

# USDA's Delay in Implementing the NAC is a Costly Mistake Congress Must Address

**To:** FGA Partners

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## Key Points

- In §4011 of the 2018 Farm Bill, Congress passed a law requiring the United States Department of Agriculture (USDA) to implement the National Accuracy Clearinghouse (NAC) nationwide to help address interstate food stamp fraud, or “dual participation,” in which beneficiaries fraudulently receive benefits from two or more states.
- USDA, under the Trump administration, issued a final rule in June 2020 that fulfilled this statutory requirement, setting an official start date for the summer of 2021 and estimating a total cost savings of more than \$165 million over five years.
- In 2021, with the Biden administration in power, USDA suddenly reversed course, scrapping the NAC program that had proven its effectiveness over the course of several years, opting instead to recreate the program from scratch, wasting millions of dollars.
- Congress must exert its oversight power to compel USDA to implement an *effective* nationwide NAC without further delay.

## Background

In 2014, at the direction of Congress, USDA launched a pilot program, the National Accuracy Clearinghouse (NAC), aimed at preventing individuals receiving Supplemental Nutrition Assistance Program (SNAP) benefits, commonly known as “food stamps,” from engaging in interstate dual participation.<sup>1</sup> Since 1993, states had relied on the Public Assistance Reporting and Information System (PARIS) to detect and stop this fraudulent activity, but given the limitations of PARIS, Congress sought out a new and more effective means for curbing fraud.<sup>2</sup> The NAC pilot program was launched.

Dual participation occurs when someone receives food stamp benefits in two or more states, or in two or more households within the same state, in the same month.<sup>3</sup> Since state eligibility systems are generally designed to support the identification of intrastate dual participation (fraud committed within state borders), the NAC is designed to focus on interstate dual participation instead (fraud committed across state lines).<sup>4</sup>

Engaging in “dual participation” is against the law and costly for both the state and the federal government.<sup>5</sup> In 2014, it was estimated that more than \$114 million in such fraud occurred nationwide.<sup>6</sup>

The NAC works by offering states a single centralized database populated with commonly formatted data provided by participating states that can be searched against to determine whether individuals receiving food stamps in one state are also receiving food stamps in another.<sup>7</sup>

Prior to the implementation of the NAC, the general strategy employed by states to detect dual participation was the use of PARIS, mentioned above, along with “client self-attestation and caseworker experience.”<sup>8</sup> In other words, besides using PARIS, states essentially relied on the fraudsters to admit their fraud (not necessarily intentionally), or on caseworkers to detect and stop the fraud based on nothing more than a hunch. Unsurprisingly, this approach proved largely ineffective.

### **A Review of the NAC Pilot Program Revealed its Effectiveness, Prompting Congress to Order that the NAC be Expanded Nationwide**

In 2013, the Mississippi Department of Health and Human Services, one of the five states that had agreed to participate in the pilot program, contracted with the Public Consulting Group, Inc. (PCG) to produce a report evaluating the effectiveness of the NAC.<sup>9</sup> The PCG was able to examine the pre-NAC processes and procedures employed in the pilot states and their resulting outcome, and then compare those outcomes with what was achieved after implementing the NAC.<sup>10</sup>

According to the report published in late 2015, the net impact of the NAC on the five pilot states amounted to a total savings of more than \$5.6 million in 2014 alone.<sup>11</sup> The report also estimated that had the NAC been implemented nationwide, savings would have amounted to over \$114 million annually.<sup>12</sup> In 2019, the Congressional Budget Office conducted its own estimation of the total cost savings of employing the NAC nationwide. It estimated that a nationwide NAC would lead to a cost savings of approximately \$576 million from 2019 to 2028.<sup>13</sup>

Based on demonstrated success of the NAC, Congress, in the Agricultural Improvement Act of 2018, better known as the 2018 Farm Bill, directed USDA to “establish an interstate data system to be known as the [National Accuracy Clearinghouse, or] NAC...” and to “incorporate best practices and lessons learned from the pilot program” it had created in 2014.<sup>14</sup> In other words, Congress directed USDA to expand the NAC pilot program nationwide. Under the Trump administration, USDA began nationwide implementation of the NAC as required by law.

### **Now, Under the Biden administration, USDA Has Inexplicably Decided to Create a New Program from Scratch, Wasting Millions of Taxpayer Dollars**

Fast forward to today, and USDA’s own estimates for 2022 put the total cost of food stamps at \$92 billion, an increase of \$20 billion from the previous year.<sup>15</sup> <sup>16</sup> Clearly, the savings that the NAC would provide for the nation would be much higher than the cost savings estimated back in the 2015 study given this massive increase.

In June 2020, USDA, under the Trump administration, issued a final rule implementing §§4011 and 4009 of the 2018 Farm Bill ordering the establishment of the NAC while requiring participation by state agencies.<sup>17</sup> At that time, USDA estimated a net reduction in food stamp spending of approximately \$165 million over five years (2021-2025) based on an estimated \$192 million decrease in federal payments offset by operating and administrative costs of \$27 million.<sup>18</sup> The timetable for enactment of the final rule was August 2021.<sup>19</sup>

Yet, despite the publication of this final rule, the proven success of the NAC, and the increasing need for oversight given the recently announced historic increases in food stamp benefits, USDA, now under the leadership of the Biden administration, inexplicably decided not to expand the NAC

program which had been in existence since 2014. Instead, USDA, through the Food and Nutrition Services (FNS), scrapped the program that had been under continuous evaluation for more than six years, opting instead to create an entirely new system from scratch.<sup>20</sup>

To this end, in FY2021, FNS entered into an interagency agreement with a government agency known as 18F, a digital consulting office that falls under the Technology Transformation Services within the General Services Administration.<sup>21</sup> The mission of 18F is to help U.S. government agencies buy and build digital services by providing consulting services.<sup>22</sup> The agreement calls for 18F, in consultation with FNS, to develop software for the NAC that meets the requirements laid out in the 2018 Farm Bill and to assist with evaluating and selecting a non-government contractor to eventually take over development of the NAC after 18F has built the minimally viable product.<sup>23</sup> The private contractor, once it has taken over the project, will be charged with managing the NAC and developing future enhancements under the administrative oversight of FNS.<sup>24</sup>

On April 30, 2021, FNS published a Request for Information (RFI) seeking a non-government contracting company to take over the NAC from 18F.<sup>25</sup> The period of performance for this new contract was expected to begin on September 1, 2021 at an annual cost of \$1.5 million, with two option periods of 12 months each.<sup>26</sup> After two years, a new RFI will be published allowing other private companies to compete for this contract alongside whichever company is awarded the contract following the current RFI. It is unclear whether the program has begun.

Legitimate concerns have been raised by outside observers that the Biden administration-led USDA's decision to scrap the old NAC and create an entirely new one is motivated by a desire to have a NAC that is less effective at identifying fraud given the administration's focus on massively expanding the food stamp program, as evidenced by Biden's unilateral 27 percent increase of food stamp benefits.<sup>27</sup> If the goal of the current administration is to expand the scope and reach of the food stamp program, argue these outside observers, then it is reasonable to assume that the USDA will seek to create a NAC program that meets the minimum requirements of §4011, but is less effective. Congress must not allow this.

**Congress Should Exercise its Oversight Power and Push USDA to Immediately Implement an *Effective* NAC**



# LEGAL MEMO

On September 1, 2021, Representative James Comer (R-KY), Ranking Member on the House Committee on Oversight and Reform, and Representative Don Bacon (R-NE), Ranking Member on the House Committee on Agriculture Subcommittee on Nutrition, Oversight, and Department Operations issued a letter to USDA Secretary Thomas Vilsack demanding an explanation for the Biden administration's sudden 27 percent increase in food stamp benefits which required the abandonment of the cost neutral policy that had been in effect for 45 years.<sup>28</sup> The letter criticized the Biden administration for "abusing its authority and expanding SNAP—without congressional authorization."<sup>29</sup> The response of Reps. Comer and Bacon is precisely the kind of leadership and oversight that is needed from Congress.

The Biden administration's 27 percent increase in food stamp benefits, some would argue, makes clear that the priority of USDA under the current leadership is not to implement an efficient SNAP program that reduces fraud wherever possible. Instead, the clear goal of the current administration is to expand the scope and reach of the food stamp program to levels never before seen, trapping millions of Americans and their families in an endless cycle of government dependency. In furtherance of this goal, the current administration has demonstrated a willingness to ignore established procedure, federal law, and the explicit congressional mandate encompassed in §4011 of the 2018 Farm Bill, which ordered USDA to implement the NAC nationwide. Clearly, there is a need for Congress to step in and exercise its oversight authority.

As Congress exercises its authority over USDA regarding the 27 percent food stamp increase, it should also push the USDA to implement the NAC without further delay. As it pushes USDA to do this, Congress must also ensure that the program ultimately implemented by USDA is *at least as effective* as the program USDA arbitrarily scrapped. Congress must step in and make clear to USDA and the Biden administration that when it directed USDA to implement the NAC, it was not a request, but an order.

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<sup>1</sup> National Accuracy Clearinghouse (NAC) Evaluation Final Report, PCG Human Services (Oct. 2015), p.5, <https://fns-prod.azureedge.net/sites/default/files/snap/NAC-Final-Evaluation-Report-FINAL-10-19-2015.pdf>.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.*



# LEGAL MEMO

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<sup>5</sup> 7 U.S.C. §2015(j).

<sup>6</sup> National Accuracy Clearinghouse (NAC) Evaluation Final Report, PCG Human Services (Oct. 2015), p.6, <https://fns-prod.azureedge.net/sites/default/files/snap/NAC-Final-Evaluation-Report-FINAL-10-19-2015.pdf>.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 35.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison, Congressional Research Service (CRS) (Feb. 2019), p.15, <https://crsreports.congress.gov/product/pdf/R/R45525>.

<sup>14</sup> H.R.2 – Agriculture Improvement Act of 2018, P.L. 115-334 (Dec. 2018), §4011, p.152-53, <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

<sup>15</sup> Estimated Increase in SNAP Benefits – FY 2022, Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) (Aug. 2021), [https://www.fns.usda.gov/TFP/state\\_table](https://www.fns.usda.gov/TFP/state_table).

<sup>16</sup> National Accuracy Clearinghouse (NAC) Evaluation Final Report, PCG Human Services (Oct. 2015), p.5, <https://fns-prod.azureedge.net/sites/default/files/snap/NAC-Final-Evaluation-Report-FINAL-10-19-2015.pdf>.

<sup>17</sup> Supplemental Nutrition Assistance Program Requirement for Interstate Data Matching, USDA/FNS (Jun. 2020), RIN: 0584-AE75, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202010&RIN=0584-AE75>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> USDA FNS RFI: National Accuracy Clearinghouse (NAC) Development Services, ID RFQ 1488408 (Apr. 2021), <https://etc.g2xchange.com/statics/xfactor-usda-fns-rfi-national-accuracy-clearinghouse-nac-development-services/>.

<sup>21</sup> *Id.*

<sup>22</sup> Technology Transformation Services, U.S. General Services Administration (Feb. 2021), <https://www.gsa.gov/about-us/organization/federal-acquisition-service/technology-transformation-services>.

<sup>23</sup> USDA FNS RFI: National Accuracy Clearinghouse (NAC) Development Services, ID RFQ 1488408 (Apr. 2021), <https://etc.g2xchange.com/statics/xfactor-usda-fns-rfi-national-accuracy-clearinghouse-nac-development-services/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Comer, Bacon Raise Red Flag with Department of Agriculture for Unprecedented Increase in SNAP Benefits, U.S. House of Representatives Committee on Oversight and Reform (Sep. 2021), <https://republicans-oversight.house.gov/release/comer-bacon-raise-red-flag-with-department-of-agriculture-for-unprecedented-increase-in-snap-benefits/>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*