CENTER FOR DIGITAL DEMOCRACY

Does buying groceries online put SNAP participants at risk?

How to Protect Health, Privacy, and Equity

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For decades, SNAP, the Supplemental Nutrition Assistance Program, has been the nation's "first line of defense against hunger," serving families with low incomes who need food assistance. Prior to the COVID-19 pandemic, SNAP helped feed approximately 40 million Americans each month, 44 percent of whom were children. The economic impact of the continuing COVID-19 crisis has put millions of people in financial jeopardy, making SNAP even more essential in the coming months and years and intensifying longstanding policy battles over its future.

Because of widespread stay-at-home orders in response to the pandemic, consumers are turning to the internet in huge numbers for their basic food and other household needs, and to shield themselves from exposure. Even before the current health crisis, shopping and paying for products exclusively through the internet—known as e-commerce—were becoming routine activities for a growing number of individuals and families. Today, people can buy nearly anything they want through their home computer or their mobile phone and have it delivered directly to them, even the same day.

Until recently, families participating in SNAP could not use their electronic benefit transfer (EBT) cards (the contemporary version of what used to be known as "food stamps") to make online purchases. However, a new purchasing pilot program, launched last year by the United States Department of Agriculture (USDA) Food and Nutrition Service, allows SNAP participants to pay for their groceries online with their EBT cards. Although the USDA does not allow EBT cards to cover the costs of home delivery, some large retailers offer this service for free; others allow consumers to buy online and pick up at curbside without having to enter the store.

The online pilot started in New York state, but quickly evolved to include several dozen states and the District of Columbia. Expansion of the pilot has accelerated in the midst of the COVID-19 crisis, and the online ordering program was available, at last count, in 37 states. There is rising pressure at the state and national levels to extend the program to all SNAP participants and to subsidize the cost of home delivery.

People who need government food assistance should have access to the same kinds of online services that others use to feed their families while staying safe. The SNAP online purchasing program could be critical to achieving that goal.

However, as this report shows, the program could also expose participants to increased data collection and surveillance, a flood of intrusive and manipulative online marketing techniques, and pervasive promotion of unhealthy foods. While all U.S. consumers who use online ordering services face many of these risks, SNAP participants are likely to be disproportionately harmed.

In the following pages, we present the results of our research on the eight retail companies chosen to participate in the SNAP online purchasing pilot as of May 2019. Our study reveals that these companies deploy a range of data-driven targeting and e-commerce practices that are at the center of today's digital marketplace. The entire e-commerce system has evolved in a largely unregulated environment, without federal or state policies that provide adequate protections for consumers. Neither the USDA nor the companies in the pilot program offer sufficient protections to SNAP participants.

INSIDE THE "BIG DATA" E-COMMERCE BLACK BOX

The SNAP online purchasing pilot launched amid dramatic technological changes in the grocery and retail industries. The phenomenal success of Amazon as a leader in online shopping has triggered a growing migration of major retailers into e-commerce. Online grocery sales are the fastest-growing U.S. sales category online, a rate accelerated by current shelter-in-place orders. Walmart reported a 43 percent growth in its online retail operations in the fourth quarter of 2019, with grocery shopping at the heart of this trend. Retailers and grocery brands are also investing heavily in digitizing store operations, the supply chain, merchandising, and the back office. They are expanding their data operations, developing new data-driven applications, and turning to online and mobile marketing to boost sales.

Many people are familiar with the experience of shopping and buying online. But most remain vague on how this system actually works, or what its implications are for them and their families. Behind the ease of buying groceries and other consumer goods and services is a highly sophisticated Big Data system that integrates marketing, product promotion, pricing, inventory supply, ordering, and delivery. Leading retailers, grocery chains, and food and beverage companies use the latest advances in data analytics, behavioral science, and communication technologies, and combine them with new methods of persuasion to influence consumers' purchasing decisions.

Eight retail companies were chosen to participate in the online SNAP purchasing program: Amazon, Dash's Market, FreshDirect, Hy-Vee, Safeway, ShopRite, Walmart, and Wright's Market. We analyzed the e-commerce operations of these companies, examining their online materials, trade publications, and reports, along with a growing body of industry research on how the food and beverage industry uses digital marketing and e-commerce strategies. We identified a set of key features that illustrate the complex and far-reaching operations of today's online grocery and retail services. The strategies, tactics, and techniques we highlight are emblematic of how these retailers interact with all their online customers. More detailed descriptions of these practices are available in the full report.

The Engine of E-commerce

These practices, which companies use with all customers—not just SNAP participants—can influence behavior and purchasing even while largely invisible.

DATA COLLECTION

These companies access extensive amounts of information on consumers—including highly sensitive data—and use it to identify and target individuals wherever they go, online and off.

The Walmart Media Group (formerly known as the "Walmart Exchange"—WMX) enables food, beverage, and many other brand marketers to take advantage of the retail giant's "shopper data at scale," providing "a direct connection to hundreds of millions of Walmart shoppers" and tapping into "billions of shopper behaviors based on 150 million omnichannel shoppers every single week—every search, every click, every transaction."

AD TECHNOLOGY

Companies can segment individuals and groups into highly granular targeting categories and engage with them not only on retailers' sites but across multiple channels.

Safeway's parent company operates the "Albertsons Performance Media" (APM) platform, which "gives brands access to proprietary shopper data to target shoppers on digital channels and drive sales across the retailer's network for more than 2,300 stores in 35 states." Among APM's clients are Pepsi and General Mills.

GEOLOCATION

With more than 240 million people in the United States using smartphones, marketers routinely deploy geolocation technologies that tap into consumers' location data and follow their movements and activities.

ShopRite redesigned its app for Apple devices to incorporate geolocation and to offer a "comprehensive grocery ordering, delivery, and pick-up eCommerce solution."

REWARD PROGRAMS AND COUPONS

Retailers offer a variety of incentive and rewards programs—including loyalty cards, digital coupons, cash-back dividends, redeemable points, discounts, contests, and sweepstakes—that require consumers to surrender detailed records of their grocery shopping in order to save money.

In order to use Hy-Vee's digital coupons, customers must activate a "Fuel Saver + Perks" card and have an online account. The company promotes itself across online media channels and conducts sweepstakes, such as its 2020 "PepsiPepsi" Super Bowl promotion, which customers enter by purchasing a Pepsi or other Frito-Lay product.

DIGITAL SHELF

Brands are playing a greater role in ensuring that their products are highly visible on the digital shelf in order to increase their portion of online sales as well as overall basket size. With their bigger ad budgets, companies marketing processed food brands can eclipse those promoting healthier, less expensive products.

Chip company Barcel developed its own store on Amazon to promote its Takis corn chips, enabling it to "provide a visual and engaging way for shoppers to engage with the brand." It also became a "sponsored brand." According to Amazon, one category of the Takis chips was among "the top 10 Amazon Best Sellers for 'Corn Chips & Crisps.'"

AI AND BEHAVIORAL SCIENCE

Companies have devised a host of tactics to influence consumer behaviors—for example, by triggering impulsive purchases of sugar-sweetened beverages and foods that are high in salts, fats, and sugars.

Using sophisticated insights from artificial intelligence, machine learning, behavioral science, and economics, food marketers and retailers can design individually tailored appeals that create a sense of urgency or scarcity in order to "trigger or 'nudge' consumers toward a desired behavior."

FRICTIONLESS SHOPPING STRATEGIES

Retailers have instituted a number of online strategies for encouraging and enabling what they call "frictionless" shopping.

Techniques such as re-order buttons, reminders, abandoned-cart notifications, and other forms of personalized service are designed to promote a seamless experience for online shoppers.

FreshDirect partnered with MasterCard's "MasterPass" bot system, which is connected to Facebook and its Messenger communications application. "Branded bots," powered by artificial intelligence technologies, engage in "conversational commerce" with customers, encouraging them to "build their order and securely checkout via MasterPass, all without leaving the Messenger platform."

REAL TIME MEASUREMENT

Through real-time measurement, retailers can determine how a marketing campaign or e-commerce practice affected consumer purchasing behavior, enabling companies to maximize and fine-tune their techniques with unprecedented precision.

Amazon, Safeway, ShopRite, and Walmart claim to be able to measure the impact of search, social, display, email, and video media channels based on how consumers discover, research, and buy products.

THE HIDDEN COSTS OF ACCESSING ONLINE SNAP BENEFITS

Online shopping could offer a number of benefits to SNAP participants. It could make food and other products more accessible for those unable to get to stores. Digital coupons and loyalty cards could also reduce the costs of necessities, enabling consumers to buy more with their limited funds. Personalized services could help streamline the process, providing discounts for the brands and products that consumers use most frequently, and offering promotions for products that are tailored to individual needs. But this system also comes with a price.

Online grocery shopping exposes consumers to a massive retail and e-commerce surveillance system of unprecedented scope and granularity. An expanding infrastructure of sophisticated data systems gives retailers, food and beverage brands, and other marketers the ability to know their customers and behaviors in an intimate way, anticipate their actions, and track and follow them wherever they go—online and off. Companies can target these individuals with personalized messages—on their mobile phones, as they communicate with friends on social media, or when they are purchasing groceries

for their families online. The loyalty cards and discount coupons that have become so vital to consumers for savings on food and other necessities are also key mechanisms to track spending and purchasing patterns, with data funneled into the machinery of the digital retail, food and beverage industry, and e-commerce operations. The ubiquity of the surveillance and the merging of the online and physical worlds make these practices nearly inescapable.

Automated digital marketing technologies undermine consumer decision-making and promote unhealthy foods. These changes in the retail and grocery industries have unleashed a new set of tools designed to manage and in some cases manipulate consumers' behaviors—favoring certain brands and products over others, "reminding" customers to make purchases, and triggering impulsive purchases based on an individual's profile and past behaviors. Sophisticated measurement software provides the industry with detailed and concrete feedback to fine-tune the system and ensure that all these strategies and techniques work to influence how customers respond. With e-commerce aimed at increasing "basket size," marketers draw from this expanding arsenal of digital techniques to position their most heavily advertised brands and products at the foreground of consumers' online experiences.

A recent report by the Center for Science in the Public Interest found that the majority of products promoted by retailers via grocery websites, email messages, store search engines, and featured price discounts were for unhealthy products such as sugar-sweetened beverages, high-fat fast food, and sweet or salty snacks.

The marketing and data practices of online grocery stores pose greater threats to individuals and families already facing hardship. While these retail and e-commerce practices affect all consumers, they are likely to have a disproportionate impact on SNAP participants, including people with low incomes, people of color, people with disabilities, and those living in rural areas. Increased reliance on online services for daily food and other household purchases could subject these consumers to extensive data collection, as well as to unfair and predatory practices, exacerbating disparities in racial and health equity.

Research has documented that food and beverage companies already target communities of color with marketing for foods and drinks low in nutrition and high in sugars, salt, and fats. Low-income populations are at greater risk for obesity, and additional exposure to marketing for unhealthy foods would increase this risk. This is especially true of the Latinx community, where many could be exposed to a "double dose" of targeted marketing in English and Spanish.

As major retailers and online e-commerce companies expand their holdings in the financial and health sectors, they will be able to create even more extensive and more detailed profiles than before. Individuals with medical conditions such as heart disease, obesity, and diabetes could confront a pervasive and intelligent apparatus that delivers personalized and aggressive marketing of prescription drugs, insurance plans, and other products using inferences about a consumer's medical conditions. Data about their consumption patterns and inferred behavioral profiles, including perceived credit or health risks, could spread to other commercial transactions, online and off, affecting eligibility decisions about insurance, housing, education, and employment, and exposing them to further exploitative targeting.

USDA'S SAFEGUARDS FAIL TO PROTECT SNAP PARTICIPANTS FROM ONLINE MARKETPLACE HARMS

When the USDA first announced its online purchasing pilot for SNAP, the agency issued a request for retailer volunteers to submit applications for the pilot, spelling out requirements for companies agreeing to participate. However, while articulating some principles for privacy protection, fairness, and equal treatment, the requirements reflect the weak and ineffective government and self-regulatory systems currently in place in the United States. Lack of meaningful safeguards enables retailers to target SNAP participants with a growing arsenal of digital marketing, data analytics, and targeting applications. Our in-depth analysis of the privacy policies of the eight companies participating in the online purchasing pilot program found that they do little to inform customers of their operations and offer only minimal safeguards.

SNAP participants who want to take advantage of the services in the new online purchasing program have no real choice. Just by signing up to get access to online products, receive coupons for discounts, or use home delivery, customers subject themselves to massive, ongoing data collection and personalized targeting. Faced with the daunting, time-consuming, and nearly impossible task of reading and deciphering a company's privacy policy, most customers simply resign themselves to agreeing to its terms.

Lack of meaningful safeguards include:

- Participating online merchants do not provide adequate choices for consumers to control how their data can be used for marketing.
- Privacy policy disclosures are invariably long, densely worded documents that often obscure what the companies' practices are, present their data operations in the most positive and beneficial terms, and deflect attention away from possible risks or harms.
- Participating retailers collect and use highly sensitive geolocation data, but the disclosures to consumers and limits on use are inadequate.
- Companies routinely share extensive personal information from their customers with "partners," "affiliates," and other types of vaguely defined "third parties," while offering few, if any, opportunities for individuals to "opt in" for such sharing, as required by the USDA.
- Participating providers allow outside companies to embed "trackers" on their webpages, enabling them to stealthily gather information about a person's activities.

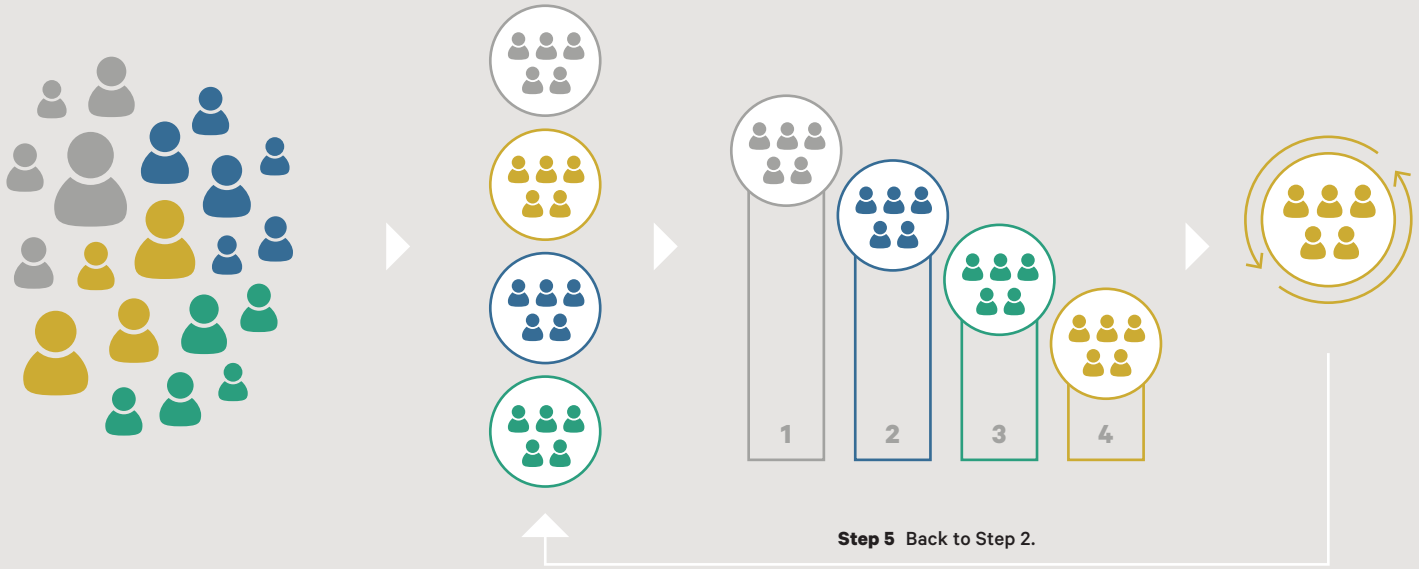
How Segmentation and Sorting May Contribute to Inequities

Step 1 Consumers may already be segregated geographically due to historic discrimination such as redlining; consumption patterns are shaped by economic conditions and other inequities, for example, consumers in poor neighborhoods may have no access to healthy food options, which limits purchase opportunities.

Step 2 As consumers come online, they are classified based on many data points, including their own past consumption patterns and patterns from people "like" them. Algorithms group consumers into segments, i.e. into groups of consumers that share characteristics.

Step 3 Segments are further sorted, i.e. ranked into more or less "lucrative" marketing targets, making some segments more likely to become targets for advertising campaigns, while others are more likely excluded from these campaigns.

Step 4 Advertising exposure is likely to lead to consumption habits which reinforce the cycle of targeting/exclusion.



Step 5 Back to Step 2.

BIG DATA'S IMPACT ON COMMUNITIES OF COLOR AND LOW-INCOME GROUPS

Many of the concerns surrounding the new SNAP online purchasing program are part of a much larger set of questions raised by the growth of digital technologies and their impacts on social and economic equality in American society. A growing body of academic research has documented how the expansion of Big Data into so many aspects of society is impacting communities of color, low-income groups, and other marginalized populations. As more and more companies use digital tools to collect an unending stream of data about consumer purchases, location, preferences, behaviors, and more, these data often reflect historical racial inequities and their use can contribute to the growth of these inequities. Jim Crow laws such as redlining, for example, have kept people of color out of certain neighborhoods and limited their access to such essential needs as affordable housing, education, jobs, health care services, and fresh foods. These disparities, in turn, can affect purchasing patterns, since where people live—and the products made available to them there—influence what people buy. The data are used to artificially construct segments or groups of online consumers and classify and sort them according to the marketers' logic. "Discrimination by association" has become commonplace in the online advertising industry, where people are grouped according to their assumed interests or inferred traits and offered or excluded from different products, services, or prices based on their presumed affinity. Researchers have also found that some algorithmic decision-making may disproportionately impact members of disadvantaged groups.

PROTECTING SNAP PARTICIPANTS IN THE PANDEMIC AND BEYOND

SNAP participants should be able to take full advantage of the digital economy, enjoying the benefits of cost savings and efficiency, and expanding their access to a wider range of foods and other products. Expansion of the SNAP online purchasing program will continue to accelerate as state and federal officials seek ways to address the ongoing spread of COVID-19 and its impacts on low-income communities. This creates a critical and urgent window of opportunity for intervention to ensure that SNAP's digital transition will maximize the benefits to low-income families and others who most need this assistance, without exposing them to practices that could threaten their privacy, undermine their health, and deepen the inequities they already experience.

The USDA should take an aggressive role in developing meaningful and effective safeguards for the new online purchasing system, grounding its framework in an understanding of the contemporary e-commerce, retail, and digital marketplaces. This should be part of the overall federal response to COVID-19, ensuring that SNAP participants can act to protect themselves, their families, and communities by remaining safely at home and practicing other forms of social distancing.

The agency should work with state officials and industry groups, as well as representatives from the consumer, privacy, civil rights, public health, food security, and academic communities, to develop a framework of principles, best practices, and policies for the program. SNAP participants should have a voice in these deliberations. The framework should extend beyond the current pilot requirements, addressing the issues we have identified in this report, along with those documented by public health organizations.

To protect SNAP participants during online purchasing, USDA should:

1. Ensure fair and transparent data collection and use.
2. Curtail manipulative and unfair marketing and promotion practices.
3. Provide consumers with meaningful privacy rights.
4. Minimize disparate impacts of Big Data e-commerce practices.
5. Foster healthy eating.

As building blocks for this framework, we recommend that the USDA:

- Require participating retailers to adhere to a granular set of privacy safeguards for limiting not only what kinds of data can be collected from individuals, but also how that information can be used and shared with third parties. A SNAP participant who orders groceries online from one merchant, for example, should not have to fear that her information will be used by another company to target her with predatory marketing for a payday loan or other similar product.
- Rather than allowing each merchant to develop its own privacy policy, require a uniform format, mandate clarity of language, and articulate specific data and consumer protections. Ensure that privacy policies are available in Spanish and other languages commonly used by a store's shoppers.
- Forbid the use of techniques that take advantage of consumers' psychological vulnerabilities or employ manipulative practices designed to foster impulsive behavior.
- Ensure there are ongoing impact assessments to address the marketing of unhealthy foods and beverages, as well as any disparate impacts on people of color, low income, and other at-risk populations.
- Build into its merchant approval process a much stronger and ongoing oversight and enforcement mechanism.
- Encourage participating retailers to prioritize healthier products in their e-commerce and online promotion efforts, discounts, and coupons.
- Facilitate participation of smaller, independent retailers, farmers markets, and other local produce suppliers.

Other government bodies and stakeholder organizations can do more to ensure that SNAP participants receive full benefits and protections when they use the online purchasing program.

- As states seek to expand their food assistance programs to accommodate online ordering, we urge them to enact privacy and consumer protection legislation that specifically addresses the e-commerce practices described in this report.
- Academics and other scholars should conduct studies of retail and grocery e-commerce platforms, marketing strategies, and data practices, including how they are impacting SNAP participants, and, generally, people of color, people with low income, and other at-risk populations.
- The Federal Trade Commission should conduct its own study of the retail and grocery industry online marketing practices, including the collection and use of consumer data.
- Congress should hold oversight hearings on the online purchasing program and ask the Government Accountability Office to conduct its own review, with special attention to assessing the impacts of e-commerce and online retail practices on the populations served by SNAP.

Finally, the privacy, consumer protection, and discrimination issues raised by the SNAP online purchasing program underscore the need for more comprehensive national laws to address the role of digital technologies in our lives.

Policies established now to protect SNAP participants in the digital marketplace will help lay the groundwork for a broader set of protections that will ensure health, safety, privacy, and equity for all U.S. consumers, as they become increasingly dependent on e-commerce and online retail services in the coming years.