



## Nutrition<sup>1</sup>

### INTRODUCTION

The Agriculture Improvement Act of 2018 (2018 Farm Bill) is the most recent multi-year, omnibus piece of legislation governing food and agricultural programs. Title IV, Nutrition, is divided into three subtitles covering the Supplemental Nutrition Assistance Program (SNAP), Commodity Distribution Programs, and Miscellaneous programs which includes the Farm-to-School Program, Seniors Farmers' Market Nutrition Program, and others. The Nutrition Title, along with Crop Insurance, Conservation, and Farm Commodity Support, comprises 99% of the total farm bill budget, with the Nutrition Title representing 76% of the mandatory outlays at the time of passage.<sup>2</sup>

This background memo discusses the history of Title IV in farm bills, the programs offered in Title IV, and the major changes made in the 2018 Farm Bill.

### I. HISTORY

Before Congress enacted the Agricultural and Consumer Protection Act of 1973, farm bills focused on farm commodity programs that provided support for staple commodities (corn, soybeans, wheat, cotton, rice, dairy, and sugar).<sup>3</sup> But the 1973 Farm Bill included amendments to the Food Stamp Act of 1964 and the Commodity Distribution Program, expanding its coverage of food and agricultural policies and making it the first “omnibus” farm bill.<sup>4</sup>

SNAP grew out of the Food Stamp Program of 1939 and the pilot programs of the 1960s.<sup>5</sup> The Food Stamp Program of 1939 was enacted to connect the food needs of the poor and the food surpluses of the Great Depression.<sup>6</sup> Those on public assistance could purchase orange stamps for one dollar each to purchase up to the amount of their monthly food expenditures.<sup>7</sup> For every orange stamp purchased they received a blue stamp worth fifty cents.<sup>8</sup> Blue stamps could be used only on foods that were deemed surplus by the United States Department of Agriculture (USDA) while orange stamps could be used on any food.<sup>9</sup> In 1943, unemployment levels had declined and there was a reduction in agricultural surpluses so the Food Stamp Program of 1939 was terminated.<sup>10</sup>

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<sup>1</sup> The following people contributed to this report: Emilie Aguirre (UCLA School of Law, Resnick Program for Food Law & Policy), Ariel Ardura (Harvard Law School Food Law and Policy Clinic), Jana Caracciolo (University of Florida Levin College of Law), Emma Clippinger (Harvard Law School Food Law and Policy Clinic), Heather Latino (Harvard Law School Food Law and Policy Clinic), Jude Lee (Harvard Law School), Nicole Nazari (California Western School of Law), Mallory Neumann (Florida State University College of Law), Eliza Pan (Summer Intern, Harvard Law School Food Law and Policy Clinic), and Emma Scott (Harvard Law School Food Law and Policy Clinic).

<sup>2</sup> RENEE JOHNSON & JIM MONKE, CONG. RSCH. SERV. WHAT IS THE FARM BILL? 4 (2019), <https://fas.org/sgp/crs/misc/RS22131.pdf>.

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

<sup>4</sup> *Id.* at 2.

<sup>5</sup> COMM. ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS ET AL., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: EXAMINING THE EVIDENCE TO DEFINE BENEFIT ADEQUACY 29 (2013), <http://www.ncbi.nlm.nih.gov/books/NBK206907/>.

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

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

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

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

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



The food stamp program reappeared when President John F. Kennedy announced that the USDA would conduct food stamp pilot programs in 1961.<sup>11</sup> The success of the pilot programs prompted President Lyndon Johnson to request a permanent food stamp program and he signed it into law in 1964.<sup>12</sup> The Food Stamp Act of 1964 allowed for the purchase of any food for home consumption except imported foods, alcohol, and tobacco products.<sup>13</sup>

The eligibility standards were amended in 1971 to create a national standard rather than a state-by-state regime and in 1974 the program expanded nationwide.<sup>14</sup> A major change to the purchase requirement occurred in the enactment of the Food Stamp Act of 1977. Instead of participants purchasing stamps equal to the amount of their monthly food expenditures, the purchase amount equaled the cost of a healthy diet as determined by the USDA.<sup>15</sup> The controversial new purchase requirement was eventually eliminated, leaving participants to receive only the formerly free portion of their benefits and supplementing their coupons with cash to buy foods necessary for a healthy diet.<sup>16</sup> In passing the 1977 act, there was an attempt to exclude the purchase of foods with low nutritional value but that policy did not make it into the final bill.<sup>17</sup>

During the 1980s, concerns about the costs of the food stamp program grew, driving the passage of legislation to change eligibility standards and requiring households to meet a certain gross income threshold.<sup>18</sup> By the 1990s, further legislation gave more control to states, changed some eligibility requirements for legal noncitizen residents and able-bodied adults without dependents, and established the Electronic Benefit Transfer (EBT) system, which went nationwide in 2002.<sup>19</sup> Through the enactment of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), the food stamp program name was changed to SNAP to fight the stigma of food stamps, and the Food Stamp Act of 1977 was renamed the Food and Nutrition Act of 2008.<sup>20</sup>

The Food and Nutrition Act of 2008 outlines the establishment of SNAP and all topics that relate to its implementation and administration such as participant eligibility, the value of the benefits allotted, approval of retail stores where benefits can be redeemed, appropriations authorization, grant programs, and so on. The Act also declares Congress's policy to protect the health of the population by improving the nutrition of low-income households.<sup>21</sup> In the wake of the 2007-09 economic recession, SNAP participation increased, and Congress enacted the American Recovery and Reinvestment Act of 2009 to increase SNAP benefits.<sup>22</sup>

The 2014 Farm Bill amended the Food and Nutrition Act of 2008 to reauthorize SNAP. The amendment maintained eligibility requirements but changed income deduction calculations that determine SNAP

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<sup>11</sup> *Id.* at 29, 31.

<sup>12</sup> *Id.* at 31.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 32.

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

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

<sup>20</sup> *A Short History of SNAP*, FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/snap/short-history-snap> (last visited Feb. 17, 2023).

<sup>21</sup> 7 U.S.C. § 2011.

<sup>22</sup> Committee on Examination of the Adequacy of Food Resources and SNAP Allotments et al., *supra* note 5, at 32.



eligibility.<sup>23</sup> The 2014 Farm Bill also brought about new employment and workforce training pilot programs for SNAP recipients, more funding for technology to prevent SNAP trafficking, and grants for organizations that encourage the purchase of fruits and vegetables.<sup>24</sup>

The 2018 Farm Bill reauthorized SNAP and maintained many of the 2014 Farm Bill eligibility requirements.<sup>25</sup> Although heavily debated, Congress ultimately maintained the existing work requirements for “able-bodied adults without dependents.”<sup>26</sup> The bill also provided more funding and services in the SNAP Employment and Training (E&T) program, made changes to the EBT and error detection systems, and reauthorized grants for organizations that encourage the purchase of fruits and vegetables.<sup>27</sup>

## II. THE 2018 FARM BILL

### A. SNAP

The SNAP program constitutes the bulk of Title IV and accounts for a large amount of spending, as it serves approximately 42 million low-income individuals—12.9% of the U.S. population.<sup>28</sup>

The 2018 Farm Bill reauthorized appropriations for the SNAP program through fiscal year 2023.<sup>29</sup> SNAP is categorized as a mandatory program.<sup>30</sup> A mandatory program is paid for through the farm bill, which appropriates an amount of funds to carry out the program,<sup>31</sup> rather than relying on discretionary, annual appropriations for funding.<sup>32</sup>

#### 1. Eligibility

The 2018 Farm Bill largely retained the existing SNAP eligibility requirements.<sup>33</sup> Eligibility is generally governed by federal statute, but states retain some flexibility to determine eligibility through categorical eligibility.<sup>34</sup>

##### a. Traditional Eligibility

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<sup>23</sup> Laura Tiehen, *2014 Farm Act Maintains SNAP Eligibility Guidelines and Funds New Initiatives*, ECON. RSCH. SERV., U.S. DEP’T OF AGRIC. (July 07, 2014), <https://www.ers.usda.gov/amber-waves/2014/july/2014-farm-act-maintains-snap-eligibility-guidelines-and-funds-new-initiatives/>.

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

<sup>25</sup> RANDY A. AUSSENBERG & KARA C. BILLINGS, CONG. RSCH. SERV., 2018 FARM BILL PRIMER: SNAP AND NUTRITION TITLE PROGRAMS, (2019), <https://fas.org/sgp/crs/misc/IF11087.pdf>.

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

<sup>27</sup> *Id.*

<sup>28</sup> Alex Smith & Laura Tiehen, *Participation in SNAP Varies Across States But Is Generally Decreasing*, ECON. RSCH. SERV., U.S. DEP’T OF AGRIC. (September 4, 2018), <https://www.ers.usda.gov/amber-waves/2018/september/participation-in-snap-varies-across-states-but-is-generally-decreasing/>.

<sup>29</sup> 7 U.S.C. § 2027(a)(1).

<sup>30</sup> RANDY A. AUSSENBERG, CONG. RSCH. SERV., SNAP AND RELATED NUTRITION PROVISIONS OF THE 2014 FARM BILL (P.L. 113-79) 5 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43332.pdf>.

<sup>31</sup> JOHNSON & MONKE, *supra* note 2, at 2, 4.

<sup>32</sup> *Id.*

<sup>33</sup> MARK A. MCMINIMY ET. AL, CONG. RSCH. SERV., THE 2018 FARM BILL (P.L. 115-334): SUMMARY AND SIDE-BY-SIDE COMPARISON 20 (2019), <https://fas.org/sgp/crs/misc/R45525.pdf>.

<sup>34</sup> RANDY A. AUSSENBERG, CONG. RSCH. SERV., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): A PRIMER ON ELIGIBILITY AND BENEFITS 1 (2016), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42505.pdf>.



Traditional eligibility requirements are set by federal statute in the Food and Nutrition Act of 2008.<sup>35</sup> The national standard for eligibility includes a set income and asset threshold.<sup>36</sup> A household's gross income equals the household's net monthly income minus any deductions listed in Section 5 of the Food and Nutrition Act and less an additional portion in recognition of the fact that a household's income is not used solely for the purpose of purchasing food.<sup>37</sup> If a household's gross income is at or below the threshold then the household qualifies for SNAP benefits.<sup>38</sup>

#### b. Categorical Eligibility

Categorical eligibility makes certain households automatically eligible for SNAP because the household already receives benefits through other programs that have income and asset requirements.<sup>39</sup> Households receiving certain types of assistance under Temporary Assistance for Needy Families (TANF) grants, Supplemental Security Income assistance, or state General Assistance (GA) automatically qualify to receive SNAP benefits.<sup>40</sup> Because states set the eligibility rules for TANF and GA, they can shape the population served by SNAP in their state.<sup>41</sup> States must still impose a gross income limit of 200% of the federal poverty line to determine eligibility for SNAP through administration of TANF benefits.<sup>42</sup>

#### c. Work-Related Requirements

In addition to income and asset requirements, SNAP has a general work requirement for non-elderly participants and a heightened work requirement for able-bodied adults without dependents (ABAWDs).<sup>43</sup> The 2018 Farm Bill largely retains existing work-related requirements, though these provisions were the subject of much debate.

Under the general work requirements, recipients ages 16 to 59 who are able to work must register with their state for work opportunities, participate in SNAP E&T if required by the relevant state agency, take and refrain from quitting a job without good cause, and provide information to the state agency so it can determine the individual's employment status or job availability.<sup>44</sup> Participants are excused from the general work requirements if they are already working 30 hours a week, caring for a dependent under the age of six or an incapacitated person, are complying with other training and job search requirements, are studying in school or a training program at least half-time, or are regularly participating in a substance abuse treatment program.<sup>45</sup>

Recipients ages 18 to 49 who are able-bodied and without dependents, ABAWDs, must meet a heightened requirement, which requires either working 20 hours per week (on average, monthly) or participating in and complying with the requirements of a work or workforce training program for 20 hours or more per week.<sup>46</sup> Individuals who fail to meet these requirements, and are not otherwise excused

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<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> RANDY A. AUSSENBERG & GENE FALK, CONG. RSCH. SERV., THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): CATEGORICAL ELIGIBILITY 2 (2019), <https://crsreports.congress.gov/product/pdf/R/R42054>.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 5–6.

<sup>42</sup> *Id.* at 4–5.

<sup>43</sup> *Snap Work Requirements*, FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/work-requirements> (last updated May 29, 2019).

<sup>44</sup> 7 U.S.C. § 2015(d).

<sup>45</sup> *Snap Work Requirements*, *supra* note 43.

<sup>46</sup> 7 U.S.C. § 2015(o).



from the general work requirements, are ineligible to receive more than 3 months' worth of SNAP benefits in 3 years.<sup>47</sup> States can apply to waive this requirement for individuals living in an area with an unemployment rate over 10% or that has insufficient employment opportunities for those individuals.<sup>48</sup> States can only waive the requirement for a certain percentage of their state's total SNAP participants. The 2018 Farm Bill lowered this percentage from 15% to 12%.<sup>49</sup>

State agencies administering SNAP are required to have an E&T program but can limit who must participate and how often.<sup>50</sup> The 2018 Farm Bill expands the type of E&T programs a state can offer while emphasizing supervised job search programs over unsupervised job search programs.<sup>51</sup> The 2018 Farm Bill also increases E&T funding by approximately \$14 million.<sup>52</sup>

## 2. Benefit Calculation and the Thrifty Food Plan

Once a participant is deemed eligible for SNAP benefits, they must then go through a benefit calculation process. SNAP benefits are calculated by factoring together household size, household income, and deductible expenses.<sup>53</sup> The 2018 Farm Bill retained the general federal benefit calculations while adding a requirement for states to conduct simplified calculations for homeless households and calling for studies and updates to the benefit calculation process.<sup>54</sup>

The dollar amount of SNAP benefits is based on the USDA's Thrifty Food Plan (TFP), which outlines the "cost of a nutritious, practical, cost-effective diet prepared at home for a family of four" which consists of "a man and a woman twenty through fifty, a child six through eight, and a child nine through eleven years of age."<sup>55</sup> In addition to the TFP, USDA also defines three other plans: Low-Cost, Moderate-Cost, and Liberal, all of which have higher cost levels than the TFP.<sup>56</sup> While the four USDA plans provide the same caloric levels, the difference in plan costs translates to a variance in recommendations for what foods should account for those calories—higher cost plans offer more variety in food types, as well as foods higher in nutritional value. The 2018 Farm Bill requires USDA to reevaluate the plan by 2022 and every five years thereafter.<sup>57</sup>

## 3. Fraud, Errors, and Related State Administrative Issues

The 2018 Farm Bill enacted policies aimed at reducing SNAP fraud and errors.<sup>58</sup> To identify and ultimately prevent concurrent enrollment in multiple states, the bill established a nationwide National Accuracy Clearinghouse, an interstate database that allows states to check whether participants are already enrolled in another state.<sup>59</sup> The bill also requires states to act, by either clarifying or verifying, on

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<sup>47</sup> *Id.*; see also *Snap Work Requirements*, *supra* note 43.

<sup>48</sup> *Id.*; see also *Snap Work Requirements*, *supra* note 43.

<sup>49</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4005.

<sup>50</sup> 7 U.S.C. §2015(d)(4)(D).

<sup>51</sup> MCMINIMY ET AL., *supra* note 33, at 20.

<sup>52</sup> *Id.*

<sup>53</sup> AUSSENBERG, *supra* note 34, at 14.

<sup>54</sup> MCMINIMY ET AL., *supra* note 33, at 20.

<sup>55</sup> 7 U.S.C. § 2012(u) and *SNAP and the Thrifty Food Plan*, FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/thriftyfoodplan>.

<sup>56</sup> *Id.*

<sup>57</sup> Agriculture Improvement Act of 2018, Pub. L. 115-334, § 4002; *SNAP and the Thrifty Food Plan*, FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/thriftyfoodplan>.

<sup>58</sup> *Id.* at 21.

<sup>59</sup> *Id.* at 21, 162.



information that has the potential to change a participant’s benefit amount.<sup>60</sup> Additionally, the 2018 Farm Bill granted USDA increased oversight of state systems and the federally run quality control system.<sup>61</sup> Finally, the bill repealed the funding previously in place for state performance awards, which financially rewarded the highest performing and most improved states.<sup>62</sup>

#### 4. Benefit Issuance, Redemption, and Trafficking

SNAP benefits are issued monthly<sup>63</sup> through a debit-like card by the state agency administering the program.<sup>64</sup> Electronic benefit transfer (EBT) technology allows SNAP recipients to purchase eligible foods at approved stores with their benefit cards. Prior farm bills provided EBT machines to authorized retailers at no cost,<sup>65</sup> but the 2014 Farm Bill imposed, and the 2018 Farm Bill maintained, that retailers are responsible for all costs of acquiring, implementing, and maintaining EBT equipment.<sup>66</sup> The Secretary of Agriculture is authorized, but not required, to exempt farmers’ markets, military commissaries, nonprofit food cooperatives, and other establishments from this requirement.<sup>67</sup>

The 2014 Farm Bill also expanded how benefits could be redeemed. Previous farm bills only allowed for the use of wired EBT machines<sup>68</sup> but the 2014 Farm Bill authorized the use of mobile technologies and internet transactions.<sup>69</sup> The 2018 Farm Bill authorized a pilot program to test SNAP recipients’ use of mobile technology.<sup>70</sup> The program requires the Secretary of Agriculture to approve project proposals in five states by January 1, 2021. Based on findings from the pilot program, the Secretary must then determine by January 1, 2022, whether to authorize the use of mobile technology in all states, conduct further study, or discontinue the use of mobile technology.<sup>71</sup>

Benefit redemption or recovery occurs when a state stores benefits offline due to the recipient’s lack of access to the electronic benefits. The 2018 Farm Bill decreased the amount of time a state must wait to recover benefits. Previously states were allowed to recover electronic benefits if the household had not accessed the account for six months, but the 2018 Farm Bill decreased that time to three months.<sup>72</sup> Similarly, the states shall now expunge benefits after nine months of inactivity, while this wait time used to be 12 months.<sup>73</sup> The 2018 Farm Bill also added that states must give notice of the off-line storage and expungement, and must reinstate the benefits at the recipient’s request.<sup>74</sup>

Benefit trafficking, when SNAP participants sell their SNAP benefits for cash, has been a concern of past farm bills. All EBT service providers are required to have a “unique terminal identification number” so

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<sup>60</sup> *Id.* at 21.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 21, 164–5.

<sup>63</sup> AUSSENBERG, *supra* note 34, at 17.

<sup>64</sup> AUSSENBERG, *supra* note 34, at 16.

<sup>65</sup> AUSSENBERG, *supra* note 34, at 21.

<sup>66</sup> 7 U.S.C. § 2016(f)(2).

<sup>67</sup> *Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) - Regulatory Flexibility Analysis*, FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., <http://www.regulations.gov/document?D=FNS-2016-0018-1266>.

<sup>68</sup> AUSSENBERG, *supra* note 30, at 22.

<sup>69</sup> *Compare* 7 U.S.C. § 2016(h) (2010) *with* 7 U.S.C. § 2016(h)(14) (2014).

<sup>70</sup> 7 U.S.C. § 2016(h)(14).

<sup>71</sup> *Id.*

<sup>72</sup> *Compare* 7 U.S.C. § 2016(h)(12) (2014) *with* 7 U.S.C. § 2016(h)(12) (2019).

<sup>73</sup> *Compare* 7 U.S.C. § 2016(h)(12) (2014) *with* 7 U.S.C. § 2016(h)(12) (2019).

<sup>74</sup> 7 U.S.C. § 2016(h)(12).



that the USDA can track transactions to prevent fraud.<sup>75</sup> In order to prevent trafficking, states are allowed to decline to issue replacement cards to participants who have made excessive requests.<sup>76</sup>

## 5. Authorized Retailers & Purchases

SNAP benefits can only be used to purchase eligible foods at authorized retailers.<sup>77</sup> The Food and Nutrition Act of 2008 defines what foods are eligible for purchase with SNAP benefits and what is required of a retail food store.<sup>78</sup> Foods that are eligible for purchase with SNAP benefits include food products for home consumption as well as garden seeds and plants for personal consumption.<sup>79</sup> Foods that cannot be purchased using SNAP benefits are alcohol, tobacco, hot foods, and hot foods ready for immediate consumption.<sup>80</sup> Other sections of the bill permit SNAP benefits to be used for meals prepared at senior citizens centers and meals provided by a private establishment that a state has contracted with to offer meals to disabled, elderly, and homeless individuals.<sup>81</sup>

### a. Definition of Retail Food Store

For an establishment or online entity to qualify as a retail food store that can accept SNAP benefits, the establishment must offer a variety of at least seven foods in each of the following categories of staple foods: 1) meat, poultry, or fish; 2) bread or cereals; 3) vegetables or fruits; and 4) dairy products.<sup>82</sup> The retailer must also offer perishable foods in at least three of those categories.<sup>83</sup> However, an establishment can qualify as a retail food store if over 50% of its total sales are from the sale of staple foods regardless of how many of each category it provides.<sup>84</sup>

The types of retailers that are authorized to accept SNAP benefits range from convenience stores to supermarkets, nonprofit food delivery services, and farmers' markets, among others.<sup>85</sup> The 2018 Farm Bill amends the definition of "retail food store" to include online entities that sell food for home preparation and consumption.<sup>86</sup>

### b. Restaurant Meals Program

The Restaurant Meals Program gives states the option to allow homeless, disabled, and elderly SNAP participants to purchase hot prepared foods from approved restaurants.<sup>87</sup> The idea behind this policy is to provide those who are unable to prepare meals at home or do not have kitchen access to food.<sup>88</sup> As of August 2021, just seven states were eligible to participate in the program.<sup>89</sup>

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<sup>75</sup> 7 U.S.C. § 2016(f)(5).

<sup>76</sup> 7 U.S.C. § 2016(h)(8)(B).

<sup>77</sup> AUSSENBERG, *supra* note 34, at 18.

<sup>78</sup> 7 U.S.C. §§ 2012(k), (o).

<sup>79</sup> 7 U.S.C. § 2012(k).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> 7 U.S.C. § 2012(o).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> AUSSENBERG, *supra* note 34, at 18.

<sup>86</sup> MCMINIMY ET AL., *supra* note 33, at 167.

<sup>87</sup> 7 U.S.C. § 2020(e)(25)(i).

<sup>88</sup> Marion Nestle, *Using SNAP Benefits for Fast Food Restaurants Is a State Decision*, THE ATLANTIC (Sep 14, 2011),

<http://www.theatlantic.com/health/archive/2011/09/using-snap-benefits-for-fast-food-restaurants-is-a-state-decision/245085/>.

<sup>89</sup> *Can I buy Food at Restaurants with Supplemental Nutrition Assistance Program Benefits?*, U.S. DEP'T OF AGRIC. (Aug. 27, 2021), <https://ask.usda.gov/s/article/Can-I-buy-food-at-restaurants-with-Supplemental-Nutrition-Assistance-Program-benefits-For-SNAP-Client>.



## 6. Programs in Lieu of SNAP

In addition to SNAP, the farm bill authorizes funding for other income-based food assistance programs. These related programs are the Food Distribution Program on Indian Reservations (FDPIR) and the programs that operate in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands.<sup>90</sup> While some Indian reservation residents may have access to SNAP, Puerto Rico, American Samoa, and the Northern Mariana Islands receive only nutrition assistance block grants.<sup>91</sup>

### a. Food Distribution Program on Indian Reservations (FDPIR)

The FDPIR, administered by USDA Food and Nutrition Service at the federal level, provides USDA food packages to income-eligible households on Indian reservations as well as other American Indian households living in certain areas near reservations or in Oklahoma.<sup>92</sup> Many American Indian households rely on FDPIR instead of SNAP because they do not have easy access to SNAP authorized food stores.<sup>93</sup> Households cannot be enrolled in both programs concurrently.<sup>94</sup> As of 2020, there were 276 tribes receiving FDPIR benefits distributed through 102 Indian Tribal Organizations and three state agencies.<sup>95</sup>

Following Native-led advocacy to focus Congressional attention on Tribal concerns,<sup>96</sup> the 2018 Farm Bill included several important advancements to support food security and food sovereignty among Tribes. These advancements included:

- Updating the federal cost-share such that USDA will pay 80% of the costs associated with administering FDPIR.<sup>97</sup>
- Adding a waiver provision and authorization to use federal funds obtained elsewhere to meet the Tribe's portion of the federal cost-share requirement.<sup>98</sup>
- Expanding the fund used to purchase traditional foods (for FDPIR food packages) to include regionally grown food, in addition to the locally grown food previously included.<sup>99</sup> The fund stipulates that, when possible, 50% of the food purchased shall be from Native American farmers, ranchers, and producers.<sup>100</sup>
- Authorizing demonstration projects under Public Law 93-638 self-determination contracts, providing Tribes with increased authority over the procurement of foods that comprise the FDPIR food packages.<sup>101</sup> These projects empower Tribes to purchase foods from Native vendors, thereby supporting regional food systems and increasing food sovereignty.

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<sup>90</sup> AUSSENBERG, *supra* note 30, at 26.

<sup>91</sup> *Id.*

<sup>92</sup> FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., FDPIR PROGRAM FACT SHEET (2020), <https://fns-prod.azureedge.us/sites/default/files/resource-files/fdpi-program-fact-sheet-2020-for%20website.pdf>.

<sup>93</sup> *Id.*

<sup>94</sup> INDIGENOUS FOOD & AGRIC. INITIATIVE, UNIV. OF ARK., *PROGRAM HIGHLIGHT: FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR)* (2019), <https://jm4e6c.p3cdn1.secureserver.net/wp-content/uploads/2020/03/Program-Highlight-FDPIR.pdf>.

<sup>95</sup> FOOD & NUTRITION SERV., *supra* note 92.

<sup>96</sup> *See* NATIVE FARM BILL COAL., <https://indigenousfoodandag.com/resources/native-farm-bill-coalition/>.

<sup>97</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4103(a).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> 7 U.S.C. § 2013(b)(6).

<sup>101</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4103(a).





## b. Nutrition Assistance Block Grants

While Guam and the Virgin Islands participate in SNAP, Puerto Rico, American Samoa, and the Northern Mariana Islands do not.<sup>102</sup> Instead, they receive mandatory funds through Nutrition Assistance Block Grants (NABGs) for their food assistance programs.<sup>103</sup> Unlike the open-ended funding SNAP receives, these block grants offer more limited funding that increases at the rate of inflation as measured by the USDA's Thrifty Food Plan (TFP).<sup>104</sup>

### 8. Nutrition Education and Obesity Prevention Grant Program

The Nutrition Education and Obesity Prevention Grant Program provides mandatory funding to states to implement programs that promote healthy food choices and physical activity for SNAP participants.<sup>105</sup> The programs are meant to align with the newest recommendations in the Dietary Guidelines for Americans.<sup>106</sup> States that wish to participate in this grant program must submit a nutrition education state plan to the Secretary of Agriculture.<sup>107</sup> State plans must identify how the funding will be used, ensure that programs are appropriate for low-income populations, and, under the 2018 Farm Bill, describe how the implementing state agency will use an electronic reporting system.<sup>108</sup>

## B. Commodity Food Assistance Programs

Though found in different subtitles of the 2018 Farm Bill's Nutrition Title (and in different chapters of the U.S. Code), the Emergency Food Assistance Program (TEFAP) and Commodity Supplemental Food Program (CSFP) each distribute USDA purchased commodities to entities serving recipients in need of food assistance. USDA has a standing appropriation, equal to a percentage of gross receipts from federally collected duties (taxes on imports) from the prior year, which may be used to purchase commodities or products for domestic consumption through these and other programs (e.g., FDPIR, school lunch and breakfast programs).<sup>109</sup> TEFAP has separately authorized funding as well,<sup>110</sup> which increased in the 2018 Farm Bill. Both programs saw moderate changes, detailed below. Additionally, the 2018 Farm Bill reauthorizes the distribution of surplus commodities to special nutrition projects through fiscal year 2023.<sup>111</sup>

### 1. The Emergency Food Assistance Program

Designed to help reduce federal food inventories while assisting low-income Americans, TEFAP was authorized in 1981. By 1988, federal food inventories were depleted so the Hunger Prevention Act of 1988 authorized appropriations to USDA to purchase food specifically for TEFAP.<sup>112</sup> TEFAP provides USDA-purchased commodities to emergency feeding organizations such as food pantries and food banks.<sup>113</sup> Qualified organizations include public and private nonprofit organizations that serve meals in a

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<sup>102</sup> AUSSENBERG, *supra* note 30, at 27.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> 7 U.S.C. §2036a(b).

<sup>106</sup> *Id.*

<sup>107</sup> 7 U.S.C. §2036a(c)(2).

<sup>108</sup> Compare 7 U.S.C. §2036a(c)(B) (2014) with 7 U.S.C. §2036a(c)(B) (2019).

<sup>109</sup> 7 U.S.C. § 612c note.

<sup>110</sup> 7 U.S.C. § 2036a(b)

<sup>111</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4103.

<sup>112</sup> FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., THE EMERGENCY FOOD ASSISTANCE PROGRAM (2020), [https://fns-prod.azureedge.us/sites/default/files/resource-files/tefap-program-fact-sheet-2019\\_1.6.20.pdf](https://fns-prod.azureedge.us/sites/default/files/resource-files/tefap-program-fact-sheet-2019_1.6.20.pdf).

<sup>113</sup> *Id.*



congregate setting or distribute food for home preparation to low-income households.<sup>114</sup> States have the authority to set their own eligibility standards and can adjust the criteria to provide assistance to only the neediest households.<sup>115</sup> USDA commodities are distributed to the state agency administering TEFAP and the amount of food the state receives is based on the number of unemployed persons and the number of people with incomes below the poverty line.<sup>116</sup> USDA commodities available to TEFAP include canned, fresh, and frozen fruits and vegetables; eggs; meat; poultry; fish; nuts; milk; cheese; whole-grain products; and enriched grain products.<sup>117</sup>

In addition to making food available to states, under TEFAP, states receive funding to help store and distribute food.<sup>118</sup> The 2018 Farm Bill dramatically increased TEFAP budget allocations. For fiscal year 2018, the budget called for \$15 million in commodity purchases. For fiscal year 2019, that amount increased to \$23 million, then to \$35 million for fiscal years 2020 through 2023.<sup>119</sup>

The 2018 Farm Bill also added a food waste initiative, support for state-led Farm to Food Bank Projects, to TEFAP.<sup>120</sup> Now, states may use federal funding to harvest, process, package, or transport unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors, so that the commodities can be used by emergency feeding organizations.<sup>121</sup> For a state to use federal funding in this way, the state must submit an amendment to its TEFAP state plan and the project's purposes must include reducing food waste, providing food to individuals in need, and building relationships between agricultural producers, processors, and distributors and emergency feeding organizations.<sup>122</sup> Also, the 2018 Farm Bill called upon the Secretary of Agriculture to issue guidance promoting food waste awareness and outlining best practices to limit food waste related to donated commodities.<sup>123</sup>

## 2. Commodity Supplemental Food Program

Subtitle B of the 2018 Farm Bill reauthorizes the Commodity Supplemental Food Program (CSFP) and the distribution of surplus commodities to special nutrition projects.<sup>124</sup> The goal of CSFP is to improve the health of low-income seniors, those who are 60 years or older.<sup>125</sup> The program authorizes USDA to purchase a variety of commodity foods for distribution to nutrition programs.<sup>126</sup> Commodity foods include fresh, frozen, and processed dairy, livestock, fruits, and vegetables.<sup>127</sup> The USDA distributes two categories of commodities: 1) “entitlement commodities” which receive mandatory funding, and 2) “bonus commodities” which the USDA purchases at the request of the agricultural community in the case of surpluses or when there is a need for price supports.<sup>128</sup>

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> 7 U.S.C. § 2036(a)(2)(D).

<sup>120</sup> 7 C.F.R. § 251.10(j).

<sup>121</sup> 7 U.S.C. § 7505(d).

<sup>122</sup> *Id.*

<sup>123</sup> 7 U.S.C. § 7507(e).

<sup>124</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, §§ 4101–4103.

<sup>125</sup> FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., COMMODITY SUPPLEMENTAL FOOD PROGRAM (2019), <https://fns-prod.azureedge.us/sites/default/files/resource-files/csfp-program-fact-sheet-2019.pdf>.

<sup>126</sup> AUSSENBERG, *supra* note 30, at 28.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*



Prior the 2014 Farm Bill, CSFP was available to low-income women, infants, children under six, and elderly persons age 60 or older, but because most participants were seniors and the other groups can participate in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Congress decided to limit CSFP's recipient pool.<sup>129</sup> CSFP is not meant to provide a complete diet to eligible households but rather to provide foods containing nutrients that are typically lacking in participants' diets.<sup>130</sup>

State agencies administer CSFP, including setting an income limit for participants that is at or below 130% of the federal poverty line.<sup>131</sup> States have the flexibility to require that participants be at nutritional risk and set a residency requirement.<sup>132</sup> Foods available through this program are foods such as nonfat dry and ultra-high-temperature fluid milk, ready-to-eat cereal, rice, pasta, peanut butter, dry beans, canned meat, and canned fruits and vegetables.<sup>133</sup>

The 2018 Farm Bill requires a certification period for CSFP participants. A certification period is that time during which a CSFP participant may receive benefits without a formal eligibility review.<sup>134</sup> Under the new provision, states are required to establish certification periods that are not less than one year, but not longer than three years. However, if a state establishes a certification period that is longer than one year it is subject to the Secretary of Agriculture's approval.<sup>135</sup> The Secretary will grant approval if the state can verify the participant's address and continued interest in participating during the certification period, and the state has sufficient reason to determine that the participant still meets the income eligibility standards.<sup>136</sup>

### C. Healthy Food Access & Local Food Systems

The farm bill also supports several programs designed to promote access to healthy foods, particularly nutritious produce.

#### 1. The Gus Schumacher Nutrition Incentive Program

Established in the 2014 Farm Bill as the Food Insecurity Nutrition Incentive grant program, the 2018 Farm Bill reauthorized and renamed the program.<sup>137</sup> Now known as the Gus Schumacher Nutrition Incentive Program (GusNIP), the program offers grants to governmental agencies and nonprofit organizations to support projects that incentivize SNAP participants to purchase fruits and vegetables.<sup>138</sup> All GusNIP projects must: 1) be supported by the state agency responsible for administering SNAP; 2) increase SNAP recipients' purchase of fruits and vegetables by providing incentives at the point of purchase; 3) operate through authorized SNAP retailers; 4) agree to participate in comprehensive program evaluation; 5) ensure the same terms and conditions apply to purchases made by SNAP recipients and those made by individuals who are not members of a SNAP household; and 6) include effective and efficient benefit redemption system technology that may be replicated in other states and communities.<sup>139</sup>

<sup>129</sup> FOOD & NUTRITION SERV., *supra* note 125.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4102.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> MCMINIMY ET AL., *supra* note 33, at 21.

<sup>138</sup> *Id.*

<sup>139</sup> *Gus Schumacher Nutrition Incentive Program (formerly FINI)*, NAT'L INST. OF FOOD & AGRIC., <https://nifa.usda.gov/program/gus-schumacher-nutrition-incentive-grant-program>.



A common nutrition incentive program model is the “Double Up Bucks” style program, which provides a dollar-for-dollar match, up to a cap, on purchases of fruits and vegetables. A SNAP user purchasing fruits and vegetables at a participating retailer earns \$1 in SNAP benefits for each SNAP dollar spent on qualifying produce. The 2018 Farm Bill expanded GusNIP grants to add funding for produce prescription projects that serve individuals eligible for SNAP or Medicaid in households with or at risk of developing a diet related health condition.<sup>140</sup> These projects provide participants with vouchers, coupons, credits, prefilled boxes, or other mechanisms for acquiring fruits and vegetables to incorporate into their diet. The bill also directed USDA to established one or more Nutrition Incentive Program Training, Technical Assistance, Evaluation, and Information Centers to provide support to grant applicants and grantees and to collect and manage program data.<sup>141</sup>

## 2. Seniors Farmers’ Market Nutrition Program

The 2018 Farm Bill reauthorizes the Seniors Farmers’ Market Nutrition Program (SFMNP) through 2023.<sup>142</sup> The SFMNP provides low-income seniors with coupons or vouchers to purchase foods at farmers’ markets, roadside stands, and community-supported agricultural programs.<sup>143</sup> Foods that can be purchased through the program are fruits, vegetables, honey, and fresh-cut herbs.<sup>144</sup> The program targets individuals over 60 years old with household incomes of less than 185% of the Federal Poverty Line.<sup>145</sup> State agencies administering the program can limit eligible foods to those grown locally.<sup>146</sup> The USDA Food and Nutrition Service provides assistance to the State agencies that are approved to administer the program.<sup>147</sup> The program reportedly serves 800,000 low-income seniors in 43 states, the District of Columbia, Puerto Rico, and eight tribes.<sup>148</sup>

## 3. Healthy Food Financing Initiative

The Healthy Food Financing Initiative (HFFI) was established by the 2014 Farm Bill and the 2018 Farm Bill reauthorized and expanded the initiative.<sup>149</sup> HFFI is a public-private partnership between USDA Rural Development and Reinvestment Fund, a national nonprofit community development financial institution.<sup>150</sup> HFFI offers grant and technical assistance to food retailers, and, as of the 2018 Farm Bill, food system enterprises seeking to improve food access in underserved areas.<sup>151</sup> HFFI offers grants of capital to food retailers and food enterprises to help them cover the high costs and barriers to entry in underserved areas.<sup>152</sup> The technical assistance that HFFI offers includes capacity building support, help with identifying food access needs, project planning, market studies, feasibility studies, business

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<sup>140</sup> MCMINIMY ET AL., *supra* note 33, at 21.

<sup>141</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4105.

<sup>142</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4201.

<sup>143</sup> FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., SENIOR FARMERS’ MARKET NUTRITION PROGRAM (2021), <https://www.fns.usda.gov/sfmnp/fact-sheet-2021>.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Choctaw Nation of Oklahoma Joins USDA Senior Farmers Market Nutrition Program*, U.S. DEP’T OF AGRIC. (Aug. 25, 2015), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2015/08/0227.xml>.

<sup>149</sup> *Healthy Food Financing Initiative*, RURAL DEV., U.S. DEP’T OF AGRIC., <https://www.rd.usda.gov/about-rd/initiatives/healthy-food-financing-initiative>.

<sup>150</sup> *Healthy Food Financing Initiative*, NAT’L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/publications/grassrootsguide/healthy-food-access/healthy-food-financing-initiative/>.

<sup>151</sup> *Healthy Food Financing Initiative*, REINVESTMENT FUND, <https://www.investinginfood.com/>.

<sup>152</sup> *Id.*



planning, financial modeling, appraisals, and community or customer engagement.<sup>153</sup> In order for a food retailer or enterprise to be eligible for HFFI grants and technical support, they must propose a project that: 1) plans to expand or preserve the availability of staple and perishable foods in underserved areas with low- and moderate-income populations; and 2) accept SNAP benefits.<sup>154</sup>

#### 4. Micro-grants for Food Security

The 2018 Farm Bill establishes the micro-grants for food security program. The program's purpose is to increase the quantity and quality of locally grown food through small-scale gardening, herding, and livestock operations in food insecure communities in areas of the United States that have significant levels of food insecurity and import a significant quantity of food.<sup>155</sup> The areas that fall within this narrow scope include Alaska and Hawaii as well as American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Republic of Palau, and the United States Virgin Islands.<sup>156</sup> Under this program each of these "eligible states" receive funds to distribute via subgrants to eligible entities that propose projects to increase the quality and quantity of locally grown food.<sup>157</sup>

To carry out this project, the 2018 Farm Bill appropriated \$10 million dollars for each fiscal year starting in 2019.<sup>158</sup> The bill further guides how this money should be distributed between the "eligible states." Both Alaska and Hawaii each receive 40%, while the remaining "eligible states" each receive 2.5%.<sup>159</sup>

#### 5. Community Food Projects

The Community Food Projects program provides funding for community-based projects that help to promote self-sufficiency of low-income communities.<sup>160</sup> The entities that can receive grants should need only a one-time contribution of funds and operate for the purpose of improving access to food.<sup>161</sup> Eligible entities, which include public food program service providers, tribal organizations, and nonprofit entities, must have experience in various areas that may benefit the targeted communities (e.g., developing new markets for small- or medium-sized farms in low income communities or coordinating services to reduce food insecurity).<sup>162</sup>

Although the 2014 Farm Bill increased the funding for this program to nine million dollars each year, the 2018 Farm bill reduced that amount to five million dollars for fiscal year 2019 and each year thereafter.<sup>163</sup>

### D. Other Provisions

The 2018 Farm Bill included several additional provisions of note, including provisions that direct the Secretary of Agriculture to:

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> 7 U.S.C. §7518(a).

<sup>156</sup> 7 U.S.C. §7518(b)(2).

<sup>157</sup> 7 U.S.C. §7518(c).

<sup>158</sup> 7 U.S.C. §7518(g)(1).

<sup>159</sup> 7 U.S.C. §7518(d)(1).

<sup>160</sup> 7 U.S.C. §2034(a)(1); *See also Competitive Food Projects Competitive Grant Program (CFPCGP)*, NAT'L INST. OF FOOD & AGRIC., <https://nifa.usda.gov/program/community-food-projects-competitive-grant-program-cfpcgp>.

<sup>161</sup> 7 U.S.C. §2034(a)(1).

<sup>162</sup> 7 U.S.C. §2034(c).

<sup>163</sup> *Compare* 7 U.S.C. § 2034(b)(2) (2014) *with* 7 U.S.C. §2034(b)(2) (2019).



- Enforce and ensure understanding of the Buy American provisions in the Richard B. Russell National School Lunch Act.<sup>164</sup>
- Carry out healthy fluid milk incentive projects to increase the purchase and consumption of fluid milk by SNAP users.<sup>165</sup>
- Issue guidance to raise awareness of the Bill Emerson Good Samaritan Food Donation Act's liability protections and to encourage state agencies to provide guidance to qualified direct donors donating food to nonprofit organizations.<sup>166</sup>

## CONCLUSION

SNAP and other Nutrition Title programs will again be a core concern in negotiating the next farm bill. SNAP enrollment increased during the COVID-19 pandemic and Congress enacted certain flexibilities to keep benefits accessible and to supplement benefits during the public health emergency. The pandemic drew increased attention to SNAP's importance as a tool to combat hunger and the need for nimble programs, especially during emergency situations. Further, as directed in the 2018 Farm Bill and in recognition of its outdated calculations, USDA increased benefit levels following its reevaluation of the Thrifty Food Plan. However, the update's process has drawn scrutiny from some policymakers and may influence negotiations of the bill.<sup>167</sup> Other Nutrition Title programs also enjoyed increased attention due to their efficacy in supporting food security and increasing access to healthy foods, with GusNIP standing out as a model of success. These programs will continue to be a focal point as a divided Congress works toward reauthorizing the bill for the next five years.

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<sup>164</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4207.

<sup>165</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4208.

<sup>166</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 4104.

<sup>167</sup> See GOV. ACCOUNTABILITY OFF., THIRTY FOOD PLAN: BETTER PLANNING & ACCOUNTABILITY COULD HELP ENSURE QUALITY OF FUTURE REEVALUATIONS (2022), <https://www.gao.gov/products/gao-23-105450>.