

An Evaluation of the
**FARMERS TO FAMILIES
FOOD BOX PROGRAM**



EXECUTIVE SUMMARY

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**FOOD LAW
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In April 2020, the United States Department of Agriculture (USDA) announced it would use funds and authority under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) as well as other existing USDA funding to launch a new \$19 billion federal program, called the Coronavirus Food Assistance Program (CFAP). The USDA designated \$3 billion of CFAP funding to the Farmers to Families Food Box Program (Program) to purchase and distribute fresh produce, dairy, and meat. 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 Service (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.

An Evaluation of the Farmers to Families Food Box Program provides 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, the Food Law and Policy Clinic (FLPC) at Harvard Law School and the National Sustainable Agriculture Coalition (NSAC) used the following methodology:

- Comprehensively reviewed all publicly available data on the Program, including the USDA solicitations, webinars, and press releases;
- 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;
- Presented findings and recommendations to the USDA AMS, who provided feedback on our initial findings; and
- Engaged a range of stakeholders to conduct external review of our report prior to publication.

SUCCESSSES

The Program's rapid implementation proved successful in several ways, including in keeping many stakeholders afloat at a time when farms and food-related businesses were facing permanent closure. It also represented the USDA's first major foray into the procurement of fresh produce. The Program's specific successes are as follows:

- Millions of boxes of fresh produce and other fresh products were distributed to people experiencing need, helping to alleviate food insecurity.
- The Program helped mitigate distributor job loss.
- Small- and mid-sized farms were initially involved.
- The Program helped reduce food waste to some extent.
- The Program was responsive and made some improvements between Round One and Round Four.

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



ISSUES AND CRITIQUES

The Program's rapid implementation created unforeseen issues that have continued through the announcement of Round Five. Additionally, some Program adjustments caused new complications in subsequent Rounds. Issues and critiques of the Program are as follows:

- The Program disproportionately left out small- and mid-sized farms and focused exclusively on price as of Round Three.
- The Program neglected an opportunity to better support minority- and women-owned farms.
- 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 box packing requirements created packing and processing complications for distributors and nonprofit entities and stripped recipients of the dignity of choice.
- The Program failed to ensure equitable distribution of food assistance to food insecure populations across the country.
- 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.



RECOMMENDATIONS

To address the critiques of the Program as well as 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, we recommend the following:

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.

While Program solicitation requirements concerning support for small producers remain in the bidding guidance, AMS has made statements to the contrary and has not made this a priority in practice. 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. Cost should not be the sole deciding factor in awarding contracts. AMS should establish a minimum requirement of involvement for these farms at the contractor and/or subcontractor level and should require distributors to provide, in advance, copies of MOUs or contracts with their chosen subcontractors to ensure transparency in the Program.

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.

Currently, the Program 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. To address this barrier, AMS could publish and encourage the use of regional lists of such farms prior to solicitation of bids, or otherwise establish a platform that would enable bidders to discover and match with these producers.

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



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.

Cost should not be the sole criterion with which bids are evaluated; in order to ensure that small and specialty farms are adequately compensated, 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, such as organic farms, or those growing particularly high-quality produce for the restaurant business would be adequately compensated while ensuring contractors are not penalized in the bidding for subcontracting with these producers.

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

The Program could improve food security and impacts on recipients by providing guidance to distributors on working with food banks and other food distribution nonprofits. Such guidance should be developed after extensive consultation with entities that have experience in direct to consumer distribution or in serving food insecure populations.

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, including appointing an individual or individuals as the planning and logistics manager(s) in charge of ensuring equal distribution of food. 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, or could give preference to bids that have letters of support from mayors indicating that the contractors' distribution plans align with the state's or locality's strategies to combat food insecurity.

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

The USDA should allow non-combination boxes to make up at least a portion of the Program. This would make it easier for smaller producers and distributors to join the Program as contractors because they would not need to find, partner with, and coordinate additional subcontractors. It would also ease the burden on nonprofit entities that do not have enough refrigerated storage space to safely store deliveries of large co-packed boxes of food. Produce-only boxes particularly benefit food recipients, as they fill a niche that is not met by other USDA food assistance programs, which generally do not provide fresh produce.

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

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. Plans could include 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

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

Instead of creating a new program in response to unprecedented supply chain disruptions in the future, the USDA could leverage its Section 32 commodities purchasing authority. While the USDA has broad discretionary authority over purchases using Section 32, purchases have tended to be of processed commodities. The Program has demonstrated that the USDA is able to implement a large-scale food assistance program that purchases and distributes fresh produce. Future efforts to similarly support producers and consumers could likely be done under the USDA's Section 32 authority.

Earmark a portion of future federal funding 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.

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 Ollive, Fresh Approach



C. Beyond: Recommendations to Address Food Waste Going Forward

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

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

Fear of liability remains a primary deterrent to food donation, despite the broad liability protections provided by the Bill Emerson Good Samaritan Act. 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. In order to provide additional flexibility to farmers and other potential donors who have surplus due to supply chain breakdowns during the pandemic, Congress should extend liability protection for food donations to certain “direct donations” made by food businesses and farmers directly 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. Finally, Congress should grant the USDA the authority to administer the Emerson Act while directing them to issue regulations and clarifying guidance on food donation and liability protections.

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

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. 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 the platform includes rural areas, since many of the apps that currently exist only operate in urban areas.



