



An Evaluation of the

FARMERS TO FAMILIES FOOD BOX PROGRAM

February 2021



FOOD LAW
and POLICY CLINIC
HARVARD LAW SCHOOL



AUTHORS

The lead authors on the report are **Emily M. Broad Leib**, Clinical Professor of Law and Director of the Food Law and Policy Clinic at Harvard Law School, **Ariel Ardura** and **Joseph Beckmann**, Clinical Fellows of the Food Law and Policy Clinic at Harvard Law School, with significant research, input, and editing support from **Wes King**, Senior Policy Specialist of the National Sustainable Agriculture Coalition. In addition, the report is based on research and writing by the following Food Law and Policy Clinic Students at Harvard Law School: **Merve Ciplak**, **Julianne Orr**, and **Audra Robitaille**.

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HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods, supporting sustainable and equitable food production, and reducing waste of healthy, wholesome food. FLPC is committed to advancing a cross-sector, multi-disciplinary, and inclusive approach to its work, building partnerships with academic institutions, government agencies, private sector actors, and civil society with expertise in public health, the environment, and the economy. For more information, visit www.chlpi.org/flpc/.

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The National Sustainable Agriculture Coalition (NSAC) is an alliance of over 130 grassroots organizations that advocates for federal policy reform to advance the sustainability of agriculture, food systems, natural resources, and rural communities. NSAC's vision of agriculture is one where a safe, nutritious, ample, and affordable food supply is produced by a legion of family farmers who make a decent living pursuing their trade, while protecting the environment, and contributing to the strength and stability of their communities. For more information, visit <https://sustainableagriculture.net/>.

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INTRODUCTION

Since the outset of the Novel coronavirus pandemic in the United States, the U.S. economy has experienced sweeping disruption, including in the agriculture and food sectors.¹ Widespread shutdowns of all but essential businesses led to the closure of many businesses in the hospitality and education sectors, including restaurants, hotels, schools, and entertainment venues.² This abrupt closure of many food service establishments triggered a sharp decline in demand for many producers.³

Consequently, farm income plummeted as supply chain disruptions left many farmers with a temporary glut of perishable products, including fruit, vegetables, milk, and meat.⁴ Unfortunately, in many cases, these surpluses were not able to be rerouted and utilized within the U.S. food system and were ultimately wasted.⁵



The pandemic forced farmers to dispose of or plow under their surplus produce, while at the same time, millions of Americans began experiencing newfound or worsening food insecurity.⁶ Even before the pandemic, roughly 10.5 percent of all U.S. households, or about 34.7 million Americans, experienced food insecurity at some point during 2019.⁷ As a result of the pandemic, in 2020 over 50 million Americans were estimated to be experiencing food insecurity, causing a marked increase in the demand for federal support and charitable assistance to meet their food needs.⁸ Additionally, the number of households with “very low food security,” or households where “normal eating patterns were disrupted due to lack of resources,”⁹ more than doubled as a result of the pandemic, increasing from 4 percent to 11 percent.¹⁰

In response to the pandemic, Congress passed several pieces of legislation in spring and early summer, notably the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹¹ In April, the USDA announced it would use funds and authority through the CARES Act and FFCRA as well as other existing USDA funding to launch a new \$19 billion federal program, called the Coronavirus Food Assistance Program (CFAP).¹² Under CFAP, the USDA provided \$16 billion in direct support payments to agricultural producers who suffered financial hardship due to lost demand and oversupply caused by the pandemic.¹³ The USDA designated the other \$3 billion of CFAP funding to the Farmers to Families Food Box Program (Program) to purchase and distribute fresh produce, dairy, and meat.¹⁴ The Program aimed to address some of the supply chain and market disruptions in the agriculture and food service industries resulting from the pandemic.

Through this Program, the Agricultural Marketing Service¹⁶ (AMS) of the USDA contracted with farms, farmer associations, distributors, and other value chain entities to purchase agricultural products from farmers and processors and for those contracted entities to distribute this food to nonprofit entities, such as food banks and faith-based organizations, to serve Americans in need.¹⁷

This report focuses on the Program because of the unique role it has played in the USDA's efforts to support producers and address food security challenges during the pandemic, and because of the likelihood that it will continue in some form during the next Administration and be a model for future programs. While other federal efforts exist to purchase surplus agricultural products, including The Emergency Food Assistance Program (TEFAP) and the USDA's commodity purchases under its Section 32 authority, these programs generally do not purchase and distribute fresh produce from agricultural producers.¹⁸ The Program also differs from the TEFAP Farm to Food Bank program, a new program as of the 2018 Farm Bill, which provides funding to support the ancillary costs of harvesting and transporting produce to be donated to food banks. As such, the Program has temporarily filled a gap in federal food procurement efforts and shown that the USDA has the ability to serve food insecure communities by procuring and distributing fresh products.

Image, top right: Volunteer distributing Program Boxes
at Cornerstone Chapel in Leesburg, VA
Credit: USDA



Created to support producers and distributors and reduce food insecurity, the Program has gone through various iterations throughout its four Rounds completed as of the end of December 2020. The USDA and AMS worked to improve the Program by taking into account stakeholder feedback and public opinion when making adaptations after each Round.¹⁹ In addition, the recently passed Consolidated Appropriations Act, 2021 included a \$900 billion pandemic relief bill, which provides an additional \$1.5 billion to the Program for a fifth Round, slated to begin at the end of January 2021.²⁰ Thus, there remain opportunities to learn from the Program and maximize future efforts, particularly with respect to addressing food waste, increasing food access, and supporting small- and mid-sized farms and minority- and women-owned farms.

Image: USDA
Program
Banner
Credit: USDA



The purpose of this report is to provide an in-depth analysis of the Program by celebrating its successes, analyzing its critiques, and providing recommendations on areas of opportunity for improvement. To obtain the necessary data for this report, the Food Law and Policy Clinic (FLPC) at Harvard Law School and the National Sustainable Agriculture Coalition (NSAC) used the following methodology: First, we comprehensively reviewed all publicly available data on the Program, including the USDA solicitations, webinars, and press releases,²¹ as well as the hearing on the Program conducted by the U.S. House of Representatives Agriculture Committee’s Subcommittee on Nutrition, Oversight, and Department Operations.²² Next, we conducted cross-sector interviews with approximately 30 individuals and organizations, including Program stakeholders, such as distributors, participant and applicant farmers, food banks and Feeding America, other nonprofits, as well as organizations and news and media outlets researching the Program. We also presented our findings and recommendations to the USDA AMS, who provided us with feedback on our initial findings. Finally, we engaged a range of stakeholders to conduct external review of our report prior to publication.

This report is designed to provide the USDA with necessary analysis of the Program and to offer recommendations on how to improve its effectiveness. Our analysis focuses on three specific goals the Program was set up to tackle:

support of farmers, specifically small- and mid-sized and minority- and women-owned farms; alleviation of food insecurity; and mitigation of food waste. Most of the recommendations herein are strategies the USDA can use to adjust the Program, should it continue beyond the conclusion of Round Five in April 2021, or be a model for the future. The report also provides recommendations to both the USDA and Congress to further address food waste, food insecurity, and the support of small- and mid-sized and minority- and women-owned farms beyond the scope of the Program, in a post-pandemic world.

While this report recognizes the unique role that the Program has played in supporting producers and distributors during the COVID-19 pandemic, it by no means intends to suggest that the Program is an adequate solution to addressing the issue of food insecurity in the United States, either during the pandemic or otherwise. To meaningfully increase food access and ensure dignity for recipients of food assistance, Congress and the USDA must ensure that Supplemental Nutrition Assistance Program (SNAP) benefits are adequate and robust, and reduce barriers to accessing these benefits and the benefits of other food assistance programs that increase the purchasing power of those in need. While FLPC wholeheartedly embraces calls to improve and expand these federal food assistance programs, discussion of these programs is beyond the scope of this report.

This report begins by providing background information on the legislation and administrative programs that led to the creation of the Program, along with a detailed overview of the Program's successes. The report next discusses the issues and critiques of the Program, as identified through reporting on the Program as well as stakeholder interviews. The report then offers recommendations to maximize the effectiveness of the Program as well as other related agency efforts, broken into three segments: A) Farmers to Families Food Box Program Recommendations; B) Applying Lessons from the Program to Other USDA Purchasing and Distribution Efforts; and C) Recommendations to Address Food Waste Going Forward.

Image: Sample contents of a Program Box at God's Kitchen in Kenosha, WI
Credit: Melissa Melshenker Ackerman, Produce Alliance



BACKGROUND

A. Coronavirus Food Assistance Program (CFAP)

The pandemic dramatically and negatively impacted the U.S. agriculture and food industries.²³ In April 2020, through CFAP, the USDA created two distinct initiatives: \$16 billion dollars of direct payments to farmers and ranchers and \$3 billion for the Farmers to Families Food Box Program.²⁴ The Farmers to Families Food Box Program (Program) funding was used for USDA to contract with distributors to purchase and distribute produce, dairy, and meat to food banks, community and faith-based organizations, and other nonprofits that serve Americans in need.²⁵ In August and October 2020, the USDA allocated additional funding to the Program, totaling \$1.5 billion. In September, in light of the ongoing market disruptions and increased costs associated with the pandemic, the USDA also implemented an expansion of CFAP, titled CFAP 2, to provide further financial assistance to producers.²⁶ CFAP 2 provided an additional \$14 billion dollars to support producers of eligible agricultural commodities,²⁷ bringing the 2020 total spend on the Program to \$4.5 billion.

B. Consolidated Appropriations Act, 2021

As the effects of the pandemic continued to detrimentally impact the U.S., on December 21, 2020, Congress passed the Consolidated Appropriations Act, 2021, which included roughly \$900 billion in stimulus for pandemic-related relief.²⁸ This Act was paired with the \$1.4 trillion omnibus spending bill that funds the federal government through September 2021. Additional funding for the Program was included in the pandemic relief measure.²⁹ This measure specified that \$1.5 billion should be used to purchase and distribute agricultural products—including fresh produce, dairy, meat and, for the first time, seafood—to individuals in need, including through the delivery to nonprofit organizations, “that can receive, store, and distribute food items,” and for grants and loans to small- and mid-sized food processors or distributors.³⁰ Also, Congress mandated that the Secretary of Agriculture conduct a review on how to improve pandemic-related food purchasing no later than 30 days after the Appropriations Act was enacted and before Round Five contracts are issued.³¹ The review must examine the specifications, coordination, and quality of the Program, as well as the fairness of purchases.³² On January 4, 2021, U.S. Secretary of Agriculture Sonny Perdue announced that the USDA will purchase an additional \$1.5 billion worth of food for nationwide distribution through the Program.³³

C. Farmers to Families Food Box Program

The USDA created the Program in order to address the procurement and distribution issues faced by the fresh produce, meat, and dairy industries and to get that food to people in need.³⁴ The Program aimed to alleviate food supply chain disruptions brought on by the closures of food service establishments throughout the country with a stated goal to partner with local and regional and distributors facing job loss.³⁵

Further, because agricultural supply chain and market disruptions left producers with excess product, the Program sought to reallocate the surplus that would otherwise go to waste.³⁶

In its Program solicitations, the USDA requests proposals that include plans for supplying commodity food boxes to identified nonprofit partners.³⁷ Eligible nonprofit partners include food banks and other nonprofits serving Americans in need, so long as they were able to “receive, store, and distribute food items.”³⁸ Awarded contracts are directed toward the purchase of agricultural products, the assembly of the boxes, the delivery to nonprofit organizations, and, since Round Three, the payment for last mile delivery.³⁹ The prime contractor is responsible for all aspects of contract performance, including sourcing the food products, preparing the boxes, securing nonprofit partners, and ensuring final delivery.⁴⁰ The four evaluative components for contract selection, in descending order of importance, are 1) Technical Information; 2) Past Performance; 3) Offeror Capability; and 4) Price.⁴¹

Participation in the Program requires that contractors submit a list of all intended subcontractor farmers and other food producers during the bidding process.⁴² The contractors act as an intermediary between the farmers and food box recipients by creating a distribution network to get the subcontractor-farms’ produce to the end consumers.⁴³ The subcontractor system was the main mechanism through which farms were involved in the Program, although, during the first two Rounds, a small number of farmers with distribution capabilities were awarded contracts and ran their entire supply chains themselves.⁴⁴

In late April 2020, less than one month after announcing the program, the USDA began issuing contracts to distributors, and in May 2020, the initial boxes were distributed.⁴⁵ The Program has since gone through four Rounds of food box contracts—Round Two received an extension and Round Five will begin after January 19, 2021.⁴⁶ As of January 9, 2021, the USDA states that the Program has invoiced 132.7 million boxes in total.⁴⁷ There have been several changes between Rounds, including requiring contractors to include Memoranda of Understanding⁴⁸ (MOUs) with their nonprofit partners in their proposal, a price-focused bid process that awarded contracts to bidders offering the lowest cost for boxes,⁴⁹ an exclusive focus on combination boxes rather than separate boxes of fresh produce, dairy, or meat,⁵⁰ a focus on delivery to Opportunity Zones to



Image: USDA Program Sticker
Credit: USDA

ensure better distribution throughout the country and in underserved areas,⁵¹ and a focus on allocating money towards last mile delivery.⁵² The fifth Round of the Program will again include combination boxes of fresh produce, dairy products, fluid milk, meat products, and, for the first time, seafood products.⁵³ It will be issued to over 240 organizations that have previously received Basic Ordering Agreements (BOA), with an amendment “to clarify the amount of acceptable processed meat products, to include seafood products.”⁵⁴ The solicitations for the existing BOA holders are expected to be issued in early January with contract awards expected to be made by January 19, 2021, and deliveries to begin shortly thereafter and continue through the end of April 2021.⁵⁵ The USDA maintains that distributor payment only occurs after evidence of delivery and adherence to the contract.⁵⁶

There is a general consensus among Program participants interviewed for this report that Round One of the Program was implemented with a rare rapidity⁵⁷—even those participants who were unhappy with deliveries or who were disappointed with other aspects of the Program were impressed by the speed with which a program of this novelty and scale was implemented. The Program’s initial shortcomings, which were likely a result of this rapid implementation, were discussed in an investigative hearing held by the House Agriculture Committee’s Subcommittee on Nutrition, Oversight, and Department Operations on July 21, 2020.⁵⁸ Changes made between Rounds seem to address, at least in part, many of these and other criticisms made by Program stakeholders.

D. Farmers to Families Food Box Program Successes

This section will explore the successes of the Program. Although the Program would benefit from a number of changes, many stakeholder interviews praised the Program for its major successes. For instance, on numerous occasions, stakeholders mentioned that without the Program, their business and many businesses within their networks would not have survived. Stakeholders additionally celebrated the fact that the USDA was able to develop a procurement process involving large-scale fresh produce procurement and distribution for the first time. The following successes should remain top-of-mind for the USDA and Congress, in the event the Program continues beyond the conclusion of Round Five in April 2021, and when considering existing or new program development in the future.

i. Millions of boxes of fresh produce and other fresh products were distributed to people experiencing need, helping to alleviate food insecurity.

The USDA received praise for its rapidity in establishing the Program to support the growing number of Americans experiencing food insecurity in light of the pandemic.⁵⁹ Following the solicitation for proposals on contracts through the Program, in Round One the USDA awarded \$1.2 billion dollars in contracts to 198 contractors.⁶⁰ Within 45 days of AMS announcing the Program, the contracted distributors successfully delivered the first five million food boxes to 501(c)(3) entities;⁶¹ within 45 days of the Program’s launch date, contracted distributors delivered over 35.7 million boxes.⁶²

Since its start, the Program has helped get food into the hands of millions of recipients, certainly providing a huge lifeline to those facing growing food insecurity. By and large, Program recipients also appreciated the food boxes and many communities have advocated for continuation of the Program between Rounds.⁶³ As of January 9, 2021, 132.7 million food boxes have been invoiced⁶⁴ for payment by distributors, broken down by Round as follows:

- Round One contracts (May 15–June 30th)—35.7 million food boxes
- Round Two contracts (July 1–August 31st)—50.8 million food boxes
- Round Two contracts extensions (September 1–18th)—15.2 million food boxes
- Round Three contracts (September 22 15–October 31st)—18.6 million food boxes
- Round Four contracts (November 1–December 31)—12.2 million food boxes⁶⁵
- Round Five contracts (End of January 2021–End of April 2021)—No data available as of the time of publication of this report.⁶⁶

ii. The Program helped mitigate distributor job loss.

In addition to providing billions of pounds of food to Americans in need, the Program provided economic relief to industries affected by the pandemic, including farmers and food service distributors.⁶⁷ The state and local government-mandated closures of food service establishments,⁶⁸ as a result of the pandemic, caused a significant disruption to food service supply chains.⁶⁹ Distributors accustomed to delivering food to food service establishments faced an immediate decline in demand for their services.⁷⁰ The Program provided economic stimulus to distributors across the country. According to the USDA, through Round Four, the Program successfully supported over 235 distributors as well as saved or impacted untold totals of farms and food supply chain jobs.⁷¹ It is important to note that several contractors mentioned that participating in the Program not only allowed them to retain staff, but occasionally provided them with an opportunity to hire more workers to meet the demand.⁷² The Program has also strengthened existing relationships and fostered new collaborations between producers, distributors, food banks, community and faith-based organizations, and other nonprofits that provide food assistance to individuals through the Program.⁷³ Multiple interviewed stakeholders indicated that they would not have developed relationships with contractors and other Program stakeholders had it not been for the Program.⁷⁴ Even further, these new networks have enabled stakeholders who are no longer participating in the Program to continue distributing food to those in need now with greater ease and a larger reach.⁷⁵

iii. Small- and mid-sized farms were initially involved.

Before the development of the Program, the pandemic severely impacted many small- and mid-sized farms, particularly those that were new or socially disadvantaged.⁷⁶ The pandemic has threatened the livelihoods of small- and mid-sized farms,⁷⁷ and those producers who rely on direct-to-consumer channels such as farmers markets, restaurants, and schools to sell their produce.⁷⁸ Demand flowing through these channels has been significantly reduced with

business and school closures, as well as changing consumer behaviors.⁷⁹ Before the Program's launch, these producers faced difficult decisions including slaughtering livestock with no market, dumping or plowing under food products, or increased expenses such as storage for said products.⁸⁰ In an economic impact assessment compiled in March 2020, NSAC determined that between March and May 2020, an estimated \$1.32 billion of total loss to the economy was expected without mitigation efforts against the harmful effects of the pandemic on small- and mid-sized farms.⁸¹

The Program's initial design provided a much-needed platform through which to support small- and mid-sized farms by awarding contracts to many local and regional distributors who chose to subcontract with such farms.⁸² Further, because smaller-scale producers were not as well served by the direct payment methods initially provided through CFAP, the Program was designed specifically to ensure these producers received necessary support.⁸³ Although the Program has received criticism for the later Rounds' lack of support for small- and mid-sized farms, (discussed in greater detail in Section III, subsection a, of the report), Program documents maintain formal support of small- and mid-sized farms as a key goal, noting in the solicitation for the Program that, "evaluation preferences" for small businesses may be offered when deciding contracts and requesting that Offerors should "describe how they intend to engage small farms (e.g. those farms servicing local and region interests and farmers markets)," with a goal of "keep[ing] our most vulnerable families fed and support[ing] American family farms in the process."⁸⁴



Image: Mona of Pie Ranch with a box of organically grown fruits and vegetables from minority-owned, beginning, and local farms in the San Francisco Bay Area
Credit: Andy Ollove, Fresh Approach

iv. The Program has helped reduce food waste to some extent.

The pandemic's disruption of daily activities led to a large-scale change in consumer habits and, subsequently, a change in demand for food products.⁸⁵ The shift away from food service demand led to supply chain disruptions resulting in part from food delivery and procurement contract cancellations.⁸⁶ These disruptions led to large volumes of supply-side food waste, including dumped milk and discarded or unharvested crops.⁸⁷ Additionally, millions of livestock were euthanized as the pandemic caused slowdowns and closures at meatpacking plants.⁸⁸



Image: Unused produce rotting in a landfill

Food waste in the U.S. is an ongoing problem that was exacerbated by the pandemic. Pre-pandemic, it was estimated that 40 percent of food in the U.S. went uneaten, contributing to at least 62.5 million tons of wasted food each year.⁸⁹ Wasted food significantly impacts the environment, the economy, and food insecurity and has been on the rise for the past several decades.⁹⁰ Approximately 21 percent of the United States' fresh water supply⁹¹ and 300 million barrels of oil are used to produce food that goes to waste.⁹² Most of this wasted food ends up in landfills.⁹³ Food waste is also responsible for at least 11 percent of methane emissions generated from landfills, an amount equivalent to the emissions of about 3.4 million vehicles.⁹⁴

The Program served as one avenue by which to mitigate some of the food waste resulting from the pandemic.⁹⁵ It is difficult to quantify how much of the supplier-side food waste was mitigated by the Program as these statistics were not actively tracked by the Program's stakeholders. Distributors and suppliers mentioned that the swift execution of the Program provided a lifeline for food producers whose growing seasons were well underway at the start of the pandemic.⁹⁶

The visuals of so much food going to waste while a greater number of Americans went hungry was the backdrop and likely an important impetus behind the Program. However, while the Program has clearly had a positive impact on food waste mitigation, none of the Program's solicitations for proposals have included food waste as an evaluative component.⁹⁷ The absence of food waste mitigation requirements in deference to other contract preferences suggests that any waste reduction was a subsidiary benefit rather than a Program objective.

v. The Program was responsive and made some improvements between Round One and Round Four.

The emergency nature of the pandemic necessitated that the Program be designed and executed quickly, which likely led to several implementation challenges. Consequently, the Program garnered swift criticism from producers, distributors, and recipients.⁹⁸ Throughout

the lifespan of the Program, feedback has been solicited and gathered in several ways through platforms such as webinars put on by AMS officials and House subcommittee hearings on the Program.⁹⁹ Every subsequent Round of the Program has involved adjustments and changes in response to feedback received, with AMS demonstrating an interest in learning from prior Rounds and the experiences of stakeholders in hopes of refining the Program.¹⁰⁰ Some of the more noticeable changes include the following:

-  Initially, AMS permitted the distribution of boxes consisting of fresh fruit and vegetables, dairy, precooked meat, fluid milk, or a combination of these foods. Starting in Round Three, contracts were awarded only for combination boxes, or boxes that included vegetables, fruit, dairy, and dried precooked meat.¹⁰¹ This change was likely in response to complaints from recipients receiving boxes that contained a single type of product or generally lacked variety.¹⁰² This shift increased the likelihood that the end-consumer received a variety of food products through the Program.
-  Starting in Round Three, AMS also made adjustments to their fulfillment, oversight, and invoicing requirements. This was in response to complaints that contractors were not satisfactorily fulfilling their contractual obligations for the boxes they were invoicing, such as by dropping boxes off in parking lots without planned last mile delivery to recipients, or without appropriate cold storage for perishable produce. The Program now requires contractors to enter into agreements with their nonprofit partners ensuring that boxes will be delivered directly to consumers, not dropped off in bulk at food banks or other nonprofits, and requires distributors to reimburse nonprofits for the cost of delivery of food into the hands of recipients.¹⁰³ The USDA runs occasional checks to ensure recipients are receiving the food and that it is in good shape.¹⁰⁴
-  After Round One, the USDA focused on prioritizing delivery of food boxes to Opportunity Zones, economically distressed communities throughout the U.S. as defined by the Tax Cuts and Jobs Act of 2017.¹⁰⁵ By awarding contracts to bidders that could serve Opportunity Zones, the Program successfully reached some regions that previously had not received boxes or were underserved by the Program.¹⁰⁶ The USDA also increased overall county coverage for Rounds Three and Four by auditing enrolled contractor lists to ensure all counties were assigned at least one contract.¹⁰⁷

The successes of the Program should be celebrated and likely should remain a part of any future iteration of the Program or any similar program implemented in the future. However, opportunities to improve and strengthen the Program exist. As such, the following sections examine shortcomings of the Program and offer recommendations for addressing these shortcomings.

ISSUES AND CRITIQUES

The rapid implementation of the Program, as well as its novelty and scale, led to some perhaps unforeseen issues. Furthermore, some adjustments made to subsequent Rounds of the Program created new problems. The discussion that follows provides a brief overview of the issues made most apparent through FLPC and NSAC's research.

A. The Program has disproportionately left out small- and mid-sized farms and focused exclusively on price as of Round Three.

In the initial Rounds, the Program was lauded by some for the support it was providing for small- and mid-sized and local farms across the country.¹⁰⁸ However, particularly since Round Three, criticism has mounted as the Program's procurement policies changed, with any prioritization of small- and mid-sized farms seeming to fall by the wayside.¹⁰⁹

The Program was designed with "American producers of all sizes" in mind, and is not specific to small- and mid-sized farms.¹¹⁰ However, the list of criteria in the Request for Proposal to become contractors for the Program explicitly requests that applicants demonstrate and describe their "intent to support American agriculture and support small farmers" as a factor for consideration and evaluation in the bidding process.¹¹¹

This demonstrates that supporting small and local farmers is a priority in executing the Program. In the context of the Program, small farmers are defined as farms that service the local or regional community, or use farmers' markets as a channel of distribution.¹¹² The Program clarifies that local and regionally produced food involves food that either travels a maximum of 400 miles from producer to end consumer, or where the producer and recipient are both in "the same State, territory, or tribal land."¹¹³

Despite including the definition of small farmers in the Program solicitation materials and listing support for small farmers as an evaluative criterion, it is not clear that the USDA has actually taken this criterion into consideration when awarding contracts. There is no transparency around how any of these criteria are weighed in the awarding of the contracts, making it impossible to assess whether the criterion of supporting small- and mid-sized farms is being satisfied or the extent to which it is.



SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	1. REQUISITION NUMBER	PAGE 1 of 19
7. FOR SOLICITATION INFORMATION CALL:		a. NAME Hilary Cole		5. SOLICITATION NUMBER AG-12-3J14-20-R-0377	6. SOLICITATION ISSUE DATE 04/24/2020
9. ISSUED BY United States Department of Agriculture Agricultural Marketing Service, Commodity Procurement Staff 1400 Independence Avenue, SW Room 3522-S, STOP 0239 Washington, DC 20250-0239		CODE	10. THIS ACQUISITION IS		8. OFFER DUE DATE/ LOCAL TIME May 1, 2020 1:00 p.m. ET
11. DELIVERY FOR FOB DESTINA-		12. DISCOUNT TERMS		13b. RATING	

Image: Program Request for Proposal form
Credit: USDA

The documents also do not specify which of these criteria are required to be met, nor does it identify which non-required criteria are weighted more favorably.¹¹⁴ There is an overall lack of transparency regarding the weighing of criteria in the procurement process. This makes it especially challenging for aspiring contractors, as there is no clarity as to what elements they should highlight or must include in their applications, or why certain contractors are selected over others.

Further, since Round Three, AMS has stated that the focus of the Program has shifted “from market support to food insecure population needs,” with a related shift to a focus on price above all else.¹¹⁵ This is in contrast to USDA testimony stating that, in early Rounds, price was not the single most important factor because they wanted contractors to be able to purchase from local farmers in the region where boxes would be distributed, and because distributing in and to rural areas is more costly by nature.¹¹⁶ With the price-first focus, AMS switched to a procurement system that awards contracts to the lowest-priced bid per box for each geographic area.¹¹⁷ This makes lowest price the exclusive criterion for evaluation, even as the solicitation continues to contain provisions about engaging small farmers.¹¹⁸ As a result of these changes, the number of contractors has decreased from 198 contractors (including smaller contractors) in Rounds One and Two to under 54 larger contractors in Round Four.¹¹⁹

In addition, one restriction the Program has imposed since its outset that detrimentally impacts small- and mid-sized farms is the imposition of audit requirements for purposes of ensuring food safety. All suppliers that wish to be contractors or subcontractors are required to have either a USDA Good Agricultural Practices (GAP)/Good Handling Practices (GHP) audit or a Global Food Safety Initiative (GFSI) benchmarked certification program audit.¹²⁰

While USDA audits are a requirement when applying to become a government contractor for other federal programs, this restricted list of qualifying certifications shrinks the pool of eligible small- and mid-sized farms because it requires them to undergo a not-insubstantial

investment of time and money to receive USDA-approved certifications in order to participate in the Program. Small- and mid-size producers that sell in direct markets do not need and often do not have these certifications. Further, this places an unnecessary burden on these farmers because many alternative food safety certification systems exist, such as the Commonwealth Quality Program in Massachusetts¹²¹ and the New York State Grown & Certified program.¹²² Small- and mid-sized farms wishing to verify their food safety may already be state-certified, even if not federally certified. Requiring expensive federal food safety certifications places an unnecessary burden on smaller farms that have already demonstrated their adherence to food safety standards.

Additionally, the last-minute nature of contract awards, Round announcements, solicitations, and overall communication from the USDA makes planning for involvement in the Program very difficult for small- and mid-sized farms.¹²³ Producers need to forecast and plant for fall and winter demand during the summer. Former Program participant farms report hiring additional staff, increasing production capacity, planting additional crops, or otherwise making adjustments and investments in back-end processes on the presumption of ongoing participation in the Program as either a contractor or subcontractor, only to have their contracts canceled in subsequent Rounds. This results in difficulty maintaining the new heightened levels of production and creates additional financial distress.¹²⁴ This, for example, was the case for a former stakeholder of the Program that planted 250,000 additional pounds of produce based on Program-dependent demand forecasts, but was left with excess produce when their contract was not renewed.¹²⁵ The last-minute nature of the Program creates risk and uncertainty as it ignores the planting timeframes and planning processes of producers, and is particularly detrimental to smaller producers.

Finally, the focus on combination boxes starting in Round Three makes it harder for smaller farmers to be awarded distributor contracts themselves. While the majority of farmers are involved in the Program as subcontractors, those with distribution capabilities were able to become contractors in early Rounds to distribute their specialty produce. However, the new requirements force them to either develop partnerships with subcontractors that can supply the products they are missing, switch to a subcontractor role and find a distributor to subcontract with, or opt out of the Program altogether.¹²⁶ Because of the many difficulties experienced by small- and mid-sized farms in participating in the Program, all of these options are suboptimal and disadvantageous for smaller farms.

B. The Program neglected an opportunity to better support minority- and women-owned farms.

The Program did little to ensure equity for minority- and women-owned farms at a time when support was desperately needed. The USDA Census of Agriculture demonstrates that these farms tend to be disproportionately smaller in acreage, revenue generation, or both.¹²⁷ As such, these farms were doubly affected by the pandemic.



The USDA has faced ongoing issues with racial equity associated with how it administers its many programs.¹²⁸ Discrimination by the agency has contributed greatly to land loss among minority and women farmers. For example, in *Pigford v. Glickman*, a group of African-American farmers sued and won a claim of racial discrimination against the USDA for the manner in which the agency allocated farm loans and assistance.¹²⁹ In *Keepseagle v. Vilsack*, Native American farmers brought a class action lawsuit against the Secretary of Agriculture, succeeding in their claims that they were discriminated against on the basis of their race in the administering of USDA farm loan programs.¹³⁰ Also, a group of female and Hispanic farmers brought action against the USDA, on the claim that the USDA had practiced unlawful and discriminatory behavior in its administration of its farm benefits program.¹³¹ In response to these issues, in the past several Farm Bills, Congress established special programs for socially disadvantaged farmers and ranchers,¹³² or has given that group of farmers priority preference in existing programs.¹³³

Despite this, the Program failed to further these efforts toward equity for minority- and women-owned farms. Although the Program demonstrated some success in contracting with and servicing minority communities in the first two Rounds,¹³⁴ upon Round Three, many African-American farmers' contracts were not renewed, despite successfully fulfilling their contractual obligations.¹³⁵ As an example, the Federation of Southern Cooperatives, a group that represents roughly 35 African-American farmers, landowners, and cooperatives, supplied 19,000 boxes in just over a three-month period to 20 nonprofit organizations, community groups, and churches across Georgia, Alabama, and Mississippi.¹³⁶ Despite their success and service to predominantly minority populations, they were not awarded a new contract in Round Three.¹³⁷ Also, several Program applicants that represent large cooperatives of minority- and women-owned farms were not awarded contracts in any Round.¹³⁸ This occurred despite the fact that these applicants clearly demonstrated both their history of addressing food insecurity in their regions and their ability to service geographic territories that otherwise would not have received food boxes.¹³⁹ Neither the participant nor applicant cooperatives received an explanation from the USDA for their exclusion from the Program.

C. In early Rounds, the USDA reimbursed some distributors an unreasonable amount for individual food boxes, then swung too far in correcting this issue in later Rounds, making low price the sole criterion.

The Program's solicitation did not require distributors to deliver boxes at or below any specific price point.¹⁴⁰ Distributors bid on contracts by providing sample pricing that was inclusive of both the procurement of the food commodities and the transportation costs associated with delivering the food to end users.¹⁴¹ In the early Rounds of the Program, the USDA faced harsh criticism for awarding contracts to distributors that invoiced the USDA for food boxes that were excessively expensive.¹⁴² Stakeholders noted that the "premium prices" paid for food boxes ranged between \$40–100, when much of its contents could be purchased for \$20 at a grocery store.¹⁴³

In response to the criticism in the early Rounds, the USDA made adjustments to the procurement strategy to place a sole focus on minimizing the price per box. However, this sole focus on price swung too far in the other direction. Most governmental procurement and other USDA programs today take into account other societal values including racial equity, geographical preference, environmental sustainability, and other goals.¹⁴⁴ This change ultimately resulted in the USDA awarding contracts to larger, national distributors that could submit bids at the lowest prices due to their existing infrastructure and economies of scale. Concomitant with the increased focus on maximizing the number of boxes distributed, the Program shifted away from its original goals of addressing food waste and supporting the livelihoods of smaller producers, meaning the sole focus on the prices was not the best solution.

D. The Program's box packing requirements created packing and processing complications for distributors and nonprofit entities and stripped recipients of the dignity of choice.

The Program imposed food packing requirements on distributors that garnered considerable critique from participating nonprofit entities. In particular, the requirement to pack food into boxes posed problems for many of the receiving nonprofit organizations. The Program dictated that distributors deliver the food in boxes or in pallets of boxes, despite the fact that many food banks prefer and most efficiently process food stored on pallets.¹⁴⁵ Inexplicably, there was no requirement for distributors to pack meat, produce, and dairy separately, despite the USDA Refrigeration and Food Safety guidelines recommending storing these foods at different temperatures.¹⁴⁶ Many food banks and agencies do not have enough refrigerated storage space to safely store deliveries of large co-packed boxes of food.¹⁴⁷

Consequently, the co-packing of produce, meat, and dairy into boxes required food banks to unpack the boxes to store each food type at the appropriate temperature to ensure food safety and longevity.¹⁴⁸ As the Program shifted towards a requirement for

combination boxes in Rounds Three and Four, this burden on nonprofit entities was further exacerbated.¹⁴⁹

Further, the box requirement also prohibited nonprofits from using the food in prepared meals or offering the food “market style,” because the food had to be delivered to recipients still in boxes. Thus, the Program failed to acknowledge that recipients may not want all the food items delivered in a box and therefore stripped them of the dignity of choice.

E. The Program failed to ensure equitable distribution of food assistance to food insecure populations across the country.

The early Rounds of the Program imposed few restrictions on distributors regarding the geographic locations for their deliveries. The Program afforded wide discretion to the contracted distributors to work with any local food banks or any other nonprofit organizations in their service area to coordinate deliveries, which sometimes resulted in the inequitable distribution of food.¹⁵⁰ Delivery data from the USDA indicates that over 1,000 U.S. counties received no food boxes in May and June.¹⁵¹ Further, the states of Alaska and Maine were left out of Round One of contracts entirely.¹⁵² Others critiqued the Program for the failure to equitably include a range of nonprofit organizations as recipients, notably by not including many local, grassroots, and in particular minority-led nonprofit organizations. In short, the Program was critiqued for not being able to provide equitable distribution of boxes to food insecure populations.



The Program stated that it required distributors to make “Truck to Trunk” or “Last Mile” deliveries to the individual end users of the food boxes as early as Round One, and starting in Round Three, it explicitly covered payments for last mile delivery.¹⁵³ This meant that the USDA required the distributors to either make deliveries directly to recipients, or they required distributors to pay for the costs to nonprofit organizations to get the food into the hands of recipients. However, many distributors fell short of this requirement and, as a result, many nonprofits ended up absorbing the costs of logistics for last mile delivery of the food boxes.¹⁵⁴ Nonprofits did not want to jeopardize the needed supply of food for their recipients, so they went to extremes in order to fund the costs of delivery even if it was not adequately covered by the distributors. This cost-shifting burden worsened for nonprofit entities in later iterations of the Program as the USDA increasingly prioritized price when awarding contracts. The solicitations encouraged distributors to submit bids at the lowest price possible to win the contract, but the USDA did not audit the sample pricing to enforce inclusion of a realistic rate that incorporated the cost of “Last Mile” delivery. The USDA’s increased emphasis on price optimization was at odds with the “Last Mile” delivery requirement because distributors were not incentivized to bid for contracts with sample pricing that incorporated a realistic estimate of their costs. Despite this issue being pervasive throughout the first three Rounds of the Program, the USDA did not appear to prioritize resolution of this issue in Round Four.

In addition, the Program’s lack of transparency complicated state and local governments’ ability to respond to gaps in services. Particularly during the first two Rounds of the program, city officials were not able to see what food from the Program was coming into their jurisdictions. The USDA did not release the names of the partner nonprofits or publish how many boxes were going to different parts of the region. This made it difficult for state and local governments to supplement the Program or respond to any gaps in services with their own funding or programming.

Finally, the Program’s attempt to award contracts to distributors that could deliver food boxes to Opportunity Zones fell short of adequately addressing the issues related to the inequitable distribution of boxes.¹⁵⁵ After critiques about distribution gaps and lack of equitable distribution in early Rounds, the Program shifted after Round Three to prioritize distribution to Opportunity Zones. Opportunity Zones are economically distressed communities, defined by census tract, nominated by American governors, and certified by the U.S. Secretary of Treasury.¹⁵⁶ However, utilizing Opportunity Zones to serve as a proxy for food insecurity as a result of the pandemic was misguided.¹⁵⁷ The pandemic caused immediate and unprecedented food insecurity in America that transcended geographical boundaries identified as Opportunity Zones; thus, directing food to these communities resulted in a failure of the Program to meet the needs of certain food insecure communities.¹⁵⁸

F. While the Program’s redirection of surplus helped to stabilize some agricultural producers, certain aspects of the Program may have actually contributed to food waste, rather than reduced it.

While an initial impetus for the Program was the wide-scale food waste occurring nationally due to pandemic shutdowns and restrictions, the Program itself did not require or incentivize contractors or subcontractors to focus their purchase and distribution on surplus food products, and any focus on utilization of surplus in early Rounds did not remain by later Rounds. In addition, by not necessarily focusing on surplus food, in some cases food was wasted in the course of implementation of the Program. For example, in later rounds, the level of specificity of required contents in combination boxes inhibited sourcing for seasonal and regionally variable products and using surplus, which both limited local and small- and mid-sized producers from participating and failed to offer flexibility for distributors to use their purchases to mitigate supply side food waste.¹⁵⁹

Food waste also occurred in the distribution phase. The loose requirements between contractors and their nonprofit partners in Rounds One and Two of the Program likely contributed to food waste occurring in the distribution stage. These Rounds required that the distributor secure nonprofit partners, but did not require the distributor to execute last mile delivery or to include delivery agreements in their proposals.¹⁶⁰ Without streamlining clear distribution plans for the Program, contractors were left to develop their own processes, resulting in mismanaged deliveries and food waste along the distribution channel.¹⁶¹

Image: Prepared Program boxes on pallets in Lawrence, KS
Credit: Scott Thellman, Juniper Hill Farms





Image: Get Fresh Produce employees packing Program boxes in Bartlett, IL
Credit: Joe Zeno, Get Fresh Produce

In addition to food waste during distribution, some additional supply-side food waste may be attributed to later Rounds of the Program. Smaller supply-side entities, including some farmers, food producers, and food cooperatives, made up a small percentage of Rounds One and Two distributor contracts.¹⁶² With the shift toward larger distributors, many of these producers were left out of Round Three.¹⁶³ Further, the quick and at times unforeseen actions from the USDA when making decisions regarding contract awards prevented farms from planning for such changes, thus interrupting planting and marketing schedules and likely contributing to food waste.¹⁶⁴ Since “past performance” is stated by the USDA to be a key factor in decisions to extend contracts, many initially successful producer-distributors grew more crops in order to satisfy contracts they hoped or believed would be extended through the end of the Program.¹⁶⁵ Some farmers facing this issue may have found other buyers or distribution channels for their food products, but some of this food likely was wasted.¹⁶⁶

In addition, the shift to awarding contracts only for combination boxes¹⁶⁷ creates problems of food waste among recipients with cultural food considerations or other dietary preferences and requirements, such as kosher, halal, vegetarian, lactose intolerant, or gluten free.¹⁶⁸ Individuals needing or preferring to adhere to such diets may dispose of products in the combination boxes that do not conform to their preferences, especially when there is no ability to opt out of certain items.

These issues present a number areas of improvement from which this report generates its recommendations. By taking these issues and proposed solutions into consideration while retaining the elements that have contributed to the Program’s successes, its overall effectiveness will be greatly improved.

RECOMMENDATIONS

Many of the critiques of the Program were likely related to the speed with which it was enacted. Several critiques of the program were addressed between Rounds, but some of these changes created new concerns, while other issues remained unresolved. This section explores recommendations to strengthen the Program and enable it to better address food insecurity, support a range of food producers, and ensure surplus food gets used.

The USDA can improve the Program by appropriately messaging its goals, translating those goals into evaluative components, establishing best practices for AMS and Program participants, being flexible where regional differences demand it, and being a resource for contractors seeking to comply. These recommendations will be discussed in the “Farmers to Families Food Box Program Recommendations” section.

In “Beyond: Applying Lessons from the Program to Other USDA Purchasing and Distribution Efforts,” the report explores ways that the USDA could leverage existing commodity purchasing programs to set up an ongoing program to purchase and distribute fresh products,¹⁶⁹ in particular through the USDA’s Section 32 authority to purchase domestic commodities.

Finally, in “Beyond: Recommendations to Address Food Waste Going Forward,” this report recognizes that while the Program has likely mitigated some supply-side food waste that was a result of supply chain disruptions caused by the pandemic, the Program did not take an active focus on food waste reduction and also is not able to address the larger issue of food waste within the U.S. This report thus recommends ways in which the USDA and Congress could help tackle the issue of food waste, beyond CFAP and the Program.

A. Farmers to Families Food Box Program

- i. Broadcast that subcontracting with small- and mid-sized and minority- and women-owned farms and distributing to minority-led nonprofits are primary goals of the Program, align all procurement processes and messaging accordingly, and track progress toward these goals.**

The USDA should officially and consistently communicate that involvement of small- and mid-sized and minority- and women-owned farms are priority goals of the Program in official communications and updates regarding the Program, and should accordingly align procurement processes for involvement in the Program to reflect these goals. The purported goals of the Program are stated across various AMS sources, including press releases and formal documentation regarding the bid solicitation process.¹⁷⁰ However, throughout the different Rounds and across various resources, contradictory statements have been made as to the official goals of the Program. There are no marketing materials or communications that

address contracting with minority- and women-owned farms. Also, while solicitation requirements concerning support for small producers remain in the bidding guidance,¹⁷¹ AMS officials have made statements indicating that the sole criterion considered in effect is the price of boxes and number of boxes distributed.¹⁷²

AMS should clearly define the goals of the Program and align the messaging across all channels and statements. Procurement processes and guidance should be fully in line with and in support of the fundamental goals of the Program. Given the pandemic's impact on small- and mid-sized and minority and women-owned farms due to major supply chain disruptions, a fundamental goal should be to support these farms.



Cost should remain one of a number of criteria that are evaluated and weighed against each other, but should not be the sole deciding factor for the awarding of contracts and subcontracts because of the impossible burden it places on smaller farms that have higher costs than vertically-integrated national producers with efficient economies of scale.

In addition, to ensure measurable metrics that enable the USDA to track progress toward meeting the goal of supporting small- and mid-sized and minority- and women-owned farms, AMS should establish a minimum requirement of small- and mid-sized and minority- and women-owned farm

involvement at the contractor and/or subcontractor level wherever possible. This could be either in the form of a certain percentage of contracts being set aside to small- and mid-sized and minority- and women-owned farms, or through a requirement that these producers be awarded contracts and subcontracts wherever available on a first priority basis, with larger farms filling in gaps and supplementing supply as needed.

Whether priority preference is included or not, to provide better transparency for the USDA to assess the Program's progress towards these goals, contractors should be required to include in their bids to the USDA MOUs or secured contracts with their chosen subcontractors, similar to the current requirements for distributor partnership with nonprofits. Alternatively, an MOU could express a commitment to sub-contract with "USDA-encouraged or "USDA-supported" producers, if the USDA maintains lists of small- and mid-sized and minority- and women-owned farms as recommended elsewhere in this report.¹⁷³ Distributor subcontracting practices should be audited periodically after contracts have been awarded in order to ensure that the subcontractors submitted during the bidding process are actually involved in the execution of the food boxes and the extent and details of their involvement.

In addition, contractors should be required to report to the USDA data on the race, ethnicity, and farm size of their subcontractors to enable the USDA and the public to better assess the equity impacts of the Program over time.

AMS should also require contractors to publish subcontractor lists as a condition of being awarded a contract in order to ensure that this information is available to the public, which will help ensure transparency in the Program's contracting practices. This could be done either by AMS itself as a form of disclosure similar to the announcement of the contractor lists,¹⁷⁴ or it could be a procurement requirement for contractors to make these lists publicly available themselves in order to remain in the pool of eligible contractors. However, AMS should be cognizant of the fact that some contractors need flexibility to bring on other smaller producers as subcontractors after the initial contract is awarded in order to address crop loss from the originally listed subcontractor.¹⁷⁵ Therefore, in such situations, stakeholders should maintain accurate records of these subcontractors and this should be viewed as an exception to abiding by the original subcontractor list.

Also, rather than issuing one solicitation for all potential Program distributors, AMS should provide different solicitations for small- and mid-sized and minority- and women-owned farms that provide more flexibility with respect to pricing and other application criteria.¹⁷⁶ Differing solicitation processes would allow the USDA to continue awarding contracts to large producers where necessary, but also enables a process by which to separately qualify small- and mid-sized, or minority- and women-owned farms as distributors. Further, AMS could grant contracts in sums reflective of these smaller producers, similar to the Gus Schumacher Nutrition Incentive Program's (GusNIP) tiered awarding of contracts based on the size of the applicant.¹⁷⁷

Finally, to ensure equitable distribution of Program food and to ensure inclusion of minority-led food distribution nonprofits, AMS should establish a minimum requirement of minority-led nonprofit involvement wherever possible. According to at least one stakeholder, Program boxes disproportionately went to well-resourced, usually white-led nonprofits, while smaller minority-led nonprofits often were not selected by distributors to participate in the Program.¹⁷⁸ In order to implement this recommendation, AMS could help maintain a list of minority-led nonprofits, and/or other local nonprofits, potentially verified with the help of letters of support from city leadership or community leaders.



Image: Stakeholder's son distributing a Program box to a vehicle at Hope Church in LaGrange, IL
Credit: Melissa Melshenker Ackerman, Produce Alliance

ii. Publish regional lists of small- and mid-sized and minority- and women-owned farms qualified to be subcontractors in the Program, or enact a matching program across contractors and producers.

Support of small- and mid-sized and minority- and women-owned farms could be bolstered by publishing and encouraging the use of regional lists of such farms prior to solicitation of bids, or otherwise establishing a platform that would enable bidders to discover and match with these producers. Such an approach would provide potential contractors with a list of “USDA-encouraged” or “USDA-supported” producers from which to choose. By introducing an easy-to-reference list of small- and mid-sized and minority- and women-owned farms open to subcontracting with distributors, the USDA can address one of the barriers that keep these lesser-known producers out of consideration for subcontractor roles. The current system requires contractors to research and come up with their own proposals for subcontracting with producers, increasing the likelihood that they may gravitate to larger, better-known farms due to lack of awareness of or time to invest in researching and building relationships with small- and mid-sized and minority- and women-owned farms.

At one point, a meeting was held between the USDA Under Secretary of Agriculture for Marketing and Regulatory Programs and Washington state representatives to discuss how Washington state could reach out to some of the awarded contractors to help them determine small- and mid-sized and direct-market farms with whom they could subcontract, demonstrating that this challenge is already on the USDA’s radar.¹⁷⁹ By publishing and encouraging contractor use of lists of small- and mid-sized and minority- and women-owned farms nationwide, the USDA can accomplish the same purpose at a national scale.

iii. Evaluate bid prices based on historic and reasonable cost for a particular farm, producer, or distribution operation in order to ensure that small and specialty farms are adequately compensated.

As noted above, one Program critique, especially in later Rounds, was the sole focus on price as selection criterion. Cost should not be the sole criterion with which bids are evaluated; in order to strike a balance AMS should require that the invoiced price is within a reasonable range of that particular contracted farm, producer, or distribution operation’s historical or demonstrated procurement costs. This would ensure that small farms with specific growing practices that make them costlier—e.g. organic farms—or those growing particularly high-quality produce for the restaurant business¹⁸⁰ would be adequately compensated while also demonstrating the true market value of their produce. This could also better support small- and mid-size farms if such farms have higher prices because they lack the economies of scale of large producers. One example of such a system is CFAP’s revenue-based pricing model for certain crops, in which crops are priced and farmers compensated based on the individual farm and crop’s historic revenues.¹⁸¹ They are therefore compensated within a range for what they would have likely sold the produce in a regular market and regular year, rather than compensated at the prices of operations that may be much larger in scale and therefore selling at lower price points.

iv. Publish best practice guidance to assist distributors participating in the Program.

There are undoubtedly Program deficiencies that are a byproduct of the wide discretion afforded to distributors to coordinate deliveries with nonprofit organizations. The Program could improve food security and impacts on recipients by providing guidance to Program distributors on working with food banks and other food distribution nonprofits, which it does not currently provide.¹⁸² Distributors would benefit from the publication and availability of some best practice guidance on how to partner with food banks and other nonprofit entities that are involved in serving food insecure populations.¹⁸³ These best practice guidance documents should be developed after extensive consultation with entities that have experience in direct to consumer distribution or in serving food insecure populations. Best practice guidance and any other publications designed to help distributors would be especially beneficial if the Program becomes part of a future playbook for supporting American producers, mitigating food waste, and addressing food insecurity.

v. Employ best practices in food distribution, supply chain management, and emergency response, and ensure more precise and more equitable targeting for distribution of boxes.

The USDA should employ best practices developed for supply chain management during humanitarian crises to improve food access and decrease inequities in food distribution.¹⁸⁴ Such an approach would involve incorporating basic best practices of crisis supply and demand planning.¹⁸⁵ The current Program does not have any one person in charge of overseeing that food is being appropriately distributed to food insecure populations across the U.S. To improve the distribution of food under this Program, an individual or individuals should be appointed as the planning and logistics manager(s) in charge of ensuring equal distribution.¹⁸⁶ In addition, the Program should enable state and local governments to respond to any gaps in services by consistently publishing data relevant to their efforts, including the names of partner nonprofits and the numbers of boxes going to different parts of the region, as well as ongoing gaps in coverage.



Image: Volunteers distributing Program boxes at God's Kitchen in Kenosha, WI
Credit: Melissa Melshenker Ackerman, Produce Alliance

Further, rather than utilizing Opportunity Zones to identify food insecure populations in need, the Program could allow for distributors to deliver to food bank distribution hubs and allow for the food banks to manage the distribution of food within their networks according to their preexisting methods.¹⁸⁷ The Program could provide direct payments to food banks to cover the logistics costs associated with this distribution model. Alternatively, or in addition, AMS could give preference to bids that cite state or local government reports or have letters of support from mayors indicating that the contractors' distribution plans align with the state or locality's strategies to combat food insecurity. Many states and cities have conducted in-depth research and analysis of community food insecurity rates and need for government assistance, which could be used by contractors to create a distribution plan.¹⁸⁸

vi. Strengthen and amend oversight and enforcement of contractual obligations to uphold overall accountability and make last mile delivery accountability a priority.

The Program should impose additional oversight on distributors and ensure distributors are held accountable for last mile delivery as well as the general quality of the boxes they deliver. Distributors bid on contracts by providing sample pricing that was inclusive of both the procurement of the food commodities and the transportation costs associated with delivering the food to end users.¹⁸⁹ Yet, in many cases, the distributors did not provide adequate funding to their nonprofit recipients to pay for last mile delivery, despite that being a stated Program requirement.¹⁹⁰ Nonprofits generally still accepted boxes without adequate coverage of these costs because they were desperate to continue receiving food for their communities. In addition, in some cases, stakeholders reported deliveries of boxes containing inedible products.¹⁹¹ Also, "past performance" is a stated USDA criterion in decisions to extend contracts; nevertheless, at least one distributor with a 98% contractual completion was not awarded a contract in Round Four, demonstrating that past performance mattered little for the awarding of contracts.¹⁹² This meant there was little reward for good performance, or deterrence of poor performance.

By increasing oversight and considering past performance, the USDA can help deter distributors from breaching their contractual obligations. At a minimum, distributors should be required to meet specified performance benchmarks.¹⁹³ The USDA should also provide a platform for nonprofit entities to provide anonymous feedback about distributors who fail to deliver boxes according to these benchmarks. The USDA could then leverage additional enforcement mechanisms, such as withholding payment to distributors, canceling breached contracts, and foreclosing opportunities for the distributor to continue to participate in future Rounds of the Program.¹⁹⁴

Providing oversight in these areas could help prevent distributors from delivering low-quality boxes and also prevent them from winning bids with low prices but then passing "last mile" delivery costs to nonprofit partners. The USDA could then use information about contract fulfillment to monitor and report out on the extent to which the Program is delivering on its goals.

vii. Consider alternative food safety audit certifications or provide technical and financial assistance for obtaining required audit certifications.

The USDA should create flexibility around audit requirements for subcontractors in the Program by accepting a wider scope of food safety certifications. Currently, all suppliers that wish to be contractors or subcontractors in the Program are required to have either a USDA Good Agricultural Practices (GAP)/Good Handling Practices (GHP) audit, or a Global Food Safety Initiative (GFSI) benchmarked certification program audit.¹⁹⁵ While such audits serve an important purpose in ensuring food safety, this restricted list of qualifying certifications unnecessarily limits the pool of eligible smaller producers. Many alternative food safety certification systems exist that the USDA could allow distributors to accept as sufficient certification of food safety practices. For example, the USDA could accept FSMA produce safety rule inspections as proof of sufficient food safety procedures and allow an exemption for “qualified exempt” farms under the FSMA produce safety rule exemption.¹⁹⁶ In addition, the USDA could accept all third party food safety certifications, such as the Commonwealth Quality Program in Massachusetts and the New York State Grown & Certified program.¹⁹⁷ The Farmers Feeding Families Coronavirus Response Act, introduced in the House, attempts to address this issue by involving the state more explicitly in the Program and allowing for state-certified, small- and mid-sized farms to be involved with the Program without obtaining federal audit certifications.¹⁹⁸ An alternative to the approach described above would be for the USDA to provide subsidies for smaller producers to apply for the necessary certifications and to provide an expedited certification process for applicants to the Program. In addition, the USDA could ease the burden of acquiring GAP certification by clarifying that GroupGAP is accepted, providing more resources for technical assistance to groups of farmers wishing to complete this for the Program, and encouraging farmers wishing to participate in the program to take advantage of this option.

viii. Reintroduce non-combination boxes, especially produce-only boxes, to the Program.

The USDA only awarded contracts for combination boxes during Rounds Three and Four.¹⁹⁹ While combination boxes ensure that Program recipients receive boxes with a variety of products, this focus has led to several issues. First, it had a disparate impact on smaller producers who were previously contractors for the Program and subsequently lost their contracts, because these producers were not easily able to find producers to contribute the additional required elements of the boxes.²⁰⁰ For example, small farms often could not easily acquire or safely handle meat and dairy products. In addition, combination boxes likely led to more food waste as well as other complications for food banks and other food distribution nonprofits, given that many food banks and nonprofits do not have enough refrigerated storage space to safely store deliveries of large co-packed boxes of food and therefore may have had to rent additional storage space, turn down boxes, spend time unpacking and repacking boxes, or distribute the food directly if smaller nonprofits could not handle the storage needs.²⁰¹ In addition, combination boxes and the degree to which the USDA mandated specific contents in these boxes made it difficult to serve recipients with food allergies or cultural or dietary preferences.²⁰²

To address these issues, the USDA should once again allow non-combination boxes to make up at least a part of the Program, and should make the combination box specifications more flexible to account for regional and seasonal variability and food allergies or cultural or dietary preferences. Non-combination boxes make it easier for smaller producers and distributors to join the Program as contractors, without having to find, partner with, and coordinate additional subcontractors to contribute missing categories of products.²⁰³ Produce-only boxes would particularly benefit food recipients, as they would fill a niche that is not met by other USDA food assistance programs, which generally do not provide fresh produce.

ix. Require contractors to submit a plan for addressing food waste in their proposals.

The USDA should encourage food recovery, utilization of surplus food to reduce unnecessary waste and responsible disposal of surplus food as priorities for the Program. Because distributors are not necessarily focused on using surplus products to fill boxes, especially in later Rounds when the Program focused heavily on price, surplus food that could have been used for the Program often is needlessly wasted. Stakeholders also pointed out that Program food boxes do not always get to people who need them, as distributors struggling to fulfill contracts at times end up leaving boxes with people or organizations that do not need them or do not have the capacity to handle them.²⁰⁴



Image: Program boxes await shipment on pallets in Mills River, NC
Credit: USDA

In order to ensure that food boxes and surplus produce do not go to waste, the Program should require contractors to submit a plan for addressing food waste in their contract bids. For example, under the TEFAP Farm to Food Bank program, the USDA requires States applying for funding to submit a plan which includes a description of how the state project will “reduce food waste at the agricultural production, processing, or distribution level.”²⁰⁵ The USDA could impose similar requirements on distributors applying to be contractors with the Program. Plans could include, for example, a commitment to connect with farmers or suppliers that are struggling with excess product, a plan to manage delivery and subcontracting processes to ensure adequate delivery of food, an outline of how distributors will address food waste that occurs during or after the delivery process, and a plan for donation or recovery to mitigate any ultimate food waste.

B. Beyond: Applying Lessons from the Program to Other USDA Purchasing and Distribution Efforts

Because the Program was created specifically in response to the supply chain disruption of the pandemic, its future remains unclear. Regardless of whether or not the Program continues, some of the lessons gleaned from its successes and failures can be applied to other USDA food purchasing and distribution programs. This section will cover several suggestions that the USDA should consider with respect to the agency's ongoing food purchasing efforts.

i. Utilize Section 32 commodities purchasing authority for future fresh produce purchasing and distribution.

The USDA could leverage its existing commodity purchasing programs instead of creating a new program in response to unprecedented supply chain disruptions.²⁰⁶ One way to do this would be through the USDA's Section 32 authority to purchase domestic commodities. "Section 32" is a permanent appropriation that sets aside the equivalent of 30% of annual customs receipts to support farms through the purchase of surplus commodities.²⁰⁷ Authorized under Section 32 of the act of August 24, 1935, Section 32 funds are to be used to, "1) encourage the export of farm products through producer payments or other means; 2) encourage the domestic consumption of farm products by diverting surpluses from normal channels or increasing their use by low-income groups; and 3) re-establish farmers' purchasing power."²⁰⁸

While most of the funds must be transferred to the USDA's child nutrition account and to the Department of Commerce for its fisheries activities, the USDA has broad discretionary authority over how it spends any remaining non-transferred funds. Historically, the USDA has largely used this Section 32 "contingency" funding to purchase agricultural commodities not typically covered by other mandatory farm support programs, such as meat, poultry, fruits, vegetables, and fish.²⁰⁹ This food is then diverted to domestic food assistance program recipients, including food banks, schools, child care centers, adult care centers, and soup kitchens. In the past, the total annual amounts of Section 32 contingency purchases have varied, from a low of \$54 million in FY2008 to a high of \$320 million in FY2009.²¹⁰



Image: Farmer holding a bunch of carrots

However, while the USDA has broad discretionary authority over these purchases, Section 32 purchases have tended to be of processed commodities. Although the USDA itself has stated that “funds are to be applied to the purchase of relatively unprocessed food products that are close to agricultural commodities in the distribution chain,”²¹¹ funds have primarily been used for “emergency removals” of processed surplus commodities, such as raisins and canned salmon.²¹²

This prioritization of processed foods is likely due to hesitation on the part of the USDA to purchase fresh produce on a large scale, perhaps stemming from a belief that such an approach could not be successful because of the myriad challenges associated with distributing fresh products quickly and efficiently. However, the Program has demonstrated that the USDA is, indeed, able to successfully implement a large-scale food assistance program that purchases and distributes fresh produce. Thus, future similar efforts to support producers and consumers, who benefit from incorporating such fresh products into their diets, could likely be done through the USDA’s Section 32 purchases of agricultural commodities.

However, any efforts to build a program using Section 32 funding should prioritize small- and mid-sized, and minority- and women-owned farms and incorporate basic best practices of supply and demand planning, as discussed in more detail with respect to the Program, in earlier sections of this report. This will help to ensure that those producers that are disproportionately impacted by market disruptions are supported through Section 32 purchases and will also help to improve food access and decrease inequities in food distribution.

ii. Earmark a portion of future federal funding for food purchasing to purchases from small- and mid-sized and minority- and women-owned farms.

One way to ensure continued support for small- and mid-sized and minority and women-owned farms—who rely heavily on direct-market channels and are therefore more susceptible to market disruptions such as those caused by the pandemic—is to set aside a guaranteed portion of future federal food purchasing and distribution funding for targeted purchases from these farms.²¹³ This would involve setting aside a certain portion of available funding for use only for the designated sub-groups of farms. The USDA has a history of enacting budget set-asides for certain categories of farmers determined to be a priority within other, non-purchasing programs; for example, five percent of acres enrolled in the Conservation Stewardship Program are set aside annually for beginning farmers and ranchers and another five percent are set aside for socially disadvantaged producers.²¹⁴ For purposes of food purchasing and distribution programs, the USDA could similarly set aside a certain percentage of funding for small- and mid-sized, and minority- and women-owned farms. An alternative structure to ensure involvement would be to require a certain percentage of participating farms to be small- and mid-sized, and minority- and women-owned farms, rather than creating a monetary threshold. Either of these approaches would ensure federal support critical for the livelihoods of small- and mid-sized, and minority- and women-owned farms during severe market disruptions.

C. Beyond: Recommendations to Address Food Waste Going Forward

During the pandemic, food waste increased as food producers who typically supply the food service industry with perishable foods saw rapid decreases in demand.²¹⁵ Even after the initial wave of shutdowns, demand was in flux because of lifting and reinstating restrictions, closure of processing facilities due to outbreaks, and uncertain consumer demand. While food waste provided an initial motivation for the Program, the Program itself does not prioritize food waste mitigation as a central goal. Nonetheless, food waste poses a severe challenge due to the pandemic, and remains a considerable ongoing issue in the U.S. While there is an abundance of food produced in the U.S. every year,²¹⁶ a significant amount of this food ends up in landfills.²¹⁷ Forty percent of the food produce in the U.S. goes uneaten, resulting in an estimated 62.5 million tons of wasted food each year.²¹⁸ Outside of the pandemic, the amount of food waste has been on the rise in the U.S. for the past several decades, with per capita food loss increasing by 50 percent from 1975 to 2005.²¹⁹ Diverting safe, edible food from the waste stream to consumers, especially those in need, can significantly reduce food waste, while also playing a role in hunger relief efforts. A number of federal laws and policies strive to enhance food recovery, but some of these laws do not benefit farmers in particular and in fact created barriers for farmers with respect to food donation during the pandemic. This section will cover a few suggestions that Congress and the relevant agencies should consider regarding food waste mitigation to respond to the ongoing pandemic and beyond.



Image: Heap of unused potatoes rotting in field

i. Expand food donation tax benefits to incentivize donations and offset associated costs.

The U.S. already offers generous tax incentives for food donors as a means to elevate food donation as an economical alternative to discarding safe, surplus food. Taxpayers who donate food are eligible for two deductions under federal law: (1) a general tax deduction of the basis value of the food that applies to all charitable contribution, and (2) an enhanced tax deduction for food donation that allows taxpayers to deduct nearly twice the base value for in-kind food donations.²²⁰ However, as farmers continue to face supply chain disruptions from the pandemic, facilitating greater in-kind food donations from struggling producers will require expanding the existing tax benefits. Congress, therefore, should take the following actions:

First, Congress should provide an alternative tax credit for food donation by farmers. Many farmers are struggling to find buyers for their crops, particularly if they are not participants in the Program.²²¹ Despite the demand for food donations, many farmers do not see this as an economical alternative, as they would need to expend a lot of resources to harvest and transport surplus product to food banks or food recovery organizations. While farmers can technically receive the enhanced deduction for food donations that is available to all businesses, this deduction is not well-suited to farmers and often is not claimed.





To incentivize farmers to donate more surplus food and offset some of the costs to farmers, Congress should provide an alternative tax credit for farmers that they can elect to claim for food donations to 501(c)(3) organizations, instead of claiming the existing enhanced deduction.

Unlike a tax credit, the value of a deduction is contingent on the amount of taxable income; thus, a deduction is typically a less effective incentive for farms, which often operate with low profit margins.²²² Because most farms do not claim the enhanced tax deduction, they are not incentivized to donate or adequately compensated for the costs of donating. To incentivize farmers to donate more surplus food and offset some of the costs to farmers, Congress should provide an alternative tax credit for farmers that they can elect to claim for food donations to 501(c)(3) organizations, instead of claiming the existing enhanced deduction. Offering this credit will help make it easier for farmers to donate surplus food.

In addition, Congress should create a tax deduction to cover transportation costs for donated food. One of the biggest costs of donating food is the transportation of the food to a food recovery organization. To reduce the transportation burden on donors, and thus encourage greater donation, Congress should amend the enhanced tax deduction for food donations to include an additional benefit covering costs of transporting donated food. Finally, Congress should expand the enhanced tax deduction for food donation to include donated food that is sold at a reduced price to the ultimate recipient. Under current law, donors may only claim an enhanced deduction for food donations made to a non-profit organization that does not charge the final recipient for the food.²²³ However, the “no charge” requirement is unnecessary because the recipient food recovery organization must already be a nonprofit, meaning that any money raised by low-cost sales of donated food would be re-invested in their social mission to serve more individuals in need. Eliminating the “no charge” restriction in the enhanced deduction can add flexibility and make food recovery more economically viable for some organizations, especially during the pandemic. As one example, if a nonprofit food recovery organization could charge \$1 for the delivery of donated foods to recoup some of its costs while still being able to offer the tax incentive to its food donors, it would be able to serve significantly more needy individuals.

ii. Expand liability protection for food donations to ensure surplus food makes it to those in need.

The federal Bill Emerson good Samaritan Act (the Emerson Act) provides broad and comprehensive national liability protection for food donors and food recovery organizations that is intended to encourage food donations. The Emerson Act provides a baseline of civil and criminal liability protections for food donors and the nonprofits that distribute food donations, provided that certain criteria are met. However, many food businesses still cite fear of liability as a primary deterrent to donating food. Expanding liability protections for food donation is more important now than ever, particularly for farmers, given the impacts of the pandemic on their normal supply chains. To expand these protections, Congress should take the following actions, several of which are set forth in the Senate Food Donation Improvement Act of 2019 (S. 3141):



Image: Program Event at the Impact Church in Detroit, MI
Credit: USDA

First, Congress should extend liability protection for food donations to certain “direct donations” made by food businesses directly to those in need. Under the Emerson Act, food donors are only protected if they give food to a nonprofit organization, which then distributes it to those in need.²²⁴ The pandemic has highlighted the need to create more flexibility, such as by expanding this liability protection to also cover direct donations made by farmers, who typically donate low-risk foods, such as surplus produce. While donations by farmers to nonprofits are already covered under the Emerson Act, protecting direct donations by farmers and other donors can allow individuals in need to pick up food from more accessible locations right at the source. This would provide additional flexibility to farmers and other potential donors who have surplus due to supply chain breakdowns during the pandemic and prevent the challenges that occur with always needing to take the food to nonprofits before it is donated to those in need. Congress should also extend liability protection to donations sold by a nonprofit organization to recipients at a “Good Samaritan Reduced Price,” in order to better support the costs of food donation and recovery, as mentioned above. Finally, in order to better explain the intricacies of the Emerson Act, Congress should grant the USDA the authority to administer the Emerson Act and direct the USDA to issue regulations and clarifying guidance on food donation and liability protection that flesh out the Emerson Act.

iii. Create or foster the creation of online spaces connecting farmers with surplus to distributors, food banks, gleaners, and other nonprofits.

One of the main purposes of the Program is to take surplus from farms and producers and ensure that it gets to people who need it. Inevitably, however, some farms struggling with surplus produce and other products will not become contractors or subcontractors for the Program. The USDA could help make it easier for such farms to connect with food banks, food recovery organizations, and other distribution nonprofits by creating an online platform to act as a link between these entities. A centralized online platform could allow farmers to post descriptions of their surplus products and alert organizations in need of food to these postings. In particular, the platform should make it easy for farmers to find food distribution organizations in their area, and vice versa. The USDA could also make sure that the online platform includes rural areas, since many of the apps that currently exist for similar purposes only operate in urban areas. Such a platform would help ensure that surplus produce and agricultural products get to people who need them, whether the surplus is a result of further supply chain disruptions during the current pandemic, future disasters, or even during non-disaster times.

CONCLUSION

The Farmers to Families Food Box Program aimed to address some of the supply chain and market disruptions resulting from the pandemic by having distributors purchase fresh produce, dairy, and meat from struggling farmers and deliver this food to food banks and other nonprofits serving Americans in need. It has also filled a gap in federal food purchasing and distribution efforts. This report provides an in-depth analysis of the Program, with a particular focus on how the Program addressed the issues of supporting small- and mid-sized, and minority- and women-owned farms, food access, and food waste. It is designed to reflect the experiences of Program stakeholders and highlight Program successes while addressing some of their needs that were not met, providing the USDA and Congress an opportunity to maximize this Program's effectiveness. Because the nation will be dealing with the Novel coronavirus and its aftermath for quite some time, it is important to think about how the USDA can learn from both the successes and shortfalls of the Program. Should the Program continue past Round Five, the USDA should make the changes recommended in this report to strengthen the Program and ensure better support of small- and mid-sized, and minority- and women-owned farms, mitigation of food insecurity, and mitigation of food waste. Further, both the USDA and Congress should take this opportunity to make additional changes to better address the issues beyond the scope of the Program.

Photo Credit: USDA



ENDNOTES

1. RANDY SCHNEPF, CONG. RSCH. SERV., R46347, COVID-19, U.S. AGRICULTURE, AND USDA'S CORONAVIRUS FOOD ASSISTANCE PROGRAM (CFAP) 10 (2020) [hereinafter SCHNEPF R46347]; *Ignacio Felix et al., US food supply chain: Disruptions and implications from COVID-19*, MCKINSEY & Co. (July 2, 2020), <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/us-food-supply-chain-disruptions-and-implications-from-covid-19>.
2. SCHNEPF R46347, *supra* note 1, at 5.
3. *Id.* at 3.
4. *Id.* at 5.
5. *Id.*
6. See *The Impact of the Coronavirus on Food Insecurity in 2020*, FEEDING AM. 1 (Oct. 2020), https://www.feedingamerica.org/sites/default/files/2020-10/Brief_Local%20Impact_10.2020_0.pdf [hereinafter *Impact of Coronavirus*]; See Video interview with USDA AMS (Dec. 17, 2020). Interview notes on file with authors; See, e.g., Tim Mak, *Millions Of Pigs Will Be Euthanized As Pandemic Cripples Meatpacking Plants*, NPR (May 14, 2020), <https://www.npr.org/2020/05/14/855662494/millions-of-pigs-will-be-euthanized-as-pandemic-cripples-meatpacking-plants>; Adam Jeffery & Emma Newburger, *Wasted milk, euthanized livestock: Photos show how coronavirus has devastated US agriculture*, CNBC (May 2, 2020), <https://www.cnbc.com/2020/05/02/coronavirus-devastates-agriculture-dumped-milk-euthanized-livestock.html>.
7. *Food Security Status of U.S. Households in 2019*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Sept. 9, 2020), <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx#foodsecure>. The food insecure household number is based on a total U.S. population of 330,716,880, according to the U.S. Census data as of December 17, 2020. U.S. and *World Population Clock*, U.S. CENSUS BUREAU (Dec. 18, 2020), <https://www.census.gov/popclock/>.
8. See *Impact of Coronavirus*, *supra* note 6, at 13.
9. *Not Enough to Eat: Covid-19 Deepens America's Hunger Crisis*, FOOD RSCH. & ACTION CTR. 2 (Sept. 2020), https://frac.org/wp-content/uploads/Not-Enough-to-Eat_Hunger-and-COVID.pdf.
10. *Id.*
11. The purpose of the CARES Act was to respond to the impact the pandemic had on the economy, public health, state and local governments, individuals and businesses. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116–136, 134 Stat. 281 (2020) (codified as amended at 15 U.S.C. § 9001); The purpose of the Families First Act was to provide paid sick leave, tax credits, free COVID-19 testing, expand food assistance and unemployment benefits, and increase Medicaid funding. Families First Coronavirus Response Act, Pub. L. No. 116–127, 134 Stat. 178 (2020) (codified as amended at 29 U.S.C. 2601); See SCHNEPF R46347, *supra* note 1, at 1.
12. *USDA Announces Coronavirus Food Assistance Program*, U.S. DEP'T OF AGRIC. (Apr. 17, 2020), <https://www.usda.gov/media/press-releases/2020/04/17/usda-announces-coronavirus-food-assistance-program> [hereinafter *USDA Announces Coronavirus Food Assistance Program*].
13. *Id.*
14. SCHNEPF R46347, *supra* note 1, at 2; *USDA to Purchase Up to \$3 Billion in Agricultural Commodities, Issue Solicitations for Interested Participants*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV. (Apr. 19, 2020), <https://www.ams.usda.gov/content/usda-purchase-3-billion-agricultural-commodities-issue-solicitations-interested> [hereinafter *USDA to Purchase Up to \$3 Billion*].
15. SCHNEPF R46347, *supra* note 1, at 19.
16. “The Agricultural Marketing Service (AMS) administers programs that create domestic and international marketing opportunities for U.S. producers of food, fiber, and specialty crops. AMS also provides the agriculture industry with valuable services to ensure the quality and availability of wholesome food for consumers across the country and around the world.” *Agricultural Marketing Service*, U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/> (last visited Jan. 8, 2021).

17. SCHNEPF R46347, *supra* note 15; *See also* Video interview with Ellie Bomstein, Project Manager Food Systems Leadership and Susan Lightfoot Schempf, Associate Director Food Systems Leadership, Wallace Center at Winrock International (Oct. 26, 2020) (stating that there were a variety of entities that served as contractors whose primary function was in aggregation and distribution). Interview notes on file with authors.
18. The USDA has previously recognized the unique challenges presented by the procurement of fresh produce, particularly associated with the supply chain. So much so that they have previously delegated such procurement to the Department of Defense by way of the Fresh Fruit and Vegetable Program (DoD Fresh)—operated by the Defense Logistics Agency (DLA). *See USDA DoD Fresh Fruit and Vegetable Program*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (Aug. 11, 2020), <https://www.fns.usda.gov/usda-foods/usda-dod-fresh-fruit-and-vegetable-program>. This program allows schools to use USDA Foods entitlement dollars to buy fresh produce. *Id.*
19. *See* Video interview with USDA AMS, *supra* note 6.
20. *USDA Announces Continuation of the Farmers to Families Food Box Program, Fifth Round of Food Purchases*, U.S. DEP’T OF AGRIC. (Jan. 4, 2021), <https://www.usda.gov/media/press-releases/2021/01/04/usda-announces-continuation-farmers-families-food-box-program-fifth> [hereinafter *USDA Fifth Round of Food Purchases*].
21. *See Press Releases*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/media/press-releases> (last visited Jan. 8, 2021); *See USDA Farmers to Families Food Box*, U.S. DEP’T OF AGRIC. AGRIC. MKTG. SERV., <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box> (last visited Jan. 9, 2021) [hereinafter *USDA Farmers to Families Food Box*].
22. *See An Overview of the Farmers to Families Food Box Program: Hearing Before the Subcomm. on Nutrition, Oversight, and Dep’t Operations of the H. Agric. Comm.*, 166th Cong. Rec. H128 (daily ed. July 21, 2020) [hereinafter *Hearing*] (committee member comments to presenters).
23. SCHNEPF R46347, *supra* note 11.
24. *See USDA Announces Coronavirus Food Assistance Program*, *supra* note 12; *See generally* SCHNEPF R46347, *supra* note 1. To be eligible for a direct payment through CFAP, “a commodity must have suffered a price loss of at least 5% during the mid-January to mid-April period,” or be subject to additional costs due to supply chain disruptions. *Id.*
25. *See USDA Announces Coronavirus Food Assistance Program*, *supra* note 12.
26. CFAP Round Two was initiated on September 17, 2020. *Coronavirus Food Assistance Program 2*, U.S. DEP’T OF AGRIC., <https://www.farmers.gov/cfap> (last visited Jan. 8, 2021).
27. A large majority of the funding for CFAP 2 was provided under the Commodity Credit Corporation (CCC) Charter Act, however, the funds could not be used to provide assistance for tobacco. 15 U.S.C. § 714 (2018). Relief for tobacco producers was funded under the CARES Act, which authorized up to 100 million dollars of funding for CFAP 2. *Id.*
28. Consolidated Appropriations Act, 2021, H.R. 133 (2020) [hereinafter *Appropriations Act 2021*].
29. *Id.*; *USDA Fifth Round of Food Purchases*, *supra* note 20.
30. *Appropriations Act 2021*, at 434–35. These food processors or distributors include seafood processing facilities and processing vessels, farmers’ markets, producers, or other organizations to respond to coronavirus, including for measures to protect workers against the disease. *Id.*
31. *Id.* Round Five contracts are expected to be issued on January 19, 2021. *USDA Fifth Round of Food Purchases*, *supra* note 20.
32. *Id.* Fairness of purchases includes distribution of purchased products, food distribution to ensure rural communities receive adequate support, sufficiency of transportation costs to reach all necessary locations, food safety standards, and the degree with which local food purchases were made. *Appropriations Act 2021*, *supra* note 30.
33. *USDA Fifth Round of Food Purchases*, *supra* note 20.
34. Video interview with Ellie Bomstein and Susan Lightfoot Schempf, *supra* note 17.
35. *USDA to Purchase Up to \$3 Billion*, *supra* note 14.
36. *See, e.g., Farmers to Families Food Box Program Reaches 75 Million Boxes Delivered*, U.S. DEP’T OF AGRIC. (Aug. 28, 2020), <https://www.usda.gov/media/press-releases/2020/08/28/farmers-families-food-box-program-reaches-75-million-boxes> (providing testimonials from producers stating that without the Program, their surplus of food would go to waste).
37. *USDA to Purchase Up to \$3 Billion*, *supra* note 14.
38. *Id.*

39. *Id.*; See also *Trump Administration Announces Additional \$1 billion for the Farmers to Families Food Box Program*, U.S. DEP'T OF AGRIC. (Aug. 25, 2020), <https://www.usda.gov/media/press-releases/2020/08/25/trump-administration-announces-additional-1-billion-farmers> (stating that a focal point of Round Three was to address the “last mile” delivery of product into the hands of the food insecure population).
40. *Request for Proposals Frequently Asked Questions*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV. (Apr. 30, 2020), <https://www.ams.usda.gov/publications/content/request-proposals-frequently-asked-questions>.
41. *Farmers to Families Food Box Program FAQs*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV. (Apr. 27, 2020), <https://www.ams.usda.gov/publications/content/farmers-families-food-box-program-faqs> [hereinafter *Program FAQs*].
42. See *Combined Synopsis/Solicitation—Families to Farmers Food Boxes*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV., https://www.ams.usda.gov/sites/default/files/media/FFFB_solicitationRound3.pdf (last visited Jan. 8, 2021) [hereinafter *Combined Synopsis*].
43. *Id.*
44. See *generally Approved Contractors for the Farmers to Families Food Box Program*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV., <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box/approved-contractors> (last visited Jan. 8, 2021). The list of selected contractors, but not subcontractors, is publicly announced for each Round. See, e.g., *Round 4 Approved Contractors for the Farmers to Families Food Box Program*, U.S. DEP'T OF AGRIC. AGRIC. MKTG. SERV., <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box/approved-contractors-round-four> (last visited Jan. 8, 2021) [hereinafter *Round 4 Approved Contractors*].
45. *USDA Farmers to Families Food Box*, *supra* note 21.
46. *Id.* Round Two began July 1 and ended August 31, with an extension beginning September 1 and ending September 18; *USDA Announces Fourth Round of the Farmers to Families Food Box Program*, U.S. DEP'T OF AGRIC. (Oct. 23, 2020), <https://www.usda.gov/media/press-releases/2020/10/23/usda-announces-fourth-round-farmers-families-food-box-program> [hereinafter *USDA Announces Fourth Round*]; *USDA Fifth Round of Food Purchases*, *supra* note 20.
47. *USDA Farmers to Families Food Box*, *supra* note 21. The data according to the USDA is as follows: Round One (May 15–June 30), 35.7 million invoiced boxes; Round Two (July 1–August 31), 50.8 million invoiced boxes; Round Two Extensions (September 1–18), 15.2 million invoiced boxes; Round Three/BOA Contracts (September 22–October 31), 18.8 million invoiced boxes; and, as of January 9, 2021, Round Four (November 1–December 31), 12.2 million invoiced boxes. *Id.*
48. A Memorandum of Understanding, also known as a letter of intent, is a written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; a noncommittal writing preliminary to a contract. It is not meant to be binding and does not hinder the parties from bargaining with a third party. *Letter of Intent*, Black's Law Dictionary (11th ed. 2019); See *Memorandum of Understanding*, Black's Law Dictionary (11th ed. 2019).
49. Christopher Purdy, *An Overview of the Food Box Program and Opportunities for Agricultural Producers to Connect with Commodity Procurement*, AGRIC. MKTG. SERV., http://www.farmmanagement.org/aginuncertaintimesenglish/wp-content/uploads/2020/10/2020_10_21_FoodBoxProgram_CPurdy_HANDOUT.pdf (last visited Jan. 8, 2021).
50. *Round 4 Approved Contractors*, *supra* note 44.
51. *Program FAQs*, *supra* note 41; See also Video interview with Melissa Melshenker Ackerman, President, Produce Alliance (Oct. 15, 2020) (explaining new MOU requirements imposed on contractors re-applying to the Program). Interview notes on file with authors.
52. See also *Hearing*, *supra* note 22 (showing committee members expressing preferences for requiring last mile delivery).
53. U.S. DEP'T OF AGRIC., *supra* note 20; See also *Fifth round of Farmers to Families Food Box Program to include \$1.5B of food*, PRODUCE NEWS (Jan. 6, 2021), <https://theproducenews.com/headlines/fifth-round-farmers-families-food-box-program-include-15b-food>.
54. U.S. DEP'T OF AGRIC., *supra* note 20; Steve Davies, *Food box program continuing with \$1.5B from relief bill*, AGRI-PULSE COMMUNICATIONS (Jan. 4, 2021), <https://www.agri-pulse.com/articles/15079-food-box-program-continuing-perdue-announces> (quoting the USDA press release regarding the additional funding for the fifth Round).
55. *USDA Fifth Round of Food Purchases*, *supra* note 20.
56. See *Hearing*, *supra* note 22 (showing USDA's statements stressing that contractors are not paid without evidence of contract fulfillment).

57. Even contractors who were critical about Program specifics made positive remarks about the speed with which it became operational. *See generally* Video interviews with Program stakeholders (Oct. 2020–Dec. 2020). Interview notes on file with authors.
58. *See Hearing, supra* note 22.
59. Secretary Sonny Perdue announced the Program on April 19, 2020, just two days after the announcement of CFAP. *USDA to Purchase Up to \$3 Billion, supra* note 14. Prior to the COVID-19 pandemic, over 37 million Americans were food insecure. *Impact of Coronavirus, supra* note 6. The pandemic caused a dramatic and immediate increase in unemployment levels, considerably increasing nationwide food insecurity. *Graphics for Economic News Releases: Civilian unemployment rate*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm> (last visited Jan. 8, 2021). Consequently, the number of individuals seeking food assistance at local food banks increased by an average of 60% across the country. *Coronavirus is the perfect storm for our neighbors struggling to make ends meet*, FEEDING AM., <https://www.feedingamerica.org/take-action/coronavirus> (last visited Jan. 8, 2021).
60. *Announcement of Contract Awards for the Farmers to Families Food Box Program*, U.S. DEP’T OF AGRIC. AGRIC. MKTG. SERV. (May 8, 2020), <https://www.ams.usda.gov/sites/default/files/media/AnnouncementofContractAwards.pdf> [hereinafter *Announcement of Contract Awards*].
61. *USDA Farmers to Families Food Box Program Reaches 5 Million Boxes Distributed*, U.S. DEP’T OF AGRIC. (June 4, 2020), <https://www.usda.gov/media/press-releases/2020/06/04/usda-farmers-families-food-box-program-reaches-5-million-boxes> [hereinafter *USDA Reaches 5 Million Boxes*]. Contracted distributors may only deliver food to entities that have 501(c)(3) tax exempt status or to government entities that can demonstrate they are able to receive, store, and distribute food items. *Program FAQs, supra* note 41.
62. *USDA Farmers to Families Food Box, supra* note 21.
63. *See, e.g.,* Ben Kessler, *Food banks fear possible end of USDA Farmers to Families Food Box Program*, NBC NEWS (Jan. 1, 2021), <https://www.nbcnews.com/news/us-news/food-banks-fear-possible-end-usda-farmers-families-food-box-n1252578> (providing multiple Program participant calls for its continuation given the continued demand for food boxes in their respective communities); Laura Reiley & Greg Jaffe, *A \$4.5 billion Trump food program is running out of money early, leaving families hungry and food assistance charities scrambling*, WASH. POST (Dec. 8, 2020), <https://www.washingtonpost.com/business/2020/12/08/trump-farmers-to-families-food-box-program-strapped/>; Benjamin Kail, *Reps. Jim McGovern, Ayanna Pressley, Sen. Ed Markey press USDA over reports of food box shortages*, MASSLIVE (Dec. 14, 2020), <https://www.masslive.com/politics/2020/12/14/rep-jim-mcgovern-ayanna-pressley-sen-ed-markey-press-usda-over-reports-of-food-box-shortages.html>; Chris Burrell, *USDA Cuts Back on Hunger Relief Shipments to Massachusetts*, GBH NEWS (Dec. 15, 2020), <https://www.wgbh.org/news/news/2020/12/15/usda-cuts-back-on-hunger-relief-shipments-to-massachusetts>.
64. Contractors are only required to submit an invoice package that indicates the number of boxes delivered, the contents of the boxes, and proof of delivery to a non-profit. *Program FAQs, supra* note 41.
65. *USDA Farmers to Families Food Box, supra* note 21.
66. The fifth Round is expected to begin shortly after contracts are awarded on January 19, 2021, and is expected to run through April 2021. *USDA Fifth Round of Food Purchases, supra* note 20.
67. RANDY SCHNEPF, CONG. RSCH. SERV., R46395, *USDA’S CORONAVIRUS FOOD ASSISTANCE PROGRAM: ROUND ONE (CFAP-1) 4 (2020)* [hereinafter *SCHNEPF R46395*].
68. For the purposes of this report, food service establishments are meant to include all of, but not limited to, the following: restaurants, cafés, bars, entertainment venues, cruise-lines, hotel food service facilities, and schools.
69. *See SCHNEPF R46395, supra* note 67.
70. Felix, *supra* note 1.
71. *Announcement of Contract Awards, supra* note 60; *Round 3 Approved Contractors for the Farmers to Families Food Box Program*, U.S. DEP’T OF AGRIC. AGRIC. MKTG. SERV., <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box/approved-contractors-round-three> (last visited Jan. 8, 2021) [hereinafter *Round 3 Approved Contractors*]; *Round 4 Approved Contractors, supra* note 44. Although the total number of farms touched by the program is not definite, one smaller Program contractor stated that they successfully partnered with 30–40 farms. *See* Video interview with Andy Ollove, Food Access Program Director, Fresh Approach (Dec. 8, 2020). Interview notes on file with authors.

72. Video interview with Jessica Fu, Staff Writer, *The Counter* (Oct. 6, 2020). Interview notes on file with authors. Sadly, some of these contractors had to lay off workers once they were not awarded contracts in later rounds. *Id.*
73. *Program FAQs*, *supra* note 41.
74. *See generally* Video interviews with Program stakeholders, *supra* note 57.
75. *See* Video interview with USDA AMS, *supra* note 6; *See* Video interview with Andy Ollove, *supra* note 71. The Program also spurred building of similar programs to help fill in the gaps once it ended. *Id.*; *See, e.g., Food For Free launches Just Eats Grocery Box program to address the urgent need for food in greater Boston*, FOOD FOR FREE (Dec. 16, 2020), https://foodforfree.org/press_releases/food-for-free-launches-just-eats-grocery-box-program-to-address-the-urgent-need-for-food-in-greater-boston/.
76. Lynne Curry, *Pastured Meat Producers are Facing Catastrophic Losses. These Efforts Could Help Them Weather the Pandemic.*, CIVIL EATS (Mar. 31, 2020), <https://civileats.com/2020/03/31/pastured-meat-producers-are-facing-catastrophic-losses-these-efforts-could-help-them-weather-the-pandemic/>; *See infra* note 132.
77. Dawn Thilmany et al., *Mitigating Immediate Harmful Impacts of COVID-19 on Farms and Ranches Selling Through Local and Regional Food Markets*, NAT'L SUSTAINABLE AGRIC. COAL. (Mar. 21, 2020), https://localfoodeconomics.com/wp-content/uploads/2020/03/2020_03_21_EconomicImpactLocalFood-NSAC-SEH.pdf; Francesca DiGiorgio, *Over 50 Organizations Urge Congress to Prioritize Small, Mid-Sized Farms for COVID-19 Relief*, FOODTANK (Apr. 2020), <https://foodtank.com/news/2020/04/over-50-organizations-urge-congress-to-prioritize-small-mid-sized-farms-for-covid-19-relief/>.
78. Nick Wood, *NC's COVID-19 Response Fails Small & Mid-Sized Farms*, CAROLINA FARM STEWARDSHIP ASS'N (May 7, 2020), <https://www.carolinafarmstewards.org/ncs-covid-19-response-fails-small-mid-sized-farms/>.
79. Robert Johansson, *America's Farmers: Resilient Throughout the COVID-19 Pandemic*, U.S. DEP'T OF AGRIC. (Oct. 13, 2020), <https://www.usda.gov/media/blog/2020/09/24/americas-farmers-resilient-throughout-covid-pandemic> (stating, “[T]he immediate and drastic decline in food demand by restaurants and hotel customers isolated farmers and food processors from some of their biggest buyers, especially for meat, dairy, and specialty crops.”).
80. Curry, *supra* note 76.
81. Thilmany, *supra* note 77.
82. *See, e.g., October 21st, 2020 Webinar Recordings—Farmers to Families Food Box Program*, AG IN UNCERTAIN TIMES (Oct. 21, 2020), <https://www.farmmanagement.org/aginuncertaintimesenglish/2020/10/> [hereinafter *Ag in Uncertain Times Webinar*]. This webinar featured a panel of former contractors of the Program, who provided feedback and personal experiences to Christopher Purdy, Associate Deputy Administrator of the Commodity Procurement Program at AMS. *Id.* Former contractor and one of our stakeholder interviewees, Scott Thellman, spoke at this webinar about how the Program ensured his farm's survival as well as that of six smaller Amish farms with whom he partnered. *Id.*
83. *See* Community Farm Alliance, *Commentary: Federal aid hasn't reached most Kentucky farmers, exposes fragilities of food system*, N. KY. TRIB. (Sept. 19, 2020), <https://www.nkytribune.com/2020/09/commentary-federal-aid-hasnt-reached-most-kentucky-farmers-exposes-fragilities-of-food-system/>; Anne Schechinger, *New USDA Records Show Trade Bailout and Coronavirus Payments Went to the Largest Farms*, AGMAG (Sept. 22, 2020), <https://www.ewg.org/agmag/2020/09/new-usda-records-show-trade-bailout-and-coronavirus-payments-went-largest-farms>.
84. *Combined Synopsis*, *supra* note 42.
85. *See* Adam Behsudi & Ryan McCrimon, *Food goes to waste amid coronavirus crisis*, POLITICO (Apr. 5, 2020), <https://www.politico.com/news/2020/04/05/food-waste-coronavirus-pandemic-164557> (quoting a consultant whose client likened the problem to a “tsunami of demand shift[s] from foodservice to food retail.”).
86. *See generally* Felix, *supra* note 1 (explaining the distribution channel disruption resulting from a change in consumer habits).
87. *See, e.g.,* Jeffery & Newburger, *supra* note 6; Jesse Newman & Jacob Bunge, *Farmers Dump Milk, Break Eggs as Coronavirus Restaurant Closings Destroy Demand*, WALL ST. J. (Apr. 9, 2020), <https://www.wsj.com/articles/farmers-deal-with-glut-of-food-as-coronavirus-closes-restaurants-11586439722>; Susie Cagle, *'A disastrous situation': mountains of food wasted as coronavirus scrambles supply chain.*, GUARDIAN (Apr. 9, 2020), <https://www.theguardian.com/world/2020/apr/09/us-coronavirus-outbreak-agriculture-food-supply-waste>.
88. *See* Video interview with USDA AMS, *supra* note 6; *See, e.g.,* Mak, *supra* note 6; Jeffery & Newburger, *supra* note 6; Newman & Bunge, *supra* note 87; Cagle, *supra* note 87; Sophie Lewis, *Farmers will have to euthanize millions of pigs*

- many cases, felt that there was not enough thorough coordination about deliveries, a more common issue than being completely in the dark).
108. *See, e.g.*, Video interview with Bob Jones, Jr., Chief Operating Officer, The Chef’s Garden (Oct. 8, 2020). Video notes on file with authors; Video interview with Scott Thellman, President, Juniper Hill Farms (Oct. 26, 2020). Interview notes on file with authors.
 109. *See, e.g.*, Video interview with Bob Jones, Jr., *supra* note 108; Video interview with Scott Thellman, *supra* note 108.
 110. *USDA Farmers to Families Food Box, supra* note 21.
 111. *Solicitation/Contract/Order for Commercial Items*, U.S. DEP’T OF AGRIC. AGRIC. MKTG. SERV., https://www.ams.usda.gov/sites/default/files/media/RFP_ERAcquisition.pdf (last visited Jan. 8, 2021).
 112. *Id.*
 113. *Farmers to Families Food Box Amendment #1: Basic Ordering Agreement Solicitation*, U.S. DEP’T OF AGRIC. AGRIC. MKTG. SERV., <https://www.ams.usda.gov/sites/default/files/media/FFFBRound3AmendmentWebinar.pdf> (last visited Jan. 8, 2021) [hereinafter *Farmers to Families Amendment #1*].
 114. *Combined Synopsis, supra* note 42.
 115. Purdy, *supra* note 49. Stakeholders mentioned that if the USDA wanted to directly address food insecurity as the main goal of the Program, they should utilize the scalable model in SNAP by allocating more money to it and loosening restrictions. *See, e.g.*, Video interview with Andy Ollove, *supra* note 71; *See generally Supplemental Nutrition Assistance Program (SNAP) SNAP Eligibility*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (current through June 30, 2021), <https://www.fns.usda.gov/snap/recipient/eligibility>.
 116. *Hearing, supra* note 22.
 117. Purdy, *supra* note 49.
 118. *Combined Synopsis, supra* note 42.
 119. *See, e.g.*, Video interview with Jessica Fu, *supra* note 72 (discussing how as smaller farms who were shorted out of contracts or renewals, larger farms were becoming more prevalent); *See also Someone’s profiting off this, supra* note 98.
 120. *Farmers to Families Amendment #1, supra* note 113.
 121. *See Commonwealth Quality Program (CQP)*, COMMONWEALTH OF MASS., <https://www.mass.gov/service-details/commonwealth-quality-program-cqp> (last visited Jan. 8, 2021).
 122. *Introducing a New Standard for New York State Agriculture*, NY STATE, <https://certified.ny.gov/> (last visited Jan. 8, 2021).
 123. *See, e.g.*, Video interview with Haile Johnston, Co-Founder & Chief Development Officer, The Common Market (Oct. 30, 2020). Interview notes on file with authors.
 124. Video interview with Bob Jones, Jr., *supra* note 108 (mentioning that his farm had increased planting based on the Program description in Round One when his contract was issued in April).
 125. *Program is winding down, supra* note 96.
 126. *See, e.g.*, Video interview with Andy Ollove, *supra* note 71 (stating that the greatest number of farms in a given local food system are specialty crops, meaning, many small contractors may have a network of meat and dairy in their region and can source these products, but they have not had experience running a cold chain and do not want to put people at risk).
 127. *2017 Census of Agriculture Highlights: Black Producers*, U.S. DEP’T OF AGRIC. NAT’L AGRIC. STAT. SERV. (2017), https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Black_Producers.pdf; Mary V. Gold & Becky Thompson, *U.S. Statistics on Women and Minorities on Farms and in Rural Areas*, U.S. DEP’T OF AGRIC. NAT’L AGRIC. LIBR. (Oct. 2018), <https://www.nal.usda.gov/afsic/us-statistics-women-and-minorities-farms-and-rural-areas>.
 128. *See, e.g.*, Ximena Bustillo, *Black farmers look to next Congress, Biden to dismantle ‘culture of discrimination’*, POLITICO (Jan. 1, 2021), <https://www.politico.com/news/2021/01/01/black-farmers-systemic-racism-453220>; Nathan Rosenberg & Bryce Wilson Stucki, *How USDA distorted data to conceal decades of discrimination against Black farmers*, COUNTER (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>; Tom Philpott, *Black Farmers Have Been Robbed of Land A New Bill Would Give Them a “Quantum Leap” Toward Justice.*, MOTHER JONES (Nov. 19, 2020), <https://www.motherjones.com/food/2020/11/black-farmers-have-been-robbed-of-land-a-new-bill-would-give-them-a-quantum-leap-toward-justice/>; Lisa Deaderick, *Systemic racism in*

- USDA makes Justice for Black Farmers Act long overdue*, SAN DIEGO UNION-TRIB. (Dec. 20, 2020), <https://www.sandiegouniontribune.com/columnists/story/2020-12-20/systemic-racism-in-usda-makes-justice-for-black-farmers-act-long-overdue>.
129. 185 F.R.D. 82 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), and enforcement denied sub nom. *Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008). The damages awarded to the class amounted to an estimated \$2 billion in debt relief and monetary payments. *Id.*
 130. 118 F. Supp. 3d 98 (D.D.C. 2015).
 131. *Garcia v. Vilsack*, 563 F.3d 519 (D.C. Cir. 2009). Also, in *Love v. Vilsack*, female farmers filed suit against the USDA, alleging that the USDA's administration claims process established for female farmers was inferior to the administrative programs offered to African-American and Native American farmers who suffered similar discrimination and filed similar complaints. *Love v. Vilsack*, 908 F. Supp. 2d 139 (D.D.C. 2012).
 132. Socially disadvantaged groups are defined under Section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), also known as the 1990 Farm Bill, Pub. L. No. 101-624, as "[a] farmer or rancher who is a member of one or more of the following groups whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities." 7 U.S.C. § 2279(e). These groups include but are not limited to African Americans, American Indians, Alaskan Natives, Asians, Hispanics, Pacific Islanders, Refugees, and Immigrants. *Id.*; *See Frequently Asked Questions 2501 Program: Q. What groups are defined as socially disadvantaged under the 2501 Program?*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/partnerships/frequently-asked-questions-2501-program> (last visited Jan. 8, 2021).
 133. *See, e.g., Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (The 2501 Program)*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/partnerships/socially-disadvantaged-farmers-and-ranchers> (last visited on Jan. 8, 2021); Olivia Paschal, *A boost for Young, Diverse Farmers*, ATLANTIC (Dec. 16, 2018), <https://www.theatlantic.com/politics/archive/2018/12/farm-bill-funds-programs-new-and-diverse-farmers/578260/>.
 134. *See, e.g.,* Jacqueline Allison, *Project gives away more farmers' produce boxes to families in need*, SKAGIT VALLEY HERALD (Dec. 12, 2020), https://www.goskagit.com/coronavirus/project-gives-away-more-farmers-produce-boxes-to-families-in-need/article_681e2c3b-b317-5b20-8616-03401fe6c4fc.html; *Farmers to Families Food Box Research Findings*, WALLACE CTR. WINROCK INT'L 11 (forthcoming in Jan. 2021) [hereinafter *Wallace Center Report*].
 135. *See, e.g.,* Gosia Wozniacka, *Black Farmers Say They Were Dropped from the USDA's Food Box Program*, CIVIL EATS (Dec. 1, 2020), <https://civileats.com/2020/12/01/black-farmers-say-they-were-dropped-from-the-usdas-food-box-program/>; Peter Wade, *People Are Going Hungry as Trump's Food Aid Program Runs Out of Money*, ROLLING STONE (Dec. 12, 2020), <https://www.rollingstone.com/politics/politics-news/farmers-to-families-food-bank-funding-run-out-1103077/>.
 136. Wozniacka, *supra* note 135.
 137. *Id.*
 138. *See generally* Video interviews with Program stakeholders, *supra* note 57.
 139. *Id.*
 140. *USDA Announces Coronavirus Food Assistance Program*, *supra* note 12 (noting "price considerations" as a contract evaluation criterion, but not specifying requirements for price).
 141. *See e.g., Combined Synopsis*, *supra* note 42.
 142. *Someone's profiting off this*, *supra* note 98.
 143. Dan Charles, *How Trump's food Box Initiative Overpaid and Underdelivered*, NPR (Sept. 3, 2020, 10:03 AM), <https://www.npr.org/sections/health-shots/2020/09/03/907128481/how-the-usdas-food-box-initiative-overpaid-and-under-delivered> (quoting Eric Cooper, President and CEO of the San Antonio Food Bank); *See Someone's profiting off this*, *supra* note 98 (reporting that the USDA reimbursed the Caribbean Produce Exchange, the recipient of an \$107 million contract, up to \$100 for each box of food distributed in Puerto Rico).
 144. *See, e.g.,* The Good Food Purchasing Program, *The Good Food Purchasing Program: Toward a Good Future Impact Report*, CTR. FOR GOOD FOOD PURCHASING (Mar. 18, 2020), <https://my.visme.co/projects/x4j4xgqy-e0654kn6qemz2np9#s1>; *Growing Opportunity: A Guide to USDA Sustainable Farming Programs*, NAT'L SUSTAINABLE AGRIC. COAL. 12 (Jan. 2017), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcseprd1311311.pdf; *See*

- generally The Program*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/program-overview/> (last visited on Jan. 8, 2021).
145. *Program FAQs*, *supra* note 41. Many food banks leverage central distribution centers that most efficiently process pallets of food items that are not individually packaged in boxes. Video interview with Carrie Calvert, Vice President of Government Relations, Feeding America (Oct. 19, 2020). Interview notes on file with authors. Also, food on pallets is more economical for food banks, which would free up money that can be spent on buying more food. *See generally* Video interviews with Program stakeholders, *supra* note 57.
 146. *Refrigeration and Food Safety*, U.S. DEP'T OF AGRIC. FOOD SAFETY & INSPECTION SERV. (Mar. 23, 2015), https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/safe-food-handling/refrigeration-and-food-safety/CT_Index.
 147. Video interview with Carrie Calvert, *supra* note 145; Video interview with Scott Thellman, *supra* note 108 (discussing how one of their partners had adequate cold storage, but did not have a pallet-sized door for their produce cooler and another partner did not have the capacity of storing meat and dairy at the proper temperature in coolers that were designed for fresh produce. Also, because of the decreased staff requirements imposed by COVID-19 restrictions, the staff needed to store products fast enough was not available).
 148. Video interview with Carrie Calvert, *supra* note 145.
 149. *See generally* Video interviews with Program stakeholders, *supra* note 57.
 150. *Program FAQs*, *supra* note 41. Food assistance to the Northeast during the pandemic lagged behind other regions. *See generally* Jessica Fu & H. Claire Brown, *Mapping Trump's food boxes: More than 1,000 counties received no aid in May and June, while some organizations received 9 truckloads a day*, COUNTER (Sept. 8, 2020), <https://thecounter.org/covid-19-farmers-to-families-food-box-delivery-usda-trump> [hereinafter *Mapping Trump's food boxes*]; Kail, *supra* note 63.
 151. *Mapping Trump's food boxes*, *supra* note 150 (noting the Program boxes were "inequitable in . . . distribution of food to hungry families struggling with the economic devastation from the coronavirus pandemic . . .").
 152. *Id.* (stating that these states were left out in the contacting process but some food banks in these states were able to secure food deliveries through the Program by using subcontractors); *USDA Reaches 5 Million Boxes*, *supra* note 61.
 153. *Combined Synopsis*, *supra* note 42.
 154. Video interview with Carrie Calvert, *supra* note 145.
 155. *Combined Synopsis*, *supra* note 42.
 156. *Opportunity Now*, U.S. DEP'T OF HOUS. & URB. DEV., <https://opportunityzones.hud.gov/> (last visited Jan. 8, 2021).
 157. Video interview with Scott Thellman, *supra* note 108.
 158. *Id.*; *See generally Impact of Coronavirus*, *supra* note 6. Feeding America projects food insecurity nationwide by reviewing poverty data, monthly unemployment data, and projections from experts like the Congressional Budget Office, Organization of Economic Cooperation and Development, International Monetary Fund, and the Federal Reserve. *Id.*
 159. Video interview with Ellie Bomstein and Susan Lightfoot Schempf, *supra* note 17.
 160. *Program FAQs*, *supra* note 41. The first contract Round gave discretion to the contractor to secure non-profit partners after the fact, but did not require proof of contract or MOUs as a part of the proposal. *Id.*
 161. Video interview with Jessica Fu, *supra* note 72 (discussing mismanaged deliveries leading to food spoilage in parking lots).
 162. Recently published data from one surveyed contractor showed that 30% of farms were less than 100 acres and 70% of farms were less than 1,000 acres. *Wallace Center Report*, *supra* note 134.
 163. Video interviews with Program stakeholders, *supra* note 57 (specifically discussions with supply-side distributors, including Sassy Cow Creamery and Juniper Hill Farms).
 164. *See* Video interview with Scott Thellman, *supra* note 108.
 165. *Program is winding down*, *supra* note 96 (reporting on A&H's decision to plant crops for projected contract extensions in the fall); Video interview with Scott Thellman, *supra* note 108 (expressing his belief that they expected a contract extension based on their performance history).
 166. *See generally* Video interviews with Program stakeholders, *supra* note 57 (specifically discussions with supply-side distributors). Food waste was not explicit, but implied in conversations with supply-side distributors. *See, e.g.*, Video

- interview with James Baerwolf, Owner, and Jennifer Orchard, Sales Marketing Assistant, Sassy Cow Creamery (Oct. 23, 2020) (mentioning how they were aware of the Program goals and its shift in priorities. The company’s milk and dairy distribution was not adversely affected by the USDA’s decision not to renew the contract in Round Three. They also mentioned the continuous opportunities for donation afforded by their pre-Program relationships with their local nonprofits). Interview notes on file with authors; *But see, e.g.,* Video interview with Bob Jones, Jr., *supra* note 108 (mentioning that as a supply-side distributor, they discussed company’s decision to grow more crops than what would normally be expected because of a hope that their contract would be renewed, but when it wasn’t, these crops had “no place to go.”); *See also* Video interview with Scott Thellman, *supra* note 108 (discussing how his farm saw increased food waste when their contract was not renewed mid-September. They took a financial hit as a result of the increased food production in preparation for future Rounds but were fortunately successful in redistributing this excess to food banks as donations to avoid wasting most of the food).
167. *Round 4 Approved Contractors, supra* note 44.
 168. Video interview with Julia Coffey, Owner-Operator, Mycoterra Farm (Oct. 30, 2020) (mentioning that precooked meat guidelines in combination boxes meant that most meats in boxes had to be pork and thus were unsuitable for kosher and halal communities). Interview notes on file with authors.
 169. Video interview with Carrie Calvert, *supra* note 145.
 170. *See, e.g., Combined Synopsis, supra* note 42.; *Farmers to Families Food Box*, U.S. DEP’T OF AGRIC., <https://www.ams.usda.gov/sites/default/files/media/FarmerstoFamiliesFoodBox.pdf> (last visited, Jan. 8, 2021).
 171. *Combined Synopsis, supra* note 42.
 172. Purdy, *supra* note 49.
 173. *See* Recommendation viii in this report, “Publish regional lists of qualifying small- and mid-sized farms or for bidding contractors to partner with or enact a matching program across contractors and producers.”
 174. *Round 4 Approved Contractors, supra* note 44.
 175. Video interview with Ellie Bomstein and Susan Lightfoot Schempf, *supra* note 17.
 176. Video interview with Andy Ollove, *supra* note 71.
 177. *See Gus Schumacher Nutrition Program (formerly FINI)*, NAT’L INST. OF FOOD & AGRIC. & U.S. DEP’T OF AGRIC., <https://nifa.usda.gov/program/gus-schumacher-nutrition-incentive-grant-program> (last visited, Jan. 8, 2021) [hereinafter *GusNIP*]. GusNIP supports projects to increase purchase of fruits and vegetables among low-income consumers participating in SNAP by providing incentives at the point of purchase. *Id.* GusNIP tiers applicants based on size by awarding less than \$100 thousand to small producers, between \$100,000 and \$500,000 for mid-sized producers, and \$500,000 to \$5 million for large producers. *Id.*; *See also* Video interview with Andy Ollove, *supra* note 71.
 178. *See generally* Video interviews with Program stakeholders, *supra* note 56.
 179. *Hearing, supra* note 22.
 180. *See, e.g.,* Video Interview with Bob Jones, Jr., *supra* note 108.
 181. NSAC’s Blog, *More Money Now Available to Farmers Impacted by the Pandemic*, NAT’L SUSTAINABLE AGRIC. COAL. (Sept. 22, 2020), <https://sustainableagriculture.net/blog/cfap2-signup/>.
 182. *Program FAQs, supra* note 41.
 183. USDA agencies publish best practice guidance to the public on a variety of topics. For example, FNS publishes best practice guidance for providing meal service. *Best Practice: Meal Service*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (Mar. 31, 2019), <https://www.fns.usda.gov/sfsp/best-practices-meal-service>. Similarly, FSIS publishes best practice guidelines that help producers and agricultural entities meet federal regulations. *Guidelines*, U.S. DEP’T OF AGRIC. FOOD SYS. & INSPECTION SERV. (Nov. 9, 2020), <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/guidelines>.
 184. *See e.g.,* Nezh Altay & Arunachalam Narayanan, *Forecasting in Humanitarian Operations: Literature Review and Research Needs*, INT’L J. FORECASTING (2020), <https://www.sciencedirect.com/science/article/pii/S0169207020301151>.
 185. *Id.* (stating that after the initial start of a humanitarian crisis, supply chain management requires “. . . information about specific needs [to] start flowing in[,] switching the supply chain from a supply-driven one to a demand-driven one (i.e. pull system).”).

186. *Id.* (suggesting that in response to a humanitarian crisis the approach should be a “distributed process, rather than a centralized” one and that a “manager . . . [should] oversee the implementation of the response strategy.”).
187. *See generally* Video interviews with Program stakeholders, *supra* note 57. For example, some food banks maintain an online ordering platform that allows their individual partners to order food to meet the needs of the food insecure population that they serve. *Id.*
188. *Id.*
189. *See, e.g., Combined Synopsis, supra* note 42.
190. Video interview with Carrie Calvert, *supra* note 145; *Key changes, supra* note 103.
191. *See generally* Video interviews with Program stakeholders, *supra* note 57.
192. *See* Video interview with Melissa Melshenker Ackerman, *supra* note 51.
193. Many food banks have some form of quality control in practice at their organizations. *See Ensuring Food Safety*, FEEDING AM., <https://www.feedingamerica.org/our-work/our-approach/ensure-food-safety> (last visited Jan. 8, 2021)(noting that food banks in the Feeding America network take deliberate action to ensure food safety).
194. *Program FAQs, supra* note 41; *See generally* Video interviews with Program stakeholders, *supra* note 57. Non-profit entities were hesitant to rejecting shipments of free food that could serve individuals in their service areas. *Id.*
195. *Farmers to Families Amendment #1, supra* note 113.
196. *See FSMA Final Rule on Produce Safety*, U.S. FOOD & DRUG ADMIN. (Sept. 3, 2020), <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-produce-safety#:~:text=To%20be%20eligible%20for%20a,during%20the%20previous%20three%20years>. To be eligible for a qualified exemption under the FSMA Produce Safety rule, a farm must meet two requirements: 1) The farm must have food sales averaging less than \$500,000 per year during the previous three years; and 2) The farm’s sales to qualified end-users must exceed sales to all others combined during the previous three years. *Id.* A qualified end user is either, (a) the consumer of the food, or (b) a restaurant or retail food establishment that is located in the same state or the same Native American reservation as the farm or not more than 275 miles away. *Id.*
197. *See Commonwealth Quality Program, supra* note 121.
198. *Hearing, supra* note 22; Farmers Feeding Families Coronavirus Response Act, H.R. 6725, 116th Congress (2020).
199. *Round 4 Approved Contractors, supra* note 44. Round Five is also projected to only accept combination boxes. *USDA Fifth Round of Food Purchases, supra* note 20.
200. *See, e.g., Ag in Uncertain Times Webinar, supra* note 82.
201. Video interview with Carrie Calvert, *supra* note 145.
202. Video interview with Ellie Bomstein and Susan Lightfoot Schempf, *supra* note 17.
203. *See, e.g.,* Video interview with Scott Thellman, *supra* note 108.
204. *See, e.g.,* Video interview with Haile Johnston, *supra* note 123.
205. 7 C.F.R. § 251.6 (2019).
206. Video interview with Carrie Calvert, *supra* note 145.
207. JIM MONKE, CONG. RSCH. SERV., RL34081, FARM AND FOOD SUPPORT UNDER USDA’S SECTION 32 PROGRAM 1 (2016).
208. *Id.*
209. *Id.*
210. *Id.* at 4.
211. *USDA Domestic Food Procurement: Programs and Expenditures*, U.S. DEP’T OF AGRIC. ECON. RSCH. SERV. (Sept. 9, 2020), https://www.ers.usda.gov/webdocs/publications/40862/54240_aer766c.pdf?v=0#:~:text=Section%2032%20refers%20to%20that,USDA%20to%20distribute%20commodities%20domestically.
212. *See, e.g.,* MONKE, *supra* note 207, at 2.
213. Stakeholders also recommended that more money be funneled to existing programs like the GusNIP, which supports projects to increase the purchase of fruits among low-income consumers participating in SNAP by providing incentives at the point of purchase as this program continues to grow year-over-year and has seen increased demand in 2020. *See, e.g.,* Video interview with Andy Ollove, *supra* note 71; *See GusNIP, supra* note 174.

214. See, e.g., *Growing Opportunity*, *supra* note 141, at 27; See 7 U.S.C. § 2779(e), *supra* note 132.
215. See, e.g., Cagle, *supra* note 87.
216. Broad Leib, *supra* note 89, at 1 (referencing Jonathan A. Foley et al., *Solutions for a cultivated planet*, 478 NATURE 337, 337–38 (2011)).
217. *ReFED Roadmap*, *supra* note 91, at 12.
218. Gunders & Bloom, *supra* note 93, at 16.
219. Hall, *supra* note 89, at 11.
220. *ReFED Roadmap*, *supra* note 91, at 12.
221. See, e.g., Cagle, *supra* note 87.
222. According to USDA, nearly 70 percent of all U.S. farms were in the operating profit margin “critical zone” in 2013. TRAVIS MINOR ET AL., THE ECONOMICS OF FOOD LOSS IN THE PRODUCE INDUSTRY (2019) (citing Robert A. Hoppe, *Profit Margin Increases with Farm Size*, U.S. DEP’T OF AGRIC. ECON. RSCH. SERV. (Feb. 2, 2015), <https://www.ers.usda.gov/amber-waves/2015/januaryfebruary/profit-margin-increases-with-farm-size/>).
223. See, e.g., Cagle, *supra* note 87.
224. 42 U.S.C. § 1791 (c)(1); See also, JoAnne Berkenkamp & Emily Broad Leib et al., *Recommendations to Strengthen the Bill Emerson Good Samaritan Act*, NAT. RES. DEF. COUNCIL & HARV. L. SCH. FOOD L. & POL’Y CLINIC 2 (2016), <https://www.nrdc.org/sites/default/files/recommendations-bill-emerson-good-samaritan-act-fs.pdf>.

