

Federal Policies to Support the Food System and Consumers During COVID-19

Harvard Law School Food Law and Policy Clinic

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The Harvard Law School Food Law and Policy Clinic (FLPC) provides guidance to partner organizations and communities on cutting-edge food system issues, with a particular focus on increasing access to healthy foods, supporting sustainable food production and regional food systems, reducing food waste, and promoting community-led food system change. During the COVID-19 pandemic, FLPC has been working closely with food businesses, community-based organizations, and policymakers in efforts to protect the safety of food system workers, address market challenges faced by local and regional farmers, support food security for vulnerable individuals, and redirect safe, wholesome food to those in need. Stemming from this cross-sector work, FLPC has identified ongoing gaps in the federal government's response to the effect of the COVID-19 crisis on our nation's food system. We ask that Congress and the relevant agencies consider our requests listed below in developing the next stimulus and the ongoing COVID-19 policy response.

INCREASE SNAP BENEFITS, EXPAND ONLINE SNAP, AND ENSURE ONLINE EXPENDITURES SUPPORT SMALL RETAILERS, FARMERS, AND RESTAURANTS

- 1. Increase household Supplemental Nutrition Assistance Program (SNAP) benefits for the duration of the COVID-19 emergency.** Congress should meaningfully increase SNAP benefits to help the rapidly growing number of families in need. Increased benefits would not only promote food security for SNAP recipients, but would also help stimulate the economy, as every \$1 in SNAP benefits creates a \$1.79 economic benefit in the community.¹ Rather than administer the increased benefit as a one-time payment to SNAP recipients, the government should offer an ongoing benefit throughout the duration of the COVID-19 crisis.
- 2. Quickly increase access to online SNAP purchases nationally.** Congress should provide the funds necessary for USDA to quickly roll out online SNAP in all states. The 2014 Farm Bill authorized an online SNAP redemption pilot program, allowing for SNAP recipients to use benefits for online purchases.² In the 2018 Farm Bill, Congress expanded this pilot, authorizing a full national rollout of SNAP for online sales.³ Prior to the COVID-19 crisis, however, only five states had launched online SNAP as part of the initial pilot approved in 2014. USDA is working to make the online SNAP program available in more states, having approved the program in 15 states as of May 2020.⁴ Recognizing the advantage of online food purchases during the pandemic, USDA should enhance these efforts to facilitate online SNAP on a national scale as quickly as possible.
- 3. Ensure that online SNAP serves a diverse range of retailers.** Congress should enable SNAP recipients to redeem benefits online at a range of retailers and vendors, including local and small-scale operations. To date, most states with an active online

SNAP program limit benefit redemption to online purchases made from Amazon and Walmart.⁵ Due to restrictions on in-person dining and shopping during COVID-19, these large e-commerce retailers are already seeing major hikes in sales, while smaller and locally-owned businesses are struggling to stay open.⁶ Ensuring greater diversity among eligible online SNAP retailers and vendors will serve to support small businesses, including farmers, farmer cooperatives, and independent retailers, and will give SNAP recipients more purchasing options. To execute this expansion, Congress should take the following actions:

- **Offer funding to pay for delivery fees on online purchases from farmers, small businesses, or independent food retailers.** Under the current model of online SNAP, SNAP recipients are unable to use benefits to pay for delivery fees, and must cover these costs out of pocket. Amazon and Walmart have both committed to waive the delivery fee for purchases that exceed a certain minimum, but as large businesses they have the ability to forgo those costs.⁷ Subsidizing delivery fees on purchases made from small retailers, farmers, or independent retailers, can remove a barrier to online SNAP redemption, support sales from these businesses, and help make the food system economy more diverse and resilient.
 - **Direct USDA to create a centralized and inclusive online portal for SNAP benefit redemption.** In order to make it easier for smaller businesses and retailers to participate as vendors in online SNAP, Congress should provide the funding and instruct USDA to issue a request for competitive contract bids to design a SNAP purchasing portal that could be easily be integrated into retailers' online POS systems. This online portal would be available for use by small and independent retailers, farmers, and cooperatives, which otherwise lack the necessary technology, and will thus remove a costly logistical barrier to smaller businesses becoming approved online SNAP vendors.
 - **Provide funding for state agencies to deliver technical assistance on online SNAP software to small and independent retailers, farmers, and farmer cooperatives.** Congress should provide funding directly to states to deliver technical assistance to small and independent retailers, which would include basic training on SNAP benefits and how to become equipped to accept online SNAP benefit payments. It should also provide access to the relevant technology and other resources that will enable these stakeholders to effectively engage in the program.
4. **Expand the SNAP Restaurant Meals Program to increase flexibility in benefit use for SNAP recipients and provide much-needed economic support to restaurants.** Generally, SNAP benefits cannot be used for foods intended to be consumed on the premises or for meals sold at restaurants. Yet, a few states operate a SNAP Restaurant Meals Program, which permits a limited number of participating restaurants to serve SNAP recipients who are either homeless, elderly, or disabled.⁸ Expanding this program during the pandemic will help provide more flexibility in benefit use to SNAP recipients and generate new clientele for restaurants that are struggling to stay in business due to social distancing requirements. To facilitate this expansion, Congress should

modify the definition of food and the definition of food service establishments to allow for SNAP redemption at restaurants, including independently-operated restaurants. Congress should allow all SNAP recipients, not just the above-mentioned vulnerable subpopulations, to spend their benefits at participating restaurants for the duration of the COVID-19 crisis. The expanded program can also help to promote better population health by specifying that SNAP restaurant meals should be nutritionally diverse and include key components, such as a fruit or vegetable, a protein, and a grain.

- 5. Provide more flexibilities in benefit use at typical SNAP vendors for the duration of the COVID-19 emergency.** Restrictions ordinarily imposed on SNAP recipients do not take into account the supply chain disruptions and economic challenges that have arisen during COVID-19. During the pandemic, some of these program parameters are interfering with the ability of SNAP recipients to adapt to changing food needs and availability. Allowing for additional flexibilities within the food assistance program can help SNAP recipients who are facing empty shelves for certain grocery staples, or who struggle to prepare meals because they are unable to pay their gas or electric bills. To allow this flexibility, Congress should temporarily remove the prohibition on using SNAP benefits to purchase “hot foods or hot food products ready for immediate consumption” in 7 U.S.C. 2012(k). Waiving this and other food restrictions on SNAP benefit redemption during the pandemic will help Congress promote greater food security and will not compromise the program’s integrity.

INCREASE WIC BENEFITS AND MAKE THEM MORE ACCESSIBLE

- 1. Increase funding for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).** WIC reduces food insecurity, alleviates poverty, supports economic stability, and improves health outcomes for women and children.⁹ However, the program’s impact is limited by the low level of benefits provided to program participants (food expenditures per participant only averaged \$40.87 per month in 2019)¹⁰ and level of program participation (only about 55% of eligible individuals participate in WIC).¹¹ In response to COVID-19, Congress has sought to expand this impact, appropriating an additional \$500 million to WIC through the Families First Act,¹² and increasing the flexibility of states to administer benefits. However, more funding will be needed for the program to increase its benefit levels, improve participation rates, and enroll the increasing numbers of eligible women and children during the economic downturn. With additional funding from Congress, state WIC agencies will be able to both increase benefits for households and increase program enrollment.
- 2. Provide for online WIC EBT redemption along with online SNAP.** Even in states that have implemented WIC EBT, WIC benefits currently are not redeemable online. USDA and states are beginning to implement online SNAP redemption, which Congress has already authorized.¹³ To provide needed changes to WIC benefit redemption during COVID-19, Congress should amend WIC’s authorizing statute, the Child Nutrition Act of 1966, to allow USDA to roll out online redemption of WIC EBT, and should provide the funds necessary for the implementation of online WIC redemption. Being able to purchase food without going in-person to grocery stores during the COVID-19

pandemic is particularly important for the safety of WIC participants, who are vulnerable populations by definition (pregnant and breastfeeding mothers, as well as infants and young children). Online WIC benefits redemption would allow WIC participants who depend on their nutrition assistance to order groceries and have them delivered to their homes.

- 3. Allow more flexibility in WIC food packages.** As part of the WIC program, participants may redeem benefits on a specific “food package” of eligible food items. In light of the strain COVID-19 has placed on retailers to meet increased demand and supply challenges of staple foods in the WIC food packages, Congress has allowed USDA to waive requirements such as restrictions on the package sizes and brands of specific WIC-approved items at the request of state agencies.¹⁴ Although most states have received waivers for at least one of the food package requirements¹⁵ participants continue to have difficulty redeeming their WIC benefits.¹⁶ Flexibility already exists in WIC food packages in the Cash Value Benefit (CVB), a monthly benefit in the WIC food packages that allows WIC participants to buy any kinds of fresh fruits or vegetables.¹⁷ To expand purchasing power and provide flexibility in the food package of WIC families, Congress should temporarily allow states to increase the WIC CVB value, a proposal set forth in the WIC Benefit Flexibility During COVID-19 Act (H.R. 6726).¹⁸ These flexible dollars provide access even in the face of shortages of specific items, and support fruit and vegetable producers. In addition to increasing the CVB funding for WIC recipients, Congress should allow states to temporarily provide cash vouchers for other categories of foods in the WIC food packages, such as whole grain bread, rather than waiving specific size and type restrictions for each category on a state-by-state basis.

INCREASE SUPPORT FOR SCHOOL MEALS AND BOOST DIRECT SALES OPPORTUNITIES THAT BENEFIT FARMERS

- 1. Increase school meal reimbursements to account for the added costs of delivery.** To address the food access needs of students during COVID-19, USDA has provided a blanket waiver to allow all school districts and other child meal providers to operate their summer meals programs: the Summer Food Service Program (SFSP) and the Seamless Summer Option (SSO).¹⁹ Through SFSP and SSO, the federal government provides sponsors with per meal reimbursements for the meals served to participating children. These reimbursements are meant to cover food as well as administrative costs, which include labor, utilities, supplies, transportation, and other expenses. Even before the COVID-19 pandemic, a 2019 survey of SFSP sponsors across the country found that 31.3% of respondents thought the reimbursement rates and funding levels for summer meals were “poor” or “decent”, and 51.9% of respondents thought that an increase in funding would increase the number of meals served.²⁰ During the COVID-19 pandemic, many school meal program administrators are taking on additional costs, by delivering meals to students’ homes and taking additional steps to provide meals in a socially distant setting—changes that create additional administrative costs that are not accounted for in the federal reimbursement rates. In response to these increased costs, USDA should amend its regulations to increase the reimbursement rates for summer meals programs provided through SFSP and SSO during the pandemic.

2. **Eliminate the area eligibility requirement for delivering meals through SFSP and SSO.** Through SFSP and SSO, school food authorities can deliver meals to children’s homes, subject to certain restrictions. For example, only school food authority sponsors can apply to administer this delivery option due to confidentiality concerns. However, school meals can only be delivered to children who live in “area eligible” locations (areas where at least 50 percent of the children are eligible for free or reduced-price (FRP) meals) or children who have been individually certified as eligible to receive FRP meals.²¹ Thus, students who are not in area eligible locations and have not been approved for FRP meals cannot receive school meal delivery. Because the pandemic and economic downturn have the simultaneous effects of creating administrative barriers to FRP certification and increasing the number of children who qualify for FRP meals, these restrictions on school meal deliveries are likely to unnecessarily prevent children who need nutrition assistance from receiving school meals. USDA should remove these barriers to accessing school meals by making all SFSP and SSO sites “open”, meaning that all children would be eligible for meal delivery as if they lived in area eligible locations.
3. **Facilitate all states’ participation in Pandemic-EBT and meaningfully increase the benefit amount.** Pandemic EBT (P-EBT), or P-SNAP, authorizes states to issue Supplemental Nutrition Assistance Program (SNAP) EBT cards with the value of school breakfast and lunch reimbursements to households whose children would have received FRP school meals at school. At the time of this document’s writing, 24 states have been approved to operate a P-EBT program.²² To ensure that all children receive the nutrition assistance they qualify for, Congress should provide USDA with the funding necessary to provide technical assistance and additional guidance to all states to quickly roll out P-EBT. Additionally, P-EBT benefits are currently based on the federal NSLP and SBP reimbursement rates for free meals served during the 2019-2020 school year, meaning that children in most states receive \$114 for every four weeks of the program to cover 20 days’ worth of breakfasts and lunches.²³ These benefits are based on the costs incurred by school food authorities, even though school food authorities are likely to have lower per-meal costs than individual households due to their economies of scale. To account for the actual costs that families are likely to incur in feeding their children, Congress should increase P-EBT benefits for every participating child.²⁴
4. **Increase funding for farm-to-school.** Many small farmers and food producers rely primarily on direct-to-consumer markets and sales to institutions, such as schools. Because of losses stemming from the closure of many farmers markets and produce stands, schools are increasingly likely to be a vital source of revenue for farmers in the coming months. Thus, Congress should provide additional support to for farm-to-school supply chains. The National Farm to School Network has advocated in its COVID-19 policy platform for Congress to allow schools to elect a portion of their USDA Commodity Foods to convert to cash purchases of local food products.²⁵ Additionally, Congress can increase funding for USDA’s Farm to School Grant Program. This program provides grant funding of up to \$100,000 to school districts, state and local agencies, Indian tribal organizations, agricultural producers, and non-profit organizations to increase local foods served through school meal programs and develop both schools’ and farmers’ capacities to participate in the farm-to-school supply chain.²⁶ In the 2019-2020 school year, the program provided 126 grants for the benefit of over 5,400 schools.²⁷ Increased

funding for the upcoming school year could help create a larger market to support struggling local and regional farmers and food producers.

INCENTIVIZE INCREASED FOOD DONATION FOR SURPLUS FOOD OR FOOD FROM THE HOSPITALITY SUPPLY THAT OTHERWISE WOULD GO TO WASTE

1. **Expand Food Donation Tax Benefits to Incentivize Donations and Offset Associated Costs.** An estimated 63 million tons of food goes to waste to each year in the U.S.²⁸ During the COVID-19 pandemic, food waste has increased as food producers who typically supply the food service industry with perishable foods see rapid decreases in demand.²⁹ 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 contributions, and (2) an enhanced tax deduction for food donation that allows taxpayers to deduct nearly twice the amount for in-kind food donations as can be deducted for other charitable donations.³⁰ However, as food producers, manufacturers and retailers are facing supply chain disruptions during COVID-19, facilitating greater in-kind food donations from these actors will require expanding the existing tax benefits. Congress should take the following actions:

- **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 the enhanced deduction for food donations made to a non-profit organization that does not charge the final recipient for the food.³¹ This “no-charge” requirement discourages donors from donating to innovative food recovery organizations; however, nonprofit organizations that sell foods at a greatly reduced rate can fill a need for food insecure individuals who, for various reasons, are not willing or able to obtain all of their needed food from a food pantry or soup kitchen. For example, social supermarkets (nonprofit grocery stores that sell donated and recovered food at a very low price) have had much success as an alternative to rescue food and support those in need of food access.³² Further, 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 and allowing low-cost sales can offset some of the new costs food recovery organizations are facing during COVID-19, such as providing home deliveries to vulnerable individuals, or paying increased labor costs due to the loss of volunteers, many of whom are elderly and thus not able to keep supporting the organization.³³ As one example, if a nonprofit food recovery organization could charge \$1 for the delivery of donated meals 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 many more needy individuals. While charging a low cost for donated food may not be the right model for all nonprofit organizations, eliminating the “no-charge” requirement will add flexibility and make food recovery more economically viable

for some organizations, especially during COVID-19.

- **Create a tax deduction to cover transportation costs for donated foods.** One of the biggest costs of donating food is the transportation of the food to a food recovery organization. As a result, some potential donors find that it more cost-effective to throw away safe, surplus food than to donate it. While food banks and food recovery organizations often seek to avoid this result by collecting donations directly from the source, these organizations have fewer resources to devote to this activity during the COVID-19 emergency. 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 the costs of transporting donated food. Specifically, Congress could create a section within I.R.C. Section 170(e) for the cost of transportation of donated food. This provision could set a limit on the amount of deduction for any individual qualified contribution, as well as a limit on the aggregate amount of transportation costs for which the taxpayer can claim a deduction. This tax deduction would be able to be claimed by logistics and trucking companies that transport food to nonprofits, donors transporting the food themselves, or donors who pay food recovery organizations to come pick up the food from the donor.
 - **Offer an alternative tax credit for food donation by farmers.** Due to social distancing measures and the closure of schools, hotels, restaurants, and event venues, as well as many farmers markets and farms stands, many farmers are struggling to find buyers for their crops.³⁴ Several new programs, such as the USDA Coronavirus Food Assistance Program's Farmers to Food Banks program,³⁵ will purchase at least some of this food, but it will be just a small amount of the overall surplus. 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 technically can 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. 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.³⁶ 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—a necessary advantage at a time when significant numbers of people are in need of emergency food assistance.
2. **Expand Liability Protection for Food Donations to Ensure Surplus Food Makes it to Those in Need.** While the federal Bill Emerson Good Samaritan Act provides a broad base of liability protection that is intended to encourage food donations, 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, given the impacts

of COVID-19 and the unprecedented demand for donated food. To expand these protections, Congress should take the following actions, several of which are set forth in the Food Donation Improvement Act (S. 3141),³⁷ which is currently pending in the Senate:

- **Extend liability protection for food donations to certain “direct donations,” made by food businesses directly to those in need.** The U.S. offers comprehensive civil and criminal liability protection for food donations, which has been in place since the Bill Emerson Good Samaritan Food Donation Act passed in Congress in 1996.³⁸ However, 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.³⁹ This means businesses cannot receive protection if they give food directly to those in need. The COVID-19 emergency has highlighted the need to create more flexibility, such as by expanding this liability protection to cover restaurants, schools, retailers, and licensed food service establishments that directly donate to beneficiaries. These organizations have already undergone food safety training and thus know how to safely handle food donations. An expansion of protection is also appropriate for farmers because they typically donate low-risk foods, such as surplus produce. Protecting direct donations by these donors can allow individuals in need to pick up food from more accessible locations right at the source, such as directly from farmers who have surplus due to supply chain breakdowns during COVID-19, and prevent the challenges that occur with always needing to take the food to a nonprofit organization before it is donated to those in need. Schools, for example, should not be required to send excess foods away to an intermediary food bank when they can more efficiently offer it to needy families within the school community after daily meal service or food distribution during COVID-19. Recognizing this inefficient barrier to food donation, several states have passed legislation to enable schools to donate directly to their families,⁴⁰ and Congress should make the change national.
- **Extend liability protection to donations sold by a nonprofit organization at a “Good Samaritan Reduced Price,” to recipients.** Similar to the enhanced deduction for food donations, mentioned above, the Emerson Act only protects food donations if the food is given away for free or “without requiring anything of monetary value from the recipient.”⁴¹ This restriction inhibits the operation of nonprofit food recovery models that aim to sell food at a low price; it poses an even greater challenge during COVID-19, as food recovery organizations need additional financial resources to procure, package, and deliver donated foods while also respecting social distancing requirements. Allowing nonprofit organizations to retain this protection for their donors if they sell products at a “Good Samaritan Reduced Price,”⁴² or an amount that covers the cost of handling, administering, and distributing the food, can better support many models of food donation. Several states already protect food donations if the food is given away for free or sold at a low price that just covers the cost of handling and administering the food,⁴³ and Congress should implement this nationally.
- **Provide regulations that better explain the intricacies of the Emerson Act.** The Emerson Act provides comprehensive liability protection that is intended

to encourage food donations, yet many food manufacturers, retailers, and restaurants still cite fear of liability as a primary deterrent to donating food.⁴⁴ For many food donors, this is because there are quite a few vague terms in the legislation; however, Congress has never mandated an agency to take control of the statute and promulgate interpretive regulations. Because the Emerson Act was incorporated into the Child Nutrition Act, which is under USDA control, Congress should grant USDA the authority to administer the Emerson Act. In making this delegation, Congress also should direct USDA to issue accompanying regulations and clarifying guidance on food donation and liability protection that flesh out the Emerson Act.

INCREASE SUPPORT FOR FOOD PRODUCERS WHO HAVE LOST MARKETS, WITH A FOCUS ON SMALL-SCALE AND DIRECT PRODUCERS

1. **Channel Targeted Purchase Funding Directly to States and Set Aside Funds for Local Foods.** Food banks are struggling to meet increasing demand at the same time as supply chains are drying up and producers are seeking alternative channels for selling their products. Thus far, Congress has taken several steps to support purchases of food that will go to food banks as in-kind donations for distribution. First, across the Families First Act and CARES Act, Congress channeled \$850 million into purchases through the Emergency Food Assistance Program (TEFAP).⁴⁵ Under TEFAP, USDA purchases agricultural products from across the country that it then sends to state agencies to distribute to emergency feeding organizations, like food banks. USDA also announced the Coronavirus Food Assistance Program, which includes \$3 billion that will be spent to make regularly purchases of produce, dairy, and cooked meat for delivery to nonprofit organizations in the coming months.⁴⁶ However, USDA's efforts to connect farmers to emergency feeding organizations depend on a complex federal contracting infrastructure from which many producers will be unable to benefit. States need immediate funds to connect their producers and food products to their most vulnerable residents, putting money in the hands of producers whose markets have evaporated and getting food to those in need. To support local and regional food producers, Congress should take the following actions:

- **Set aside a portion of funding from TEFAP, CFAP, and any future federal funding for targeted purchases from direct-market farmers.** To support small-scale and direct-marketing farmers, Congress should ensure allocated funds from these programs are used to buy food from producers who rely on local agricultural food marketing—such as farmers markets and farm-to-school programs—but have seen those opportunities diminish due to COVID-19. Congress could achieve this by requiring that a certain percentage of targeted-purchase funds are used to purchase agricultural products that would have been sold through these local, direct-market channels.
- **Send targeted funds directly to States so state agencies and their food-bank partners can immediately replenish their food stocks and support smaller in-state producers.** Rather than wait several months to receive

donations through the federally administered program, state agencies or TEFAP eligible recipient agencies (typically food banks) should receive funds to procure food products that would have been sold to commercial industries, food service industries, or through direct-to-consumer or other direct markets but for which a decreased demand exists due to COVID-19. A portion of those funds should be earmarked for purchases from local, smaller-scale producers, —particularly for perishable foods at risk of going to waste—who may not be on USDA’s radar for national TEFAP or CFAP purchases. The Farmers Feeding Families Coronavirus Response Act (H.R. 6725) is an example of this approach.

- **Increase federal support for the TEFAP Farm to Food Bank Program.** The federal Farm to Food Bank Program (FTFB), authorized in the 2018 Farm Bill, provides dedicated funding from TEFAP to cover the harvesting, processing, packaging, and transportation costs of getting donated agricultural products to food banks.⁴⁷ The program reduces the financial barrier that farmers face when they would like to donate unused product to food banks, but would be required to expend additional resources in order to do so. With food banks experiencing increased demand and farmers facing diminished market opportunities, support through FTFB is needed now more than ever. The program, however, currently has a limited budget (\$3.75 million for FTFB projects in FY 2020) and requires a fifty percent match of state funds to support the program.⁴⁸ To ensure the program is able to meet the significant increase in demand due to COVID-19 and support families and farmers across the United States, Congress should waive the state match requirement, increase funding for the program, and direct USDA to fast-track the approval process for state plan amendments to implement FTFB projects. One pending bill that achieves these aims is the Farm to Food Bank Enhancement Act (H.R. 6757), which would increase funding to \$25 million, waive the state-match requirement, and allow states to carry out new projects.⁴⁹
2. **Create Emergency Grants to Support Farmers Market Delivery Services.** Local agriculture producers have seen their regular market opportunities evaporate under COVID-19 as farmers markets and farm-to-institution programs have shut down. However, farmers and CSAs with online ordering platforms and those that offer home delivery services have seen surges in demand. While the federal Farmers Market Promotion Program annually provides funding for farmers markets, CSAs, and producer networks, that funding is limited to \$13.5 million for FY 2020, and projects in the current application cycle would not begin until September 30.⁵⁰ Congress should provide additional, targeted support to get more farmers markets up and running online and with transportation and delivery services, and quickly, as many traditional markets remain closed for the season. To do this, Congress should create a new grant program within the Local Agricultural Market Program (LAMP; authorized in the 2018 Farm Bill⁵¹) to fund emergency farmers market grants. These grants should offer funds to help farmers that would otherwise sell together in farmers markets to develop online marketing and sales platforms and should support new or expanded distribution services for delivery of these farmers’ products to customers’ homes. These grants would support groups of farmers in the same region to help leverage collective resources and support multiple farmers at once in reaching their customer base. While not specifically tailored to these

purposes, Sec. 60302 of the HEROES Act (H.R. 6800) would provide additional LAMP grants for assistance in response to COVID-19, with \$50,000,000 appropriated for the program.

SUPPORT AND PROTECT ESSENTIAL WORKERS THROUGHOUT THE FOOD SYSTEM

1. **Provide clear national support for the health and safety of workers throughout the food system.** The COVID-19 crisis has shown what many working in food policy already know: that those working in the fields, food processing plants, and grocery stores are “essential workers.” Yet, since most states have followed the DHS critical infrastructure guidelines and proclaimed these businesses as essential businesses allowed to stay open despite stay-at-home orders, many have been able to function with business-as-usual operations, putting their workers at risk and indeed resulting in the illness and death of many workers throughout the food system. To address this issue, Congress should take the necessary actions consistent with Sen. Warren’s “Essential Workers Bill of Rights,”⁵² and should address the following specific asks:
 - **Make OSHA and CDC guidelines robust and mandatory for food system employers and their worksites.** Violations should be actionable in court.
 - **Subsidize wages for farmworkers and other food system workers to ensure food system employers stay in business and workers receive fair wages.** Essential workers in the food system should receive a premium wage for all work performed during the public health crisis. One approach is reflected in Division Q of the HEROES Act, which would create a HEROES Fund and grant program to support employers paying essential workers—including grocery, restaurant, and food production workers—premium pay of an additional \$13 per hour, up to \$10,000, for work performed since January 27, 2020.
 - **Establish a pathway to citizenship for undocumented farmworkers and other workers providing essential services.** One example of this type of legislation would be the Farmworker Modernization Act of 2019 (H.R. 5038).⁵³
 - **Provide workers with paid short-term sick leave and long-term family and medical leave.** These changes should be permanent and not expire with the end of the COVID-19 emergency. Examples of potential bills include the PAID Leave Act (S. 3513, H.R. 6442)⁵⁴ and the FAMILY Act (H.R. 1185, S. 463)⁵⁵ to provide workers with paid short-term sick leave and longer-term family and medical leave.
 - **Ensure that all benefits and relief enacted by Congress in response to COVID-19 are accessible all communities, regardless of immigration status.**

EXPAND COVERAGE TO ALLOW THE HEALTH CARE SYSTEM TO BETTER SUPPORT NUTRITION AND IMPROVED DIETARY QUALITY

1. **Provide coverage for nutrition interventions in Medicare and Medicaid.** Food insecurity and improper nutrition are major drivers of poor health outcomes and rising health care costs, with unhealthy diets globally posing “a greater risk to morbidity and mortality than unsafe sex, alcohol, drug, and tobacco use combined.”⁵⁶ The COVID-19 crisis has underlined this crucial connection between food and health. Many of the chronic conditions that place COVID-19 patients at particular risk for severe illness or death are heavily impacted by diet. As a result, organizations that provide nutrition interventions specifically designed to prevent or manage such conditions—such as medically tailored meals, medically tailored food boxes, and produce prescriptions—are experiencing surges in demand. Research shows that receiving medically tailored meals can reduce hospital admissions, ambulance transports, and emergency room visits⁵⁷—exactly the types of intensive services likely to expose immuno-compromised individuals to COVID-19 and that people should avoid if they can. However, most of these programs are reliant on grants and other short-term funding, leaving them unable to scale-up to respond to current need. To ensure the widespread availability of these critical services during the COVID-19 emergency, and to improve nutrition and diet quality to reduce health conditions that make Americans vulnerable to COVID-19, Congress should take the following actions:

- **Provide coverage of Food is Medicine interventions via Medicare.** H.R. 6774 is an example of legislation that would take an important step towards achieving this goal. This bill would establish a multi-state demonstration program to provide coverage of medically tailored meals for qualifying Medicare enrollees.⁵⁸
- **Expand Medicare coverage for Medical Nutrition Therapy (MNT).** Medicare coverage expanded in this way should allow patients with a wide range of diet-impacted diseases (e.g., hypertension, prediabetes, and cancer) to access nutrition counseling.
- **Provide coverage of Food is Medicine interventions within Medicaid mandatory and optional benefits categories.** For example, Congress could clarify the language of the Social Security Act at 42 U.S.C. § 1396d to explicitly allow coverage of Food is Medicine interventions within the “home health care services” and “other diagnostic, screening, preventive, and rehabilitative services” benefit categories.
- **Direct CMS to issue guidance for state Medicaid agencies and Medicaid Managed Care Organizations.** The guidance should outline all current authorities under which states and Medicaid Managed Care Organizations may provide coverage for Food is Medicine interventions via Medicaid (e.g., waivers, State Plan Amendments, and managed care contracting authorities).

DEVELOP A U.S. NATIONAL FOOD STRATEGY TO BETTER COORDINATE AND SET PRIORITIES ACROSS THE FOOD SYSTEM

1. **Develop a U.S. national food strategy to set priorities and manage trade-offs for short- and long-term food system needs.** A huge number of federal policies, laws, and regulations guide and structure our food system. At the federal level, more than 15 different U.S. agencies have authority over aspects of food system safety and supports.⁵⁹ However, these laws are fragmented and in many cases inconsistent, hindering our ability to set and achieve priorities for food security, health, sustainability, and equity. The U.S. should follow the lead of the many other nations that have implemented a national food strategy, by developing a coordinated federal approach to food and agricultural law and policy that prioritizes, coordinates, and charts a course for long-term food system stability. Such a strategy is needed in the best of times, but the COVID-19 pandemic has shed a light on the challenges in our fractured food system. This public health emergency has made the need for a national food strategy even more vital as a method of addressing the needs for a safe and secure food system that supports the health of consumers, workers, and the earth.⁶⁰ As a first step towards this goal, Congress should do the following:

- **Establish a bi-partisan Commission to devise and implement a national food strategy.** Congress has previously created high-level, bi-partisan commissions to develop a national strategy in the wake of national emergencies. The National Commission on Terrorist Attacks Upon the United States (“9/11 Commission”), for example, was established through the passage of the Intelligence Authorization Act in 2003, and was tasked with reporting on the events and decisions that led to 9/11 and making recommendations to prevent future attacks.⁶¹ Congress should develop a similar Commission to increase the sustainability and resilience of food systems following COVID-19, and to protect against food crises during future pandemics or public health emergencies.

ENDNOTES

- 1 See KENNETH HANSON, U.S. DEP'T OF AGRIC. ECON. RES. SERV., *THE FOOD ASSISTANCE NATIONAL INPUT-OUTPUT MULTIPLIER (FANIOM) MODEL AND STIMULUS EFFECTS OF SNAP* (2010).
- 2 Agricultural Act of 2014, P.L. 113-79 § 4011(b) (codified at 7 U.S.C. 2016(k)).
- 3 Agricultural Improvement Act of 2018, P.L. 115-334 § 4001 (codified at 7 U.S.C. 2016(k)).
- 4 See *SNAP Online Purchasing Pilot*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/online-purchasing-pilot> (last visited May 17, 2020).
- 5 See *id.*
- 6 See, e.g., Nathaniel Popper, *Americans Keep Clicking to Buy, Minting New Online Shopping Winners*, N.Y. TIMES (May 13, 2020), <https://nyti.ms/2AhdwuS>.
- 7 Consumer Bob and Nicholas Kjeldgaard, *California Food Stamp Program Now Allows Grocery Delivery*, NBC SAN DIEGO (Apr. 15, 2020), <https://www.nbcsandiego.com/news/investigations/nbc-7-responds/california-food-stamp-program-now-allows-grocery-delivery/2306418/>.
- 8 See *Can I buy food at restaurants with Supplemental Nutrition Assistance Program benefits? (For SNAP Clients)*, U.S. DEP'T OF AGRIC. (Jul. 17, 2019), <https://ask.usda.gov/s/article/Can-I-buy-food-at-restaurants-with-Supplemental-Nutrition-Assistance-Program-benefits-For-SNAP-Clien>; see also 7 U.S.C. 2020 (e) (25); 7 U.S.C. 2012(k).
- 9 See GERALDINE HENCHY, FOOD RESEARCH & ACTION CTR., *MAKING WIC BETTER: STRATEGIES TO REACH MORE WOMEN AND CHILDREN AND STRENGTHEN BENEFITS USE 7-10* (2019), <https://frac.org/wp-content/uploads/Making-WIC-Work-Better-Full-Report.pdf>.
- 10 *WIC Program Participation and Costs*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Apr. 10, 2020), <https://fns-prod.azureedge.net/sites/default/files/resource-files/wisummary-4.pdf>; *WIC Data Tables*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (May 15, 2020), <https://www.fns.usda.gov/pd/wic-program>.
- 11 *WIC 2016 Eligibility and Coverage Rates*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (May 29, 2019), <https://www.fns.usda.gov/wic/wic-2016-eligibility-and-coverage-rates#Chart1>.
- 12 See RANDY ALISON AUSSENBERG & KARA CLIFFORD BILLINGS, CONG. RESEARCH SERV., IN11250, *USDA Domestic Food Assistance Programs' Response to COVID-19: P.L. 116-127, P.L. 116-136, and Related Efforts 1* (2020), <https://crsreports.congress.gov/product/pdf/IN/IN11250>.
- 13 See Agricultural Improvement Act of 2018, P.L. 115-334 § 4001 (codified at 7 U.S.C. 2016(k)).
- 14 Families First Coronavirus Response Act, Pub. L. No. 116-127, §2204(a), 134 Stat. 178 (2020).
- 15 See *WIC Food Package Substitution Waiver*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Apr. 28, 2020), <https://www.fns.usda.gov/wic/food-package-substitution-waiver>.
- 16 *Press Release: National WIC Association Praises Bipartisan Effort to Enhance Access to Nutritious Foods through COVID-19 Crisis*, NAT'L WIC ASS'N (May 6, 2020), <https://www.nwica.org/blog/press-release-national-wic-association-praises-bipartisan-effort-to-enhance-access-to-nutritious-foods-through-covid-19-crisis#.XsJdIGhKiMq>.
- 17 7 C.F.R. §246.10(e)(10).
- 18 See Schrier, *Wright Introduce Bipartisan Bill To Increase Fresh Food WIC Purchases, Help Farmers*, CONGRESSWOMAN KIM SCHRIER (May 6, 2020), <https://schrier.house.gov/media/press-releases/schrier-wright-introduce-bipartisan-bill-increase-fresh-food-wic-purchases-help>; see also 7 C.F.R. §246.10(e) (10).
- 19 Families First Coronavirus Response Act, P.L. 116-127 (2020), §2102; U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., *FNS Response to COVID-19* (Mar. 19, 2020), <https://www.fns.usda.gov/disaster/pandemic/covid-19>.
- 20 In 2019, the federal government reimbursement rate for most Summer Food Service Program (SFSP) sites was \$2.56 per breakfast and \$3.97 per lunch. For most Seamless Summer Option (SSO) programs it was between \$1.90 and \$2.20 per breakfast and between \$3 and \$3.43 for lunches. HUNGER FREE AMERICA, *SUMMER MEALS FOR CHILDREN SITE BARRIERS AND OPPORTUNITIES REPORT 1* (2019), <https://www.hungervolunteer.org/sites/default/files/atoms/files/Summer%20Meals%20Barriers%20and%20Opportunities%20Report%202019.pdf>; See *Reimbursement Rates for the Child Nutrition Programs*, FLA. DEP'T OF AGRIC. & CONSUMER SERV.'S, <https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/National-School-Lunch-Program/Financial-Management/Reimbursement-Rates> (last visited May 17, 2020); see also *USDA Announces SY 2019-20 Reimbursement Rates*, SCHOOL NUTRITION ASS'N (Aug. 12, 2019), <https://schoolnutrition.org/news-publications/news/2019/usda-announces-sy-2019-20-reimbursement-rates/>.

- 21 See *COVID-19 Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) Meal Delivery Using Existing Authority: Question and Answer #1 and #3*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Mar. 17, 2020), <https://www.fns.usda.gov/sfsp/covid-19-meal-delivery>.
- 22 See *State Guidance on Coronavirus Pandemic EBT (P-EBT)*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (May 12, 2020), <https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt>.
- 23 See *Pandemic EBT (P-EBT) Questions and Answers (Question #12)*, U.S. DEP'T OF AGRIC. (Apr. 15, 2020), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-COVID-PEBTAQA.pdf>.
- 24 The Families First Coronavirus Response Act leaves the funding level up to USDA. See Families First Coronavirus Response Act, P.L. 116-127 (2020) § 1101(b) (“Such level of benefits shall be determined by the Secretary in an amount not less than the value of meals at the free rate over the course of 5 school days for each eligible child in the household.”).
- 25 *National Farm to School Network Federal Policy Response to COVID-19*, NAT'L FARM TO SCHOOL NETWORK (May 6, 2020), <http://www.farmentoschool.org/documents/NFSN-COVID-PolicyPlatform.pdf>.
- 26 See RENEE JOHNSON & TADLOCK COWAN, CONG. RES. SERV., R43950, LOCAL FOOD SYSTEMS: SELECTED FARM BILL AND OTHER FEDERAL PROGRAMS 19 (2016), <https://fas.org/sgp/crs/misc/R43950.pdf>; see also *Farm to School Grant Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Oct. 22, 2019), <https://www.fns.usda.gov/cfs/farm-school-grant-program>.
- 27 See *id.*
- 28 *A Roadmap to Reduce U.S. Food Waste by 20 Percent*, REFED 16 (2016), https://www.refed.com/downloads/ReFED_Report_2016.pdf.
- 29 See, e.g., Susie Cagle, *A Disastrous Situation: Mountains of Food Wasted as Coronavirus Scrambles Supply Chain*, THE GUARDIAN (Apr. 9, 2020), <https://www.theguardian.com/world/2020/apr/09/us-coronavirus-outbreak-agriculture-food-supply-waste>.
- 30 I.R.C. § 170(e)(3)(C).
- 31 Emily Broad Leib et al., *Don't Waste, Donate: Enhancing Food Donations Through Federal Policy*, HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC AND NATURAL RESOURCES DEFENSE COUNCIL 3 (2017), http://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate_March-2017.pdf.
- 32 See Jay Rayner, *The Rise of Social Supermarkets*, THE GUARDIAN (May 19, 2019), <https://www.theguardian.com/society/2019/may/19/social-supermarkets-food-poverty-jay-rayner/>; see also Serri Graslie, *Social Supermarkets A 'Win-Win-Win' For Europe's Poor*, NPR (Dec. 12, 2013), <https://www.npr.org/sections/thesalt/2013/12/11/250185245/social-supermarkets-a-win-win-win-for-europes-poor>.
- 33 See, e.g., Patricia Barnes, *COVID-19 Has Benched A Critical Volunteer Workforce – Seniors*, FORBES (Apr. 3, 2020), <https://www.forbes.com/sites/patriciabarnes/2020/04/03/covid-19-has-benched-a-critical-volunteer-workforceseniors-volunteers/#5bd12fca449f>.
- 34 See, e.g., Susie Cagle, *A Disastrous Situation: Mountains of Food Wasted as Coronavirus Scrambles Supply Chain*, THE GUARDIAN (Apr. 9, 2020), <https://www.theguardian.com/world/2020/apr/09/us-coronavirus-outbreak-agriculture-food-supply-waste>.
- 35 See *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>.
- 36 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. RES. SERV. (Feb. 2, 2015), <https://www.ers.usda.gov/amber-waves/2015/januaryfebruary/profit-margin-increases-with-farm-size/>).
- 37 Food Donation Improvement Act of 2019, S. 3141, 116th Cong. (2019).
- 38 See 42 U.S.C. § 1791.
- 39 42 U.S.C. §1791(c)(1); see also NAT. RES. DEF. COUNCIL & HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, RECOMMENDATIONS TO STRENGTHEN THE BILL EMERSON GOOD SAMARITAN ACT 2 (2016), <http://www.chlpi.org/wp-content/uploads/2013/12/recommendations-bill-emerson-good-samaritan-act-fs.pdf>.
- 40 For example, in 2017 Texas passed the Student Fairness in Feeding Act, which authorizes schools to donate excess foods to school affiliates, such as teachers or parents, who are “officials” of nonprofits. These “officials” can then redistribute food on the school campus. See Student Fairness in Feeding Act, S.B. 725, 85th Leg. (Tex. 2017) (“A school district or open-enrollment charter school may allow a campus to elect to donate food to a nonprofit organization through an official of the nonprofit organization who is directly affiliated with the campus, including a teacher, counselor, or parent of a student enrolled at the campus. The donated food may be received, stored, and distributed on the campus.”)
- 41 42 U.S.C. § 1791 (b)(3).

- 42 Food Donation Improvement Act of 2019, S. 3141, 116th Cong. §2 (2019).
- 43 Emily Broad Leib et al., *supra* note 31 at 29-30.
- 44 See, e.g., FOOD WASTE REDUCTION ALL., ANALYSIS OF U.S. FOOD WASTE AMONG FOOD MANUFACTURERS, RETAILERS, AND RESTAURANTS 14 (2016), http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf.
- 45 See AUSSENBERG & BILLINGS, *supra* note 12.
- 46 See *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>.
- 47 Kara Clifford Billings, CONG. RESEARCH SERV., REPORT NO. R45408, *The Emergency Food Assistance Program (TEFAP): Background and Funding* (2020), <https://fas.org/sgp/crs/misc/R45408.pdf>; *TEFAP – Farm to Food Bank Projects State Plan Requests and Fiscal Year 2020 Allocations*, USDA-FNS (2020), <https://www.fns.usda.gov/tefap/farm-food-bank-projects>.
- 48 *TEFAP – Farm to Food Bank Projects State Plan Requests and Fiscal Year 2020 Allocations*, USDA-FNS (2020), <https://www.fns.usda.gov/tefap/farm-food-bank-projects>.
- 49 Farm to Food Bank Enhancement Act, H.R. 6757, 116th Cong. (2019).
- 50 USDA-AMS, FARMERS MARKET PROMOTION PROGRAM: FISCAL YEAR 2020 REQUEST FOR APPLICATIONS VERSION 2 (2020), https://www.ams.usda.gov/sites/default/files/media/2020_FMPP_RFA.pdf.
- 51 *USDA Announces \$37 Million in Grants Available to Local and Regional Food Systems*, U.S. DEP'T OF AGRIC. (Mar. 9, 2020), <https://www.ams.usda.gov/content/usda-announces-37-million-grants-available-local-and-regional-food-systems>.
- 52 *Elizabeth Warren and Ro Khanna Unveil Essential Workers Bill of Rights*, ELIZABETH WARREN SENATE NEWSROOM (Apr. 13, 2020), <https://www.warren.senate.gov/newsroom/press-releases/elizabeth-warren-and-ro-khanna-unveil-essential-workers-bill-of-rights>.
- 53 Farm Workforce Modernization Act of 2019, H.R. 5038, 116th Cong. (2019).
- 54 Providing Americans Insured Days of Leave Act of 2020, S.3513, 116th Cong. (2020); Providing Americans Insured Days of Leave Act of 2020, H.R. 6442, 116th Cong. (2020).
- 55 Family and Medical Insurance Leave Act, H.R. 1185, 116th Cong. (2020); Family and Medical Insurance Leave Act, S. 463, 116th Cong. (2020).
- 56 Walter Willett et al., *Food in the Anthropocene: the EAT–Lancet Commission on healthy diets from sustainable food systems*, THE LANCET, (2019) (citing statistics from Lawrence Haddad et al., *Food systems and diets: Facing the challenges of the 21st century*, GLOBAL PANEL ON AGRICULTURE AND FOOD SYSTEMS FOR NUTRITION, LONDON, UK, (2016)).
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- 58 To amend title XVIII of the Social Security Act to require the Secretary of Health and Human Services to conduct a demonstration program to assess the effects of a hospital providing to qualified individuals medically tailored home-delivered meals, and for other purposes, H.R. 6774, 116th Cong. (2020).
- 59 See U.S. GOV'T ACCOUNTABILITY OFFICE., GAO-15-290, HIGH RISK SERIES: AN UPDATE 262 (Feb. 2015), <https://www.gao.gov/assets/670/668415.pdf>.
- 60 For more information about other coordinated strategies in the U.S. and about models of national food strategies in other countries, as well as a roadmap for the procedures to be used to create a national food strategy in the U.S., see FLPC's report published with the Vermont Law School Center for Agriculture and Food Systems, *Blueprint for a National Food Strategy*. CTR. FOR AGRIC. AND FOOD SYSTEMS AT VERMONT LAW SCHOOL & HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, BLUEPRINT FOR A NATIONAL FOOD STRATEGY (2017), http://www.chlpi.org/wp-content/uploads/2013/12/National-Food-Strategy-Blueprint_March-2017.pdf.
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