11.4 billion.[6]

Monitoring Food Loss Waste: The USDA and EPA

Although agricultural production and imports are a significant aspect of the US economy, many agricultural products are lost or wasted every year. Food loss has been defined as "the edible amount of food available for human consumption but is not consumed."[7] Food waste is a subset of food loss, and that term refers to "when an edible item goes unconsumed, such as food discarded by retailers due to blemishes or plate waste discarded by consumers."[8] The USDA's Economic Research Service (ERS) estimates that in 2010, the total level of food loss within retail and households was $161 billion.[9] More recent research has revealed that in addition to having significant food loss in certain stages of the supply chain (retail

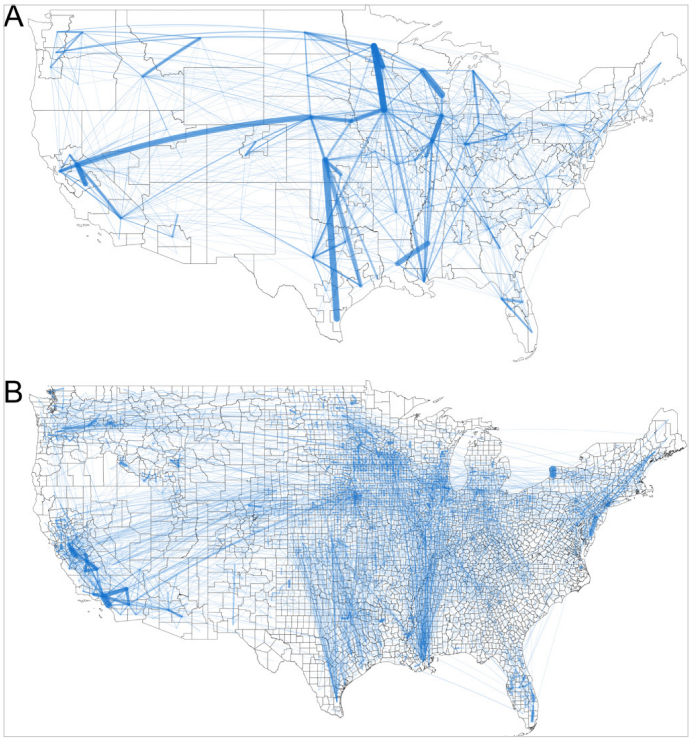


Figure 1. Maps of food flow networks in the US. The images demonstrate total food flows (tons) for the authors' (A) freight analysis framework, tracking where items are shipped around the country and (B) county scale. Image by Xiaowen Lin, Paul J. Ruess, Landon Marston, and Megan Konar from "Food Flows between Counties in the United States," https://iopscience.iop.org/article/10.1088/1748-9326/ab29ae and is licensed under CC-BY-4.0.

and households), earlier stages in the food supply chain are experiencing substantial food loss. One study found that up to 30 percent of food loss related to fruits and vegetables in the United States can be attributed to actions during agricultural production and harvest.[10] See figure 2 for a visual representation of these data.

Many causes have been attributed to these outcomes. According to Minor et al., some of the largest catalysts for this issue are the following:

- Price volatility: Produce prices fluctuate heavily, and farmers are unwilling to sell at a price that is lower than their cost of production and processing.
- Labor costs and availability: Farming depends on manual labor, which is costly, and the cost of production varies during the course of a growing season. Also, the number of available farmworkers has decreased over time, leading to increased applications for migrant laborers.
- Supply chain: Produce is extremely perishable, and if the supply chain breaks down early in the process, it is more likely that these products will perish and be unfit for market.

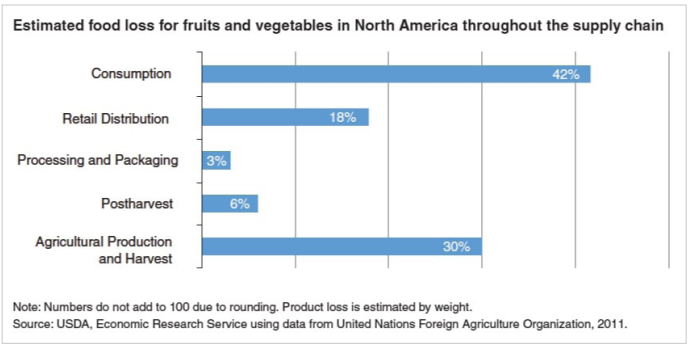


Figure 2. Estimated food loss for fruits and vegetables in North America throughout the supply chain.

- Standards and consumer expectations: Produce must meet retail specifications for appearance and other characteristics, and be appealing to consumers.
- Contracts: To sell their products, farmers enter into contracts with retailers to meet appearance and volume standards, which may lead to over-planting to have a better yield from which to select products.
- Government policies: as an unintended consequence, policies related to farming and food chain supply may incentivize over-planting, leading to more food loss.[11]

Food loss and food waste have become a more popular topic since 2013, when the USDA and the EPA called on participants in the food supply chain to "join the effort to reduce, recover, and recycle food waste."[12] The EPA's stake in policies and legislation related to food waste is related to the topic's apparent environmental impacts. According to one recent study, a reduction of food loss waste by 50 percent in the United States among households, restaurants, and food processing firms could lead to an 8–10 percent reduction of negative environmental impacts caused by the food system, including greenhouse gas emissions, land use, and water use.[13] The United Nations (UN) has adopted seventeen sustainable development goals (SDG), including SDG 12.3, which calls for a 50 percent reduction in food loss waste by 2030.[14] Similarly, the FDA, EPA, and USDA entered into a formal agreement in 2018 to reach similar food loss reduction goals.[15] This formal agreement provides, in part, for the agencies to coordinate efforts related to educating the public about the dangers of food loss waste.

Congressional Response to Food Loss Waste

In addition to the work of executive branch agencies, Congress has undertaken steps to address food waste. In 2008, Congress enacted the Food, Conservation, and Energy Act of 2008, also commonly referred to as the 2008 U.S. Farm Bill.[16] The general

scope of that legislation involved matters related to agricultural programs, including rural development, agricultural research, nutrition, and conservation, among other topics. As enacted, that law briefly discusses food waste, and contemplates that food waste could be used for livestock feed. Specifically, the law defines food waste as "renewable biomass," or, "any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States."[17] That statute also references food waste as a resource for advanced biofuel, defined as "fuel derived from renewable biomass other than corn kernel starch . . . [including] biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste."[18] Although it is not clear based on the records reviewed whether this legislation has had a measurable impact on food loss waste in the US food supply chain since its enactment, it demonstrates that for years policymakers and elected officials have considered the issue of food waste and attempted both to address it and define the term.

In 2016, the House Committee on Agriculture held a hearing on food loss waste across the US food supply chain.[19] Witnesses at the hearing included agricultural industry representatives, scientists, academics, and an executive from Feeding America, an organization that works to end hunger across the nation. Although the witnesses represented different interests, through each of their respective statements it became evident that food waste impacts multiple facets of American life and the US economy. For example, Dana Gunders, then a senior scientist at the Natural Resources Defense Council, provided relatable descriptions of food waste:

> So imagine walking out of the grocery store with five bags of groceries, dropping two in the parking lot, and not bothering to pick them up. It seems crazy but that is essentially what we are doing today across the country where we are wasting 40 percent of all our food. . . .
>
> Now imagine a farm that covers 3/4 of the State of California, and uses as much water as California, Ohio, and Texas combined. When you harvest that farm, it is enough food to fill a tractor trailer every 20 seconds, and then it drives all over the country, except instead of going to people to eat it, it goes straight to the landfill. This is essentially what we are doing today. In fact, food is the number one product entering our landfills today.[20]

Jesse Fink, a co-founder of Priceline.com and appearing as a representative for Rethink Food Waste Through Economics and Data (ReFED), outlined facts and figures before the committee on this topic:

> Addressing food waste can help solve three of our nation's largest problems. First and foremost is hunger. Our research found that solutions feasible today could nearly double the amount of food donated from businesses to hunger relief organizations. Second is economic development. Reducing food waste boosts the economy, with a conservative estimate of 15,000 jobs created from innovation. In addition, solutions available today can create $100 billion of net economic value over the next decade. This includes $6 billion in annual savings for consumers, $2 billion in annual potential profit for businesses, and a reduced burden on taxpayers, including lower municipal disposal costs. . . . Last, is the environment. Commonsense food waste solutions will conserve up to 1.5 percent of our country's fresh waste water, and this is lost on farms. In addition, reducing food waste will decrease methane emissions from landfills, and increase the health of our soils through composting.[21]

Witnesses and panelists in the hearing referenced a bill called the Food Recovery Act of 2015, which focused on various methods of reducing food waste.[22] That bill was introduced in the House and referred to various committees and subcommittees, but never discussed or voted on, on the House floor.[23]

More recently, Congress enacted the Agriculture Improvement Act of 2018, which, in part, called on the USDA Secretary to establish a Food Loss and Waste Reduction Liaison and to "conduct an evaluation of the pilot projects funded under this paragraph to assess different solutions for increasing access to compost and reducing municipal food waste."[24] Additionally, a House Report encouraged various agency heads "to raise consumer awareness surrounding food waste."[25] Actions taken to date by various governmental agencies and branches demonstrate that food waste and its impacts on public health, US agriculture, and the overall economy is a bipartisan issue affecting multiple cross-sections of Americans.

Current Issues Related to Food Loss: Coronavirus and Government Assistance

At the time of this article's drafting, the United States is grappling with the coronavirus pandemic. Along with nearly all

other sectors of American life, the pandemic has impacted rates of food loss waste across the country and the world. According to a report from the UN's Food and Agriculture Organization,

> Disruptions in supply chains resulting from blockages on transport routes, transport restrictions and quarantine measures are resulting in significant increases in food loss and waste, especially of perishable agricultural produce such as fruits and vegetables, fish, meat and dairy products.
>
> * * *
>
> Even before the COVID-19 pandemic, logistical challenges and weather conditions in developing countries often caused high levels of food loss during transport and in markets. The onset of seasonal harvest gluts in these countries could further exacerbate the high levels of loss sustained in the traditional food supply chains in these countries.[26]

It appears that the United Nations is looking closely at how food supply chains across the world have been impacted by the pandemic.

In response to the coronavirus, the US has put protections in place related to the food supply chain. For example, the USDA's Coronavirus Food Assistance Program provides direct payments to agricultural producers who have been impacted by the pandemic.[27] Additionally, the president issued Executive Order 13917, implementing the Defense Production Act for food supply chains in the beef, poultry, and pork industries.[28] Various bills also have been introduced in Congress regarding protecting the food supply chain and America's food supply, including the Community Meals Fund (H.R. 6384), that would award grants to anti-hunger groups who help those affected by the coronavirus pandemic.[29] A similar bill was introduced in the Senate called the Farmers-Feeding-Families Coronavirus Response Act (S. 3655), which would direct the USDA to buy food from producers affected by the pandemic.[30] Because this pandemic is relatively new, only time will tell what kind of long-term effects it will have across all types of institutions. It is likely that more legislation, programs, agency rules, and other actions will likely be created on this topic in the coming years. It may be worthwhile to follow federal legislation, programs, agency rules, and other actions to see how the federal government responds to its impact on the food supply chain.

Conclusion

Over the past several years, the topic of food loss waste has become a growing concern in both the United States and abroad. With the coronavirus pandemic presenting challenges across the world, the subject of food loss is only going to exacerbate. It is clear that increased education of the public is needed, especially as people are concerned about food scarcity and empty store shelves. Because it is an evolving situation, it may also be an interesting and worthwhile topic for researchers to look at more closely, using the resources listed above.[31]

Anna L. Price (annalieseprice@gmail.com), MLIS Graduate 2020, University of Washington iSchool/Legal Reference Specialist, Law Library of Congress. This paper was written for LIS 526 Government Publications Spring 2020, Professor Jennifer Morgan and Professor Andrea Morrison.

References

1. Government Accountability Office, *Substantial Effort Needed to Achieve Greater Progress on High-Risk Areas*, GAO-19-157SP (Washington, DC: GPO, 2019), 195, https://www.gao.gov/assets/700/697245.pdf.
2. Quentin J. Read et al., "Assessing the Environmental Impacts of Halving Food Loss and Waste along the Food Supply Chain," *Science of the Total Environment* 712 (2020): 1–11.
3. Xiaowen Lin et al., "Food Flows between Counties in the United States," *Environmental Research Letters* 14, no. 8 (2019): 1–17, https://iopscience.iop.org/article/10.1088/1748-9326/ab29ae.
4. Megan Konar, "The First Map of America's Food Supply System is Mind-Boggling," *Fast Company*, October 28, 2019, p. 2, https://www.fastcompany.com/90422553/the-first-map-of-americas-food-supply-chain-is-mind-boggling.
5. Department of Agriculture, "Agricultural Imports—Value By Selected Country of Origin: 2000 to 2019 [selected years]," *ProQuest Statistical Abstract of the U.S. 2020 Online Edition*, 1.
6. *ProQuest Statistical Abstract*, 1.
7. Jean C. Buzby, Hodan F. Wells, and Jeffrey Hyman, *The Estimated Amount, Value, and Calories of Postharvest Food Losses at the Retail and Consumer Levels in the United States*, USDA, Economic Research Service, Economic Bulletin

Number 121 (Washington, DC: GPO, 2014), 1, https://www.ers.usda.gov/webdocs/publications/43833/43680_eib121.pdf?v=4791.6.
8. Buzby, Hodan, and Hyman, *The Estimated Amount,* 1.
9. Buzby, Hodan and Hyman, *The Estimated Amount,* 13.
10. Travis Minor et al., *Economic Drivers of Food Loss at the Farm and Pre-Retail Sectors: A Look at the Produce Supply Chain in the United States*, USDA, Economic Research Service, Economic Bulletin Number 216 (Washington, DC: GPO, 2019), 5, https://www.ers.usda.gov/webdocs/publications/95779/eib-216.pdf?v=653.4.
11. Minor et al., *Economic Drivers,* 6–17.
12. Department of Agriculture, "USDA and EPA Launch U.S. Food Waste Challenge," Release No. 0112.13 (2013), https://www.usda.gov/media/press-releases/2013/06/04/usda-and-epa-launch-us-food-waste-challenge.
13. Read et al., "Assessing the Environmental Impacts," 1, 6.
14. United Nations, "Goal 12: Ensure Sustainable Consumption and Production Patterns," https://www.un.org/sustainabledevelopment/sustainable-consumption-production/.
15. FDA, EPA, and USDA, "Formal Agreement among the FDA, EPA, and USDA Relative to Cooperation and Coordination on Food Loss and Waste," US Department of Agriculture (2018), https://www.usda.gov/sites/default/files/documents/usda-fda-epa-formal-agreement.pdf.
16. *Food, Conservation, and Energy Act of 2008*, 122 Stat. 923 (2008), https://www.govinfo.gov/content/pkg/STATUTE-122/pdf/STATUTE-122-Pg923.pdf.
17. *Food, Conservation, and Energy Act of 2008,* 1305.
18. *Food, Conservation, and Energy Act of 2008,* 1303.
19. House Committee on Agriculture, *Food Waste from Field to Table*, 114th Cong., 2nd sess., May 25, 2016, https://www.govinfo.gov/app/details/CHRG-114hhrg20309/CHRG-114hhrg20309.
20. House Committee on Agriculture, *Food Waste,* 11.
21. House Committee on Agriculture, *Food Waste,* 17–18.
22. Food Recovery Act of 2015, H.R. 4184, 114th Cong. (2015), https://www.govinfo.gov/content/pkg/BILLS-114hr4184ih/pdf/BILLS-114hr4184ih.pdf.
23. Congress.gov, "H.R.4184—Food Recovery Act of 2015," All Actions, https://www.congress.gov/bill/114th-congress/house-bill/4184/all-actions.
24. *Food Loss and Waste Reduction Liaison*, 7 U.S.C. § 6924 (2018), https://www.govinfo.gov/content/pkg/USCODE-2018-title7/pdf/USCODE-2018-title7-chap98-subchapI-sec6924.pdf.
25. House Committee on Appropriations, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2019, 115th Cong., 2nd sess., 2018, H. Rept. 706, at 8 (2018), https://www.govinfo.gov/content/pkg/CRPT-115hrpt706/pdf/CRPT-115hrpt706.pdf.
26. Rosa S. Rolle, "Mitigating Risks to Food Systems during COVID-19: Reducing Food Loss and Waste," UN, Food and Agriculture Organization, May 11, 2020, p. 1, http://www.fao.org/3/ca9056en/ca9056en.pdf.
27. USDA, "Coronavirus Food Assistance Program," Final Rule. Federal Register 85, no. 99 (May 21, 2020): 30825, https://www.govinfo.gov/content/pkg/FR-2020-05-21/pdf/2020-11025.pdf.
28. "Delegating Authority Under the Defense Production Act With Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID- 19," Executive Order 13917, Federal Register 85, no. 85 (April 28, 2020): 26313, https://www.govinfo.gov/content/pkg/FR-2020-05-01/pdf/2020-09536.pdf.
29. Community Meals Fund, H.R. 6384, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/6384.
30. Farmers-Feeding-Families Coronavirus Response Act, S. 3655, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/senate-bill/3655.
31. The views expressfed herein are solely those of the author and do not reflect the opinion of the Law Library of Congress or the Library of Congress.

Price Gouging During a Pandemic

The Federal Government's Response

Marissa Rydzewski

On March 11, 2020, the World Health Organization (WHO) characterized the COVID-19 outbreak as a pandemic. Two days later, the US president declared a state of emergency in Proclamation No. 9994. One of the many problems that arise with a public health crisis is the shortage of essential medical supplies like ventilators, masks, and hand sanitizer. When these items become scarce, some businesses or entrepreneurs try to inflate their prices to make a higher profit when they know they can still sell these necessary items. These high costs on goods during disasters or emergencies can seem unfair and make it difficult for those who need them able to afford them. During these stressful times, it's important for Americans to recognize and report price gouging when they suspect fraudulent activity when purchasing items. Where do people find the authority on anti-price gouging laws? Typically, it is each state's responsibility, however, in times of crisis, the federal government could also do what is necessary to protect the public interests. This paper will assist people in understanding what price gouging is, how to recognize when price gouging is occurring, and how to report it. Additionally, this paper will address what responsibility the federal government has to protect Americans from price gouging schemes in times of crisis and what it is currently implementing to prevent these fraudulent actions.

At the beginning of 2020, many Americans were optimistic about what the new decade would bring. The economy was doing well, unemployment was low, and it was going to be an exciting election year. No one expected that less than three months into the year the world would be in a global phenomenon. On March 13, the US President Donald Trump announced a "National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreaks."[1] The world was experiencing a pandemic. Within weeks many lost their jobs, restaurants, offices, and schools were closed, citizens were dying due to COVID-19, and essential items like personal protective equipment (PPE) became scarce.[2] Emergencies, like a pandemic, create openings for fraudulent sales of demanded materials. Price gouging becomes an easy scam on unsuspecting consumers who are in a panic. Currently, there are no federal price gouging statutes, although several federal bills have been attempted through the decades.[3] In fact, legislation against price gouging is mostly left up to the states. Thirty-four states, territories, and the District of Columbia have price gouging regulations for times of disaster or crisis.[4] Although these price gouging penalties are mainly regulated by state and local governments, it is still important for citizens to know what the federal government's responsibility is to address price-gouging during a national crisis. Since this pandemic started, the federal government has begun to address this issue in many ways, including complaint forms, task forces, executive orders, legislation, and case law through district courts.

Defining, Recognizing, and Reporting Price Gouging During COVID-19

The term "price gouging" has been recently defined by the Senate in the bill "Prevent Emergency and Disaster Profiteering Act of 2020." This bill states price gouging is "the sale of a good or service at an unconscionably excessive price by a person during an emergency period and in an emergency area."[5] It can be difficult to determine what "unconscionably excessive price" means and how that is determined. Many states, including California and Arkansas, declare goods sold at 10 percent or higher than what the good is normally sold for is considered price discrimination and is illegal.[6] A good rule of thumb for consumers to follow is to ask themselves several simple questions to determine if price gouging is occurring: Do they think the seller has priced the item(s) unfairly? Do they feel taken advantage of with this price? Can they find the good(s) sold elsewhere for cheaper or did they see the item cheaper before there was a disturbance in the market? All of these questions are good indicators as to whether or not they are being unfairly treated

as a consumer. Finally, when in doubt, it never hurts to report the suspicion of price gouging. When reporting price gouging, it is important to remember the company or store name, their address, product details, the date, time, and location (online or physical) of where the product is being sold. It can also be useful to take a picture of the item and its information.[7] Reporting can be done at the federal and state level.

The Department of Justice (DOJ) is the executive office that is responsible for investigating and prosecuting any potential federal criminal offenses. US Attorney General William Barr initiated the COVID-19 Hoarding and Price Gouging Task Force, which was formed to protect Americans from hoarding and price gouging of critical supplies. "Critical supplies" has been identified by the secretary of Health and Human Services (HHS) in a *Notice* listing items that may not be hoarded or sold for "exorbitant prices," including personal protective equipment (PPE) (masks, shields, and gloves), respirators, ventilators, sterilization services, disinfecting devices, and medical gowns or apparel.[8] The new HHS order makes it illegal for individuals to accumulate an excessive amount of materials that are now considered protected and scarce healthcare and medical items. Furthermore, this statute prohibits any persons from collecting these items and selling them "in excess of prevailing market prices."[9] The creation of this task force functions to oversee any price gouging, hoarding, and excessive market profiteering related to the COVID-19 pandemic.

The DOJ has created a page called "Combatting Hoarding and Price Gouging," which states the department is committed to preventing fraudulent actions such as hoarding or price gouging of scarce medical supplies during an emergency. Any speculation of hoarding or price gouging should be reported by filling out a National Center for Disaster Fraud (NCDF) Disaster Complaint Form or by directly calling the NCDF. The NCDF complaint form should be used to report COVID-19–related price gouging on items like disinfecting devices, sterilization services, respirators, ventilators, face masks, gloves, and medical gowns.[10] Barr states the DOJ "will aggressively pursue bad actors who amass critical supplies either far beyond what they could use or for the purpose of profiteering. Scarce medical supplies need to be going to hospitals for immediate use in care, not to warehouses for later overcharging."[11] Additionally, if citizens need to report the conduct of price gouging on nonmedical or essential items, the DOJ recommends going to the USA.gov website to report this conduct to their individual state attorney general's office or their local law enforcement agency. USA.gov lists each states' attorney general contact information, which consumers can use to report price gouging at the state level.[12]

Executive and Congressional Action Against Price Gouging during COVID-19

Although the US government is committed to not interfering with the market, this laissez-faire attitude can be overturned in times of emergency when individuals are using this economic dislocation to extort consumers through high profiteering. Within the early months of the COVID-19 pandemic, the federal government has taken several steps to intercept price discrimination and hoarding of medical equipment and other scarce items.

One of the first steps of price-gouging prevention came on March 18, 2020. President Trump issued Executive Order 13909, providing HHS the authority to determine which health and medical resources were necessary to limit for preventative measures against COVID-19. This executive order, titled "Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19," declares HHS has authority to work with other executive departments and agencies to prioritize and allocate all health and medical supplies, which includes controlling and overseeing distribution of scarce materials circulating in the market.[13] A few days later, on March 23, Executive Order 13910, "Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID-19," was signed by the president. This order gives authority to HHS to use whatever means necessary to negate price gouging and hoarding of medical resources imperative to stopping the spread of COVID-19.[14]

The president has the authority to impose necessary price and wage stabilization to supplies like PPE under The Defense Production Act of 1950 (henceforth "Act"). Under section 101 (a) of the Act, the president may create orders to "promote the national defense" and may allocate materials and services for this purpose as he sees fit. Section 101 (b) allows the president to manipulate the civilian market if "such material is a scarce and critical material essential to the national defense."[15] Additionally, the "Hoarding of Designated Scarce Materials" section states, "to prevent hoarding, no person shall accumulate . . . for the purpose of resale at prices in excess of prevailing market prices, materials which have been designated by the president as scarce materials or materials the supply of which would be threatened by such accumulation."[16] The COVID-19 crisis is unlike anything the United States has ever experienced before in modern history. Therefore, under this Act, the president has the ability to prevent price gouging and hoarding of scarce medical resources to protect US citizens.

On the legislative level, the House and Senate are simultaneously working on several bills regarding price gouging and hoarding during COVID-19. At the time of this paper, none

of these bills have become law. The House has introduced three bills: H.R. 6450, H.R. 6472, and H.R. 6800. "The Price Gouging Prevention Act" (H.R. 6450) was introduced into the House on April 3. Its purpose is to "prevent price gouging during emergencies" and recognize that individuals may do business in bad faith in order to take an unfair advantage.[17] If passed, it will curb excessive pricing to no more than 10 percent above the total cost to the seller, plus the customarily applied markup to make a profit once an emergency declaration has been made. This law would be enforced through the Federal Trade Commission (FTC), which has authority through the "Unfair or Deceptive Acts or Practices" section of The Federal Trade Commission Act.[18] The bill also grants enforcement to state attorney generals to bring an action in state or district courts.[19] The bill clarifies that under normal circumstances, the pricing of consumer goods should not be a government issue. However, when there is a disruption in the marketplace, like a crisis, then it is in the public's interest to have the government enforce fair and just prices of essential goods. Several days after the "Price Gouging Prevention Act" was introduced into the House, a similar bill, the "COVID-19 Price Gouging Prevention Act" (H.R. 6472) was introduced. This bill's purpose is to protect the public from price gouging connected to public health emergencies during the COVID-19 pandemic. Selling consumer goods or services at excessive prices due to the advantages of an unstable market caused by a public health emergency is deemed illicit.[20] Finally, the most recent bill involving price gouging was passed in the House on May 15: "The Heroes Act" (H.R. 6800) has the entire text of "COVID-19 Price Gouging Prevention Act" incorporated into it. H.R. 6800 is a multi-part bill that encompasses various aspects of COVID-19 prevention and preparation.[21] Additionally, Subtitle A of the bill, "Supply Chain Improvements," states that any price discrimination of essential medical resources related to COIVD-19 detecting, diagnosing, preventing, and treating will be reported to the FTC and law enforcement.[22] The Senate received this bill on May 20 and it was read for the first time on the following day.[23]

On the other side of the aisle, the Senate has introduced three price gouging bills since the COVID-19 crisis: S. 3574, S. 3576, and S. 3853. "The Disaster and Emergency Pricing Abuse Prevention Act" (S. 3576) was introduced in the Senate on March 24. This bill gives authority to the FTC to condemn unjust price increases during an emergency where there have been significant disruptions in the market. Section 3 (a) of the bill states that "selling, or offering for sale, essential goods and services, in or affecting commerce, at an unconscionably excessive price during, or in anticipation of, a natural disaster, pandemic, or state of emergency, shall constitute an unfair or deceptive act or practice under the Federal Trade Commission Act."[24] The bill also would require the FTC to implement a "price gouging hotline" to receive complaints from consumers regarding excessive prices from sellers during states of emergency or during major disasters.[25] On May 7, the Senate introduced the "Prevent Emergency and Disaster Profiteering Act of 2020" (S. 3647). This bill prevents price gouging of essential items during national emergencies. This bill states it is unlawful "for any person to engage in price-gouging with respect to necessary good or services" listed and published by the secretary of the HHS or the administrator of the Federal Emergency Management Agency.[26] Currently, the only list identifying "necessary good or services" published by either of those agencies was by HHS. The most recent bill on prevention of price-gouging during emergencies was introduced on June 1. At the time of this paper's publication, the title and text of the S. 3853 were still unavailable.[27]

Federal Cases Involving Price Gouging

Since the COVID-19 pandemic was announced by the WHO on March 11, there have been multiple complaints of price gouging filed at the federal district court level. One company currently pursuing legal action in several lawsuits regarding price gouging is 3M. 3M is currently awaiting judicial orders for eight pending cases regarding trademark infringement, false advertising, and deceptive acts by other companies who are using 3M's logo to sell N95 masks and respirators to the government and other consumers at excessive prices. 3M states that by using their signature "3M," third-party actors are using price gouging to get more money from customers who believe they are purchasing supplies from 3M.[28] In the case, *3M Co. v. Performance Supply*, the plaintiff claims the "Defendant is using the '3M' trademarks to perpetuate a false and deceptive price-gouging scheme on unwitting consumers, including agencies of government, in connection with the attempted sale of 3M's N95 respirators during the global COVI-19 pandemic."[29] 3M is one of the leading manufacturers of N95 respirators and has been selling these respirators to the federal government for decades. They claim these actions are tarnishing their reputation because their trademark is being misused and falsely advertised to consumers. Furthermore, these third parties are using this crisis to exploit customers and increase the demand of 3M-branded N95 respirators by claiming 3M's prices increased due to lack of supply and therefore, these third-party distributors must sell these counterfeit ventilators at exorbitant prices (figure 1).[30] In this case, the court stated the trademark was being used falsely and under deceptive acts and the trademark owner would likely suffer if these actions continued. Additionally, it is in the

9. Defendant stated that it would sell the respirators for $6.05 per mask for 2 million 3M 8210 masks and for $6.35 per mask for 5 million 3M 1860 masks. *See id.* As shown in the table below, Defendant's mark-up over 3M's listed single-case prices is more than five times as much:

3M Model	3M's Per-Respirator List Price	Defendant's Per-Respirator Price	Markup
1860	$1.27	$6.35	500%
8210	$1.02-$1.31	$6.05	460-590%

Figure 1. Defendant's mark-up over 3M's listed single-case respirator prices is more than five times as much.

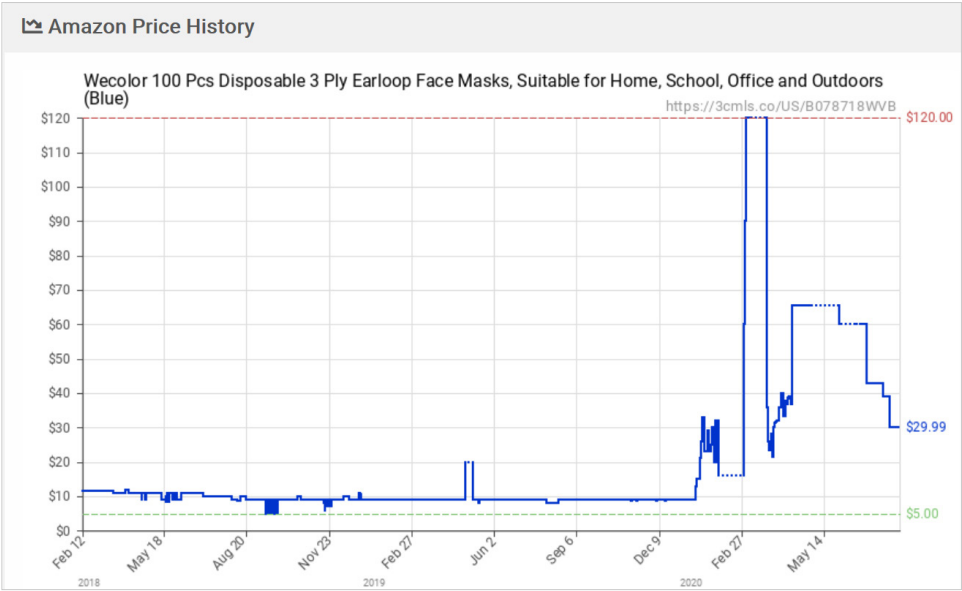


Figure 2. Amazon's Price History of 100 Pcs Disposable Earloop Face Masks from 2018-2020, https://camelcamelcamel.com/product/B078718WVB.

public's best interest if these actions were to cease: healthcare professionals and the public deserve trustworthy supplies "that are free of misrepresentations, false designation of origin, and unscrupulous profiteering."[31] The court granted 3M's application for a temporary restraining order and a motion for preliminary injunction.

Large global corporations like Amazon are also being scrutinized for increasing their prices on basic necessities during the COVID-19 crisis. In a class action complaint, *McQueen v. Amazon.com, Inc.*, the plaintiffs claim that since the start of the pandemic, Amazon's prices for some categories, such as home items, have increased more than 1,000 percent. Face masks had been priced at $20, and after the state of emergency was declared, they were increased to $120, an increase exceeding 500 percent (figure 2).[32] Additionally, pain relievers have increased in price from $18.75, to $62.40, an increase of 233 percent, and disinfectants have increased more than 100 percent, from $14.99 to $29.99.[33] The plaintiffs state "Amazon has exploited vulnerable consumers by selling, and offering for sale, products at excessive prices during COVID-19 pandemic. Facing retail scarcity, and official warnings as to the risks of public interaction, consumers have turned to Amazon as a lifeline to obtain goods vital to their safety, health, and well-being."[34] Multinational corporations, like Amazon, who millions of people rely on for essential goods to be delivered to their houses, need to be leaders in times of crisis. Deceptive practices during times of hardship should not be tolerated and need to be remedied by the courts. As of June 4, this case is still pending.

More cases are still swiftly being filed with the district courts due to essential items being excessively priced. As of June 6, three more cases were filed regarding price gouging, including *Redmond v. Albertsons Companies, Inc.* in the US District Court for the Northern District of California on June 3.[35] Since case disputes could take weeks or months to be finalized, how the courts are handling these cases will become more apparent as time goes on.

Dissemination of Information and Access Issues

Accessing information on anti-gouging laws can be difficult for anyone. It can also be hard to understand who has authority and where to appropriately report price gouging. Most anti-gouging regulations resources come from each state's attorney general office, which can also be found on the USA.gov "Common Scams and Frauds" page (https://www.usa.gov/common-scams-frauds). More information on state laws and regulations on anti-gouging can be found on the website FindLaw on the "Price Gouging Laws by State" page (https://consumer.findlaw.com/consumer-transactions/price-gouging-laws-by-state.html). Additionally, state and territory regulations against price gouging can be found on the National Conference of State Legislatures (NCSL) website. The NCSL provides

a simple way for residents to compare price gouging restrictions between state and local governments.[36] If citizens are looking for federal action against price gouging, they can start with the DOJ's "Combatting Price Gouging and Hoarding" page (https://www.justice.gov/coronavirus/combattingpricegouginghoarding). This can help them identify what price gouging is and whether reporting at the federal or state level is appropriate for their situation. If an investigation or criminal cases are initiated by the DOJ, these reports and cases should be accessible to the public on the DOJ website. Additionally, civil suits against bad actors of price gouging can be found through free case law sources like Google Scholar and Justia. All federal legislation regarding price gouging can be found on Congress.gov. This website allows individuals to read the full text of each bill and it also allows bills to be monitored for their progress through Congress. Executive orders and other presidential documents can be found on the Whitehouse.gov website on the "Presidential Actions" page (https://www.whitehouse.gov/presidential-actions/). All other executive documents regarding price gouging can be found on each executive department or agency website or in the Federal Register (https://www.federalregister.gov/). It is vital for consumers to understand their rights against excessive prices, especially during a pandemic. All of the resources stated above are great places to start searching for anti-gouging materials.

Conclusion

Over the past few months, the federal government has made increasing efforts to take on price gouging. It is evident by the executive orders, House and Senate bills, and the cases in federal court that price gouging during an emergency is not tolerated at the federal level. All three governmental branches have made it clear that it is their duty to intervene in the economic market during a national disaster for the public good. As time goes on, more cases against price gouging predators will arise in federal courts and, hopefully, federal anti-gouging bills will become law. Presently, there are no federal laws prohibiting gouging, but that all could change in the coming months.[37] All information regarding rights to fair prices during a crisis needs to be accessible to the public so they can take necessary action when they discover unfair prices.

Marissa Rydzewski (rydzew@uw.edu), MLIS Candidate 2021, University of Washington iSchool. This paper was written for LIS 526 Government Publications Spring 2020, Professor Jennifer Morgan and Professor Andrea Morrison.

References and Notes

1. Donald J. Trump, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,* 85 *Federal Register* 15337 (March 18, 2020), https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05794.pdf.
2. Margaret Douglas et al., "Mitigating the Wider Health Effects of Covid-19 Pandemic Response," *BMJ* 369 (April 27, 2020), https://doi.org/10.1136/bmj.m1557.
3. Kendra L. Berardi, Ian T. Clarke-Fisher, and Edward J. Heath, "Responding to Government Inquiries Related to Price Gouging During the COVID-19 Pandemic," *National Law Review*, March 30, 2020, https://www.natlawreview.com/article/responding-to-government-inquires-related-to-price-gouging-during-covid-19-pandemic.
4. Heather Morton, "Price Gouging State Statutes," NCLS (March 30, 2020), https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx.
5. Prevent Emergency and Disaster Profiteering Act of 2020, S. 3647, 116th Cong. §2 (4), https://www.congress.gov/bill/116th-congress/senate-bill/3647/text.
6. "Price Gouging Laws by State," Findlaw, last updated March 24, 2020, https://consumer.findlaw.com/consumer-transactions/price-gouging-laws-by-state.html.
7. "How to Identify and Report Price Gouging," United States Public Interest Research Group, https://uspirg.org/feature/usf/how-identify-and-report-price-gouging.
8. "Combatting Price Gouging & Hoarding," Department of Justice, https://www.justice.gov/coronavirus/combattingpricegouginghoarding.
9. US Department of Health and Human Services, *Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures Under Executive Order 13910 and Section 102 of the Defense Production Act of 1950*, (March 25, 2020), https://www.justice.gov/file/1264276/download.
10. NCDF Disaster Complaint Form," Department of Justice, https://www.justice.gov/disaster-fraud/ncdf-disaster-complaint-form.
11. "Combatting Price Gouging & Hoarding."
12. "State Attorneys General," USA.gov, https://www.usa.gov/state-attorney-general.
13. Presidential Document, *Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19,* 85 *Federal Register* 16227-16228 (March 18, 2020).
14. Presidential Document, *Preventing Hoarding of Health and Medical Resources to Respond to the Spread of*

COVID-19, 85 *Federal Register* 17001-17002 (March 23, 2020).
15. The Defense Production Act of 1950, 50 U.S.C. § 4511 (a), (b) (2020), https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title50-section4511&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGU1MC1zZWN0aW9uNDUwMQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim.
16. 50 U.S.C. § 4512 (2020), https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title50-section4512&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGU1MC1zZWN0aW9uNDUwMQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim.
17. The Price Gouging Prevention Act, H.R. 6450, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/6450/text.
18. Federal Trade Commission Act, 15 U.S.C. §57a (a)(1)(B) (2020), https://uscode.house.gov/view.xhtml?req=(title:15%20section:57a%20edition:prelim).
19. H.R. 6450 (2020).
20. COVID-19 Price Gouging Prevention Act, H.R 6472, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/6472/text.
21. The Heroes Act, H.R. 6800, 116th Cong, (2020), https://www.congress.gov/bill/116th-congress/house-bill/6800/text.
22. H.R. 6800 §30511 (c)(D)(8) (2020).
23. H.R 6800 (Bill Activity).
24. Disaster and Emergency Pricing Abuse Prevention Act, S. 3576, 116th Cong. §3 (a) (2020), https://www.congress.gov/bill/116th-congress/senate-bill/3576/text.
25. S. 3576 §4 (2020).
26. S. 3647 §3 (a) (2020).
27. A Bill to Prevent Price Gouging during Emergencies, and for Other Purposes, S. 3853, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/senate-bill/3853/titles.
28. *3M Co. v. Performance Supply,* LLC, F. Supp.3d (S.D.N.Y. May 4, 2020).
29. *3M Co. v. Performance Supply,* LLC, F. Supp.3d at ¶ 2.
30. *3M Co. v. Performance Supply,* LLC, F. Supp.3d at ¶ 31-32, https://scholar.google.com/scholar_case?case=8562671216799740609&hl=en&as_sdt=6,48.
31. *3M Co. v. Performance Supply,* LLC, F. Supp.3d at ¶ 44.
32. Complaint, *McQueen et al v. Amazon.com, Inc.,* 4:20-cv-02782, 26 (N. D. Cal. filed Apr. 21, 2020), https://www.courtlistener.com/recap/gov.uscourts.cand.358530/gov.uscourts.cand.358530.1.0.pdf.
33. Complaint at 2, *McQueen et al v. Amazon.com, Inc.*
34. Complaint at 45, *McQueen et al v. Amazon.com, Inc.*
35. Complaint, *Redmond v. Albertsons Companies, Inc.,* 3:20-cv-03692 (N.D. Cal. filed Jun. 03, 2020), https://www.classaction.org/media/redmond-v-albertsons-companies-inc.pdf.
36. Morton, "Price Gouging State Statutes."
37. Berardi, Clarke-Fisher, and Heath, "Responding to Government Inquiries"; Rosa S. Rolle, *Mitigating Risks to Food Systems during COVID-19: Reducing Food Loss and Waste*, UN, Food and Agriculture Organization, May 11, 2020, p. 1, http://www.fao.org/3/ca9056en/ca9056en.pdf.