

# Farm to Food Desert: A Look at How the Agriculture and Nutrition Act of 2018 Affects Food Insecurity and Access to Fresh Fruits and Vegetables

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## INTRODUCTION

Amidst urban growth and prosperity are communities lacking fresh produce and healthy food options. Low-income families struggle to find sustainable and nutritious food, which is often more expensive, and as a result face severe health problems.<sup>1</sup> Fast-food restaurants, bars, and convenience stores are increasingly more common, and a lack of access to healthy options creates gaps in nutrition that have serious ramifications for families.<sup>2</sup> Food insecurity is characterized by a lack of food needed to support a healthy lifestyle.<sup>3</sup> In 2017, 88.2 percent of homes in the United States (“U.S.”) were “food secure,” a slight increase from the year before.<sup>4</sup> Of the remaining 11.8 percent, 7.3 percent of households had “low food security”, while 4.5 percent of that number had “very low food security.”<sup>5</sup> Food security is divided into categories ranging from secure to very low.<sup>6</sup> Low food security is defined as a reduced quality of food and lack of variety within a diet.<sup>7</sup> However, food intake is often not as much of an issue in low food security households as is the quality of that food.<sup>8</sup> Very low

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<sup>1</sup> See Guadalupe T. Luna, *The New Deal and Food Insecurity in the Midst of Plenty*, 9 DRAKE J. AGRIC. L. 213, 215–216 (2004).

<sup>2</sup> *Id.* at 215.

<sup>3</sup> *See id.* at 213.

<sup>4</sup> *Key Statistics and Graphics*, U.S. DEPT OF AGRIC. ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx> [<https://perma.cc/5G2G-H5DU>].

<sup>5</sup> *Id.*

<sup>6</sup> *See id.*

<sup>7</sup> *Definitions of Food Security*, U.S. DEPT OF AGRIC. ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx> [<http://perma.cc/E7ZY-2YE4>].

<sup>8</sup> *See Key Statistics and Graphics*, *supra* note 4.

food security is defined as multiple instances of disrupted food patterns and a reduction in food intake.<sup>9</sup>

Food insecurity is not synonymous with hunger, which is often a result of food insecurity.<sup>10</sup> Instead, hunger is assessed on an individual physiological level.<sup>11</sup> Though the percentage of food insecure households may seem small, these numbers are deceiving.<sup>12</sup> The 7.7 percentage of U.S. households that were food insecure in 2017, including both adults and children, translates to a staggering 2.9 million households.<sup>13</sup> In 2017, an estimated forty million Americans lived in food insecure households and relied on the federal government for help.<sup>14</sup> The United States Department of Agriculture (“USDA”) assesses the severity of a household’s food insecurity through a series of questions such as, “In the last 12 months, did you ever cut the size of your meals or skip meals because there wasn’t enough money for food?” and, “In the last 12 months, did you ever not eat for a whole day because there wasn't enough money for food?”<sup>15</sup>

Part I of this Note examines the history of food assistance and specifically the 2018 Farm Bill; this history provides key understanding to the complications related to food insecurity. Next, Part II analyzes changes to the 2018 Farm Bill and its effects on food accessibility. Finally, Part III offers potential solutions to food insecurity and discusses the ways in which communities can maximize the use of federal assistance.

## I. A BRIEF HISTORY OF FOOD ASSISTANCE AND FARM BILL MEASURES

Consumers in food insecure or economically distressed areas are particularly neglected, with their options limited to shopping for food at convenience stores and gas stations, or otherwise eating at fast-food restaurants.<sup>16</sup>

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

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

<sup>11</sup> *Id.*

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

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

<sup>14</sup> See *Key Statistics and Graphics*, *supra* note 4.

<sup>15</sup> *Measurement*, U.S. DEP’T OF AGRIC. ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measurement.aspx> [perma.cc/2D7D-P9NS].

This lack of access to healthy and sustainable food means that individuals in food insecure areas are more likely to turn to government assistance or non-profit organizations to meet their needs.<sup>17</sup> Low-income areas frequently struggle with poorly-stocked stores and lack of access to healthy food choices.<sup>18</sup> Some experts feel there is a tenuous statistical connection between the availability of grocery stores and food insecurity.<sup>19</sup> Other experts argue the health problems food insecure households face comes from the abundance of fast-food options available in low-income areas.<sup>20</sup> In these areas, there are nearly twice as many fast-food restaurants and convenience stores than in higher income communities.<sup>21</sup> Many impoverished communities experience increased health problems as agriculture and food-related policies lack variety and offer mostly unhealthy options.<sup>22</sup> In many communities within the U.S. obesity is common and leads the development of a plethora of other physical and mental health issues such as cardiovascular disease, diabetes, anxiety, and depression.<sup>23</sup> In a compilation of studies from the 1990s and early 2000s, researchers found a positive correlation between food education and supplement programs and a participant's emotional health and behavioral growth.<sup>24</sup>

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<sup>16</sup> Luna, *supra* note 1.

<sup>17</sup> *See id.* at 218–19.

<sup>18</sup> *Id.* at 224–25.

<sup>19</sup> *See generally* Robert Paarlberg, FOOD POLITICS: WHAT EVERYONE NEEDS TO KNOW 91–92 (OXFORD UNIV. PRESS, 2nd ed. 2013) (stating that the connection may be in the presence of high volumes of fast food restaurants rather than those lacking access to supermarkets).

<sup>20</sup> *See id.*

<sup>21</sup> *Id.* at 92.

<sup>22</sup> Luna, *supra* note 1.

<sup>23</sup> Michelle P. Corrigan, *Growing What You Eat: Developing Community Gardens in Baltimore, Maryland*, 31 APPLIED GEOGRAPHY 1232, 1234 (2011).

<sup>24</sup> *See* MARY KAY FOX ET AL., EFFECTS OF FOOD ASSISTANCE AND NUTRITION PROGRAMS ON NUTRITION AND HEALTH: VOLUME 3, LITERATURE REVIEW 319 (U.S. DEP'T OF AGRIC. ECON. RES. SERV. 2004).

*i. Defining food deserts*

In these areas, food insecure households could significantly benefit from access to produce and other farm-raised products.<sup>26</sup> The 2008 Farm Bill required the USDA to study food deserts, and subsequent bills have sought to reduce the number of food insecure households.<sup>27</sup> The Agriculture and Nutrition Act of 2018, also known as the 2018 Farm Bill, has the potential to influence the accessibility of federal assistance through Supplemental Nutrition Assistance Programs (“SNAP”), educational opportunities like the Expanded Food and Nutrition Education Program, and incentives to farmers and community gardeners to provide communities with fresh produce and resources.<sup>28</sup> The most recent iteration of the Farm Bill, which is re-evaluated every five years, passed during a

lame duck session in a lauded bipartisan effort on December 20, 2018, after months of debate.<sup>29</sup> The Congressional Budget Office analyzed the bill on December 10, 2018, and estimated that spending would increase by \$1.8 billion, while revenues would increase by \$35 million.<sup>30</sup> In many ways, the budget appears as a continuance of the 2014 Farm Bill.<sup>31</sup> After offering his support for the \$400 billion Farm Bill, President Trump advocated for SNAP reform and promoted independence and financial integrity.<sup>32</sup> To that end, the Trump administration proposed regulatory changes

<sup>25</sup>Corrigan, *supra* note 23, at 1233.

<sup>26</sup> *See id.*

<sup>27</sup> MICHELE VER PLOEG, ET AL, ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES 1 (June 2009), [https://www.ers.usda.gov/webdocs/publications/42711/12716\\_ap036\\_1\\_.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf?v=0) [<https://perma.cc/8G23-CBKC>].

<sup>28</sup> CONGRESSIONAL RESEARCH SERVICE, WHAT IS THE FARM BILL?, (September 26, 2019) <https://fas.org/sgp/crs/misc/RS22131.pdf> [<https://perma.cc/47KH-QZH4>].

<sup>29</sup> Humeyra Pamuk, *Spurned by Congress, Trump administration seeks food stamp curbs via rule change*, REUTERS (Dec. 20, 2018 5:05 AM) <https://www.reuters.com/article/us-usa-food/spurned-by-congress-trump-administration-seeks-food-stamp-curbs-via-rule-change-idUSKCN1OJ12D> [<https://perma.cc/YXM9-9RKV>].

<sup>30</sup> MARK MCMINIMY, CONG. RESEARCH SERV., No. R45525, THE 2018 FARM BILL (P.L. 115-334): SUMMARY AND SIDE-BY-SIDE COMPARISON (2019).

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

<sup>32</sup> Office of Comm’ns, *President Donald J. Trump is Improving American Agriculture Programs*, 2018 WL 6695899 at \*1–2 (White House Dec. 20, 2018).

to create work requirements for individuals without dependents.<sup>33</sup> These changes were a part of earlier versions of the Farm Bill but Congressional groups decided to cut them in negotiations.<sup>34</sup> Critics of these administrative rule changes argue that altering waiver criteria or availability harms Americans who are actively seeking work but still may not be able to meet all of their needs.<sup>35</sup>

The success of federal funding depends on how food deserts are defined.<sup>36</sup> Different definitions of food deserts alter data and multiple definitions are especially damaging as they affect remedies for food insecurity.<sup>37</sup> The USDA defines a food desert as any census tract classified as low-income with at least a third of the area's population living more than one mile from a supermarket or large grocery.<sup>38</sup> However, in another study, researchers define food deserts as urban areas that had ten or less stores, none of which had more than twenty employees.<sup>39</sup> Another defined food deserts as areas that are "poor" and "urban," but changed the focus from the type of store to the presence of "healthy and affordable foods."<sup>40</sup> These definitions exclude the multitude of rural areas that lack access to healthy foods or supermarkets. In one study at Tulane University, researchers altered the definition of food insecurity to include a lack of access to six key fruits and vegetables.<sup>41</sup> This change allowed for the inclusion of smaller corner stores and community grocery stores.<sup>42</sup> The study also indicated that the shelves of "snack foods" greatly outweighed the shelves of fruits and vegetables.<sup>43</sup> Changing research techniques could better serve communities who may not be completely lacking

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<sup>33</sup> *Id.*

<sup>34</sup> Pamuk, *supra* note 29.

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

<sup>36</sup> VER PLOEG, *supra* note 27.

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

<sup>38</sup> Jason P. Block & S. V. Subramanian, *Moving Beyond "Food Deserts": Reorienting United States Policies to Reduce Disparities in Diet Quality*, PLOS MED, Dec. 8, 2015, <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001914> [<https://perma.cc/Z2JR-UUJZ>].

<sup>39</sup> Renee E. Walker, Christopher R. Keane, & Jessica G. Burke, *Disparities and access to health food in the United States: A review of food deserts literature*, 16 HEALTH & PLACE 876, 876 (2010).

<sup>40</sup> *Id.* at 881.

<sup>41</sup> VER PLOEG, *supra* note 27.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

in healthy options, but would benefit from other community and government measures. Additionally, varying definitions add to the debate concerning the existence of food deserts and potential solutions.<sup>44</sup> Some scholars consider the term “food deserts” to be too simplistic, and not reflective of more complex human and economic decisions.<sup>45</sup> The term “desert” also labels areas as desolate and lifeless, a term that may not be true, accurate, or hopeful.<sup>46</sup> The lack of accessible supermarkets and grocery stores is not the only issue communities in food deserts face.

Healthy food options that are not within walking distance or not on public transportation routes contribute to food insecurity.<sup>47</sup> With this, additional challenges like childcare, busy schedules, and neighborhood safety concerns lead citizens to choose unhealthy options that may be more convenient.<sup>48</sup> In some communities, home delivery grocers accept Electronic Benefit Transfer (“EBT”) credit along with offering farm-to-table options.<sup>49</sup> For example, FreshDirect is a Bronx, New York based company that delivers food items purchased to households receiving federal assistance as well as those who do not.<sup>50</sup> Purchases may only come from SNAP-eligible items, but the website does not mark them as such, allowing users to make purchases without feeling “othered.”<sup>51</sup> The program has pre-made options, fruit, vegetables, and farm-to-table products as well as offering free delivery to EBT users within a specific set of area codes.<sup>52</sup>

*ii. Food assistance programs*

Food assistance programs began in the late 18th century, opening and closing with need until the Great Depression and the

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<sup>44</sup> Walker, *supra* note 39, at 876.

<sup>45</sup> Barry Yeoman, *The Hidden Resilience of ‘Food Desert’ Neighborhoods*, CIVIL EATS (Sept. 14, 2018), <https://civileats.com/2018/09/14/the-hidden-resilience-of-food-desert-neighborhoods/> [<https://perma.cc/W5ZZ-BMCC>].

<sup>46</sup> *Id.*

<sup>47</sup> Walker, *supra* note 39, at 878.

<sup>48</sup> *Id.*

<sup>49</sup> *Details about FreshDirect EBT Pilot Program*, FRESHDIRECT: ABOUT US, [https://www.freshdirect.com/browse.jsp?id=about\\_ebt](https://www.freshdirect.com/browse.jsp?id=about_ebt) [<https://perma.cc/K2TJ-P9MH>].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

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

New Deal.<sup>53</sup> Exorbitant food prices meant financially disadvantaged individuals were unable to access healthy food, which in turn lead to vitamin deficiencies and deaths across the country.<sup>54</sup> Since the Great Depression, government programs such as the National School Lunch Act, Food Stamps (now known as Supplemental Nutritional Assistance Program or SNAP), and Special Supplemental Nutritional Program for Women, Infants, and Children (“WIC”) have been implemented to aid those who need assistance purchasing healthy meals.<sup>55</sup> Implementation of these programs provides relief for millions of Americans nationwide.<sup>56</sup>

Food assistance programs do not necessarily address the issues of ensuring access to healthy food choices or increased nutrients, which is a deviation from the original goals of the early programs.<sup>57</sup> SNAP benefits can be used to purchase grains, fruits and vegetables, meat proteins, and dairy products, as well as seeds or plants used to grow food.<sup>58</sup> However, products like soft drinks, candy, cookies, and bakery cakes are also considered eligible items.<sup>59</sup> Benefits cannot be used to buy alcoholic beverages, cigarettes, nonfood items (including pet food and toiletries), vitamins, hot foods, or foods that will be eaten in the store.<sup>60</sup> In certain areas, authorized restaurants may accept SNAP benefits from the elderly, homeless, or disabled.<sup>61</sup> However, those unable to receive federal assistance may struggle to afford a healthy lifestyle, and they have no choice but to rely on programs like

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<sup>53</sup> ANDREW F. SMITH, *FOOD IN AMERICA: THE PAST, PRESENT, AND FUTURE OF FOOD, FARMING, AND THE FAMILY MEAL*, 119 (2017).

<sup>54</sup> Paarlberg, *supra* note 19, at 36.

<sup>55</sup> *Id.* at 37.

<sup>56</sup> *See id.* at 39.

<sup>57</sup> Wen You, et al., *Food Consumed Away from Home Can be a Part of a Healthy and Affordable Diet*, 139 J. OF NUTRITION 1994-99 (July 21, 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2853693/pdf/nut1391994.pdf> [<https://perma.cc/KGU6-8CL7>]; *see also* Paarlberg, *supra* note 19.

<sup>58</sup> *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP’T AGRIC. FOOD NUTRITION SERV. (Nov. 17, 2017), <https://www.fns.usda.gov/snap/eligible-food-items> [<https://www.fns.usda.gov/snap/eligible-food-items>].

<sup>59</sup> *Id.*

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

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

micro-grants and public-private partnerships for assistance.<sup>62</sup> Without knowledge of these programs, individuals lose access to local products.

The 2018 Farm Bill contains distinct provisions that address these needs, often in the context of food assistance but rarely in ways that promote a healthy diet and lifestyle.<sup>63</sup> In some households, SNAP purchases typically replace certain existing cash expenditure resulting in households failing to make nutritious choices.<sup>64</sup> Food items are not subsidized based on their nutritional value, which leads to overproduction and advances the “scarcity in the midst of plenty” trope.<sup>65</sup> Other aspects of the Farm Bill focus on promoting education, and many government programs work to teach communities how to make healthy food choices.<sup>66</sup> Some administrations made promoting healthy choices and grocery stores a distinct policy focus.<sup>67</sup> For instance, part of the “Let’s Move” campaign of President Obama’s administration aimed to bring more grocery stores to low-income neighborhoods.<sup>68</sup> Through that program, a team of California grocery groups, health care providers, and banks dedicated \$200 million to eliminate food deserts in the state.<sup>69</sup> Even with these types of programs in place, food assistance programs have left food choices primarily up to the purchaser, who may live in areas lacking those options, have more convenient but less nutritious options, or may not possess the nutritional education needed to make such choices.

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<sup>62</sup> Taylor Inman, *Kentucky Ranks Sixth In The Nation For Food Insecurity Among Seniors*, WKMS, (May 21, 2018), <http://www.wkms.org/post/kentucky-ranks-sixth-nation-food-insecurity-among-seniors> [<https://perma.cc/5DSR-JLYQ>].

<sup>63</sup> Paarlberg, *supra* note 19, at 38.

<sup>64</sup> *Id.*

<sup>65</sup> Luna, *supra* note 1, at 240.

<sup>66</sup> NAT’L INST. OF FOOD AND AGRIC., *Supplemental Nutrition Education Program*, U.S. DEP’T AGRIC., <https://nifa.usda.gov/program/supplemental-nutrition-education-program-education-snap-ed> [<https://perma.cc/2WAC-8KAL>].

<sup>67</sup> Our History, U.S. DEP’T HEALTH AND HUMAN SERV., <https://www.hhs.gov/fitness/about-pcsfn/our-history/index.html> (last visited Jan. 6, 2020) [<https://perma.cc/WEG6-28ST>].

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*



## II. CHANGES TO THE 2018 FARM BILL

### *i. Gus Schumacher Nutrition Incentive Program*

Along with permanent funding, a seminal change to the 2018 Farm Bill is the renaming of the Food Insecurity Nutrition Incentive to the Gus Schumacher Nutrition Incentive Program.<sup>70</sup> The program is named in honor of Gus Schumacher, a leader in the farm-to-table movement who recognized that food assistance programs made purchasing fresh produce difficult.<sup>71</sup> He and his organization, Wholesome Wave, leveraged for changes to SNAP funding that allowed for the purchase of local produce.<sup>72</sup> The legislative program's goal is to aid local farmers, while simultaneously supporting those in food assistance programs.<sup>73</sup> Wholesome Wave, under Schumacher's guidance, found that these incentive programs motivated SNAP recipients to purchase healthy food.<sup>74</sup> A 2015 survey in Utah found similar results to that of Wholesome Wave.<sup>75</sup> The survey involved a twenty-eight item questionnaire inquiring about participants' demographics, fruit and vegetable consumption, food security, use of food assistance, and shopping tendencies.<sup>76</sup> Survey results indicated there was an increase in food security status and incentives of at least \$20 per week appeared to be the most successful in creating positive change.<sup>77</sup>

To create incentive programs for the purchase of local produce, the Gus Schumacher Nutrition Incentive Program

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<sup>70</sup> *Congress-Approved Farm Bill Honors Wholesome Wave Co-Founder, Gus Schumacher*, WHOLESOME WAVE, (Dec. 13, 2018), <https://www.wholesomewave.org/news/congress-approved-farm-bill-honors-wholesome-wave-co-founder-gus-schumacher> [https://perma.cc/KGQ8-YW6K].

<sup>71</sup> Bart Barnes, *Gus Schumacher, a force in the farm-to-table movement, dies at 77*, WASH. POST, (Sept. 27, 2017), [https://www.washingtonpost.com/local/obituaries/gus-schumacher-a-force-in-the-farm-to-table-movement-dies-at-77/2017/09/27/5f2c5c66-a221-11e7-8cfe-d5b912fab99\\_story.html?utm\\_term=.6b26bb73b1c1](https://www.washingtonpost.com/local/obituaries/gus-schumacher-a-force-in-the-farm-to-table-movement-dies-at-77/2017/09/27/5f2c5c66-a221-11e7-8cfe-d5b912fab99_story.html?utm_term=.6b26bb73b1c1). [https://perma.cc/H42C-2EWH].

<sup>72</sup> Michel Nischan, *Honoring Gus Schumacher, Food & Farming Hero*, WHOLESOME WAVE, (September 25, 2017) <https://www.wholesomewave.org/news/honoring-gus-schumacher-food-farming-hero-1939-2017> [https://perma.cc/MGT3-SCTD].

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See Mateja Savoie-Roskos et al., *Reducing Food Insecurity and Improving Fruit and Vegetable Intake Among Farmers' Market Incentive Program Participants*, 48 J. NUTRITION EDUC. & BEHAV. 70, 70 (2016).

<sup>76</sup> *Id.* at 71.

<sup>77</sup> *Id.* at 72.

specifies that eligible groups may partner with various other groups, including farmers' markets, community-supported agriculture programs, or retail food stores participating in SNAP.<sup>78</sup> Those seeking grants are judged on their ability to increase access to fruits and vegetables for those in low-income households or underserved communities and the incentives provided.<sup>79</sup> These incentives must be included and may be used solely for the purchase of such items.<sup>80</sup> Grant participants may also coordinate with farms, nutritional education programs, extension offices, public health departments, health insurance agencies, grocery stores, community-based organizations or nongovernmental organizations.<sup>81</sup> Supplemental services, such as online ordering, transportation, or delivery, can be offered in high-need communities.<sup>82</sup> Federal funding for the program starts at \$45 million for fiscal year 2019, and increases annually.<sup>83</sup> The Congressional Budget Office finds that the Gus Schumacher program will cost taxpayers \$417 million from 2019 to 2028.<sup>84</sup>

Households receiving benefits from these programs will not have additional benefits or incentives considered as part of their allotted SNAP benefits.<sup>85</sup> Folded into this is the establishment of "Nutritional Incentive Program training, technical assistance, evaluation, and information centers."<sup>86</sup> These centers are meant to provide access to resources under the above grants and to implement training and education.<sup>87</sup> Social scientists measured incentive programs's success, concluding that not only do incentives create an increase in fruit and vegetable consumption, but they also diminish the stress of hunger.<sup>88</sup> However, food waste

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<sup>78</sup> Agriculture Improvement Act of 2018 § 4205, 132 Stat. 4490, 4657 (2018).

<sup>79</sup> *Id.* at 4658.

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

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

<sup>82</sup> *Id.*

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

<sup>84</sup> Letter from Keith Hall, Dir., Cong. Budget Office, to Honorable K. Michael Conaway, Chairman, Comm. Agric., (Dec. 11, 2018) (on file with Cong. Budget Office). [https://www.cbo.gov/system/files?file=2018-12/hr2conf\\_0.pdf](https://www.cbo.gov/system/files?file=2018-12/hr2conf_0.pdf) [https://perma.cc/CJ2H-E5CP].

<sup>85</sup> Agriculture Improvement Act § 4205 at 4661.

<sup>86</sup> *Id.*

<sup>87</sup> *See id.* at § 4662.

<sup>88</sup> Savoie-Roskos, *supra* note 75, at 72–73 n.1.

often increases because fruits and vegetables have a shorter shelf life compared to processed foods, and therefore SNAP benefit often do not last as long.<sup>89</sup>

*i. Micro-grants*

Proposed by Alaskan Senator Lisa Murkowski, the Micro-grants for Food Security program aims to increase the amount of locally grown food through small scale gardening, herding, and livestock operations in food insecure areas.<sup>90</sup> Those eligible include Secretary-approved individuals, native peoples or tribal organizations, non-profits (including religious organizations), food banks or pantries, federally-funded education programs, such as Head Start, and public schools and higher education centers.<sup>91</sup> These multi-purpose programs could be used to fund training or to create a food preservation program, similar to those proposed by the Food Bank of Alaska.<sup>92</sup> The food bank's program encourages the donation of food items that are usually wasted and saves them through canning.<sup>93</sup> These programs are only open to specific states and territories, including Alaska, Hawaii, American Samoa, the Northern Mariana Islands, Puerto Rico, Micronesia, Guam, the Marshall Islands, Palau, and the U.S. Virgin Islands.<sup>94</sup> One of the grant program's goals is to promote local food growth and the revival of Native People's practices.<sup>95</sup> Funds may be used to purchase gardening tools, to build composting centers and towers for vegetable growth, or to expand and cultivate other areas

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<sup>89</sup> *See id.*

<sup>90</sup> Agriculture Improvement Act of 2018 § 4206; *see also* Star-Advertiser Staff, *New micro-grants to support locally grown food*, STAR ADVERTISER (July 2, 2018), <https://www.staradvertiser.com/2018/07/02/breaking-news/new-micro-grants-to-support-locally-grown-food/> [https://perma.cc/5PQE-7U8M].

<sup>91</sup> Agriculture Improvement Act of 2018 § 4206.

<sup>92</sup> Erin McKinstry, *New farm bill program aims to help food insecurity in Alaska*, ALASKA PUB. MEDIA (July 27, 2018), <https://www.alaskapublic.org/2018/07/27/new-farm-bill-program-aims-to-help-food-insecurity-in-alaska/> [https://perma.cc/B8RT-DJXZ].

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

<sup>94</sup> Agriculture Improvement Act of 2018 § 4206.

<sup>95</sup> *New micro-grants to support locally grown food*, U.S. SENATOR FOR ALASKA LISA MURKOWSKI (July 2, 2018), <https://www.murkowski.senate.gov/press/article/new-micro-grants-to-support-locally-grown-food-> [https://perma.cc/88P9-3Z47].

necessary to the growth of a farming system and increased availability of locally grown foods.<sup>96</sup>

The federal government also provides funding from resources along with the Farm Bill for a variety of specialized opportunities that target communities as a whole.<sup>97</sup> For example, block grants funded by the Department of Housing and Urban Development may be given to projects that hope to transform city blocks through food hubs or processing facilities.<sup>98</sup>

*ii. Public-Private Partnership*

Section 4021 of the Agriculture Improvement Act of 2018 introduces funding for public-private partnerships, amending the 2008 Farm Bill.<sup>99</sup> Now, up to ten pilot projects with the goal of encouraging public-private partnerships that address food insecurity can be approved.<sup>100</sup> These partnerships are open to non-profit or community-based organizations, institutes of higher education, or private entities deemed eligible by the Secretary.<sup>101</sup> Programs run for two years and require the collaboration with one or more public or eligible agencies to improve the effectiveness of SNAP, develop food security solutions, and enable communities to more readily address food insecurity.<sup>102</sup> The program has a \$5 million budget which remains available until fully disbursed to a variety of projects.<sup>103</sup>

Private-public partnerships are popular on a global level and have helped developing countries increase food security. These partnerships are collaborations between public and private entities that share resources, processes, and risks in the creation of products and services.<sup>104</sup> The partnerships aim to increase

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<sup>96</sup> Agriculture Improvement Act of 2018 § 4206.

<sup>97</sup> See *Grants*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERVICES, <https://www.fns.usda.gov/fm/grant-opportunities> [<https://perma.cc/8PVU-BR4B>].

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

<sup>99</sup> Agriculture Improvement Act of 2018 § 4021.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at § 4653.

<sup>104</sup> Frank Hartwich et al., *Food Security in Practice: Building Public-Private Partnerships for Agricultural Innovation*, INT'L FOOD POL'Y RES. INST., vii (2007),

innovation in agriculture and provide cultivators with the security that lucrative resources provide.<sup>105</sup> In global studies, public-private partnerships influenced research, market competition, and poverty reduction.<sup>106</sup> Producing public-private partnerships that achieve food security, in turn, support small share farmers and strengthen the broader economy.<sup>107</sup> In developing nations where public-private partnerships have gained support, the goal is to revitalize entire industries, such as the Chilean Pisco market.<sup>108</sup> In that case, the public-private partnership followed the production of alcohol from farming and distilling to marketing and export.<sup>109</sup>

### *iii. Urban Food Research*

The Farm Bill creates competitive grants for the expansion of urban, indoor, or nontraditional agriculture.<sup>110</sup> The grants extend to harvesting, transportation, and other aspects of market development.<sup>111</sup> Overall, these grants can investigate a multitude of strategies for urban or indoor agriculture, including projects like decontamination and pest management, building effects and light management, as well as traditional farming research.<sup>112</sup> The Secretary may give priority to grants that have the partnership of multiple entities, or those that specifically focus on areas with urban or rooftop farms or indoor production facilities.<sup>113</sup> The Farm Bill is often viewed as a political power play that allows big

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<https://ageconsearch.umn.edu/bitstream/46707/2/Building%20Public-Private%20partnerships.pdf>. [<https://perma.cc/2DZJ-4BMY>].

<sup>105</sup> *Id.*

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

<sup>107</sup> Marlo Rankin et al., *Public-Private Partnerships for Agribusiness Development*, FOOD & AGRIC. ORG. OF THE UNITED NATIONS, 27 (2016), <http://www.fao.org/3/a-i5699e.pdf> [<https://perma.cc/B4C3-JXWJ>].

<sup>108</sup> *Id.* at 59.

<sup>109</sup> *Id.*

<sup>110</sup> Agriculture Improvement Act of 2018 § 7212.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

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

agricultural corporations to cash in on subsidies and policy matters under the guise of bucolic country scenes and nutrition subsidy programs.<sup>114</sup> It is entirely possible that these research grants will end up in the hands of major corporations. This could counter the benefits of small-scale urban food research on a community. Folded into the Farm Bill is a census for urban, indoor, and emerging agriculture programs, including community gardens and urban farms.<sup>115</sup> This census counts the number of community gardens, which gives researchers and policymakers an advantage in future programming and funding.<sup>116</sup>

*iv. Nutrition Education Program*

The Nutrition Education Program amends previous sections to include partnerships between multiple funding outlets for the purpose of obesity prevention and nutrition education.<sup>117</sup> There are several federal nutrition education programs, as well as private outlets and state sponsored county extension offices.<sup>118</sup> The Expanded Food and Nutrition Program, which is present at seventy-five land grant institutions, including the University of Kentucky,<sup>119</sup> uses peer education to organize messages that are specific to the needs of the community.<sup>120</sup> Through this program, studies have shown that up to 94 percent of adults increased their fruit and vegetable consumption.<sup>121</sup> The programs aim to educate families in food insecure communities and provide them with the resources needed to create healthy lifestyles on a limited budget.<sup>122</sup> Another program, SNAP-Ed is a nutrition-specific program managed by the USDA's Food and Nutrition Service but

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<sup>114</sup> Gracy Olmstead, *The Farm Bill Ignores the Real Troubles of U.S. Agriculture*, N.Y. TIMES (Dec. 14, 2018), <https://www.nytimes.com/2018/12/14/opinion/farm-bill-agriculture.html> [<https://perma.cc/X89M-CM58>].

<sup>115</sup> Agriculture Improvement Act of 2018 § 7212(b).

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

<sup>117</sup> Agriculture Improvement Act § 7112.

<sup>118</sup> *See Nutrition Education Program*, UNIV. OF KY. COLL. OF AGRIC., FOOD & ENV'T, <https://kynep.ca.uky.edu> [<https://perma.cc/T2ZY-6SAX>].

<sup>119</sup> *Id.*

<sup>120</sup> Au, *infra* note 123.

<sup>121</sup> *Id.*

<sup>122</sup> UNIV. COLL. OF AGRIC., FOOD AND ENV'T, *supra* note 118.

administered by state agencies.<sup>123</sup> The federal program focuses on physical activity and obesity prevention through education and community outreach.<sup>124</sup> SNAP-Ed began after the University of Wisconsin used state funding in conjunction with SNAP offices in order to receive a larger grant from the federal government.<sup>125</sup> This system was eventually utilized across the nation, most often by land grant universities.<sup>126</sup> SNAP-Ed is a community-focused approach to education, working with state, public, and private organizations that are closest to the communities each institution serves.<sup>127</sup> The program's success is monitored by the federal tracking system called Education and Administrative Reporting System.<sup>128</sup> The program tracks demographics, types of intervention—such as direct education or social marketing—partnerships with other entities, SNAP-Ed meeting settings, and topics covered.<sup>129</sup>

v. *Senior Farmers Market*

The Farm Bill extends funding for the senior farmers's market nutrition program, which aims to bring fresh produce from local farmers to seniors through the Commodity Credit Corporation, at the Agriculture Secretary's discretion.<sup>130</sup> The program allows low-income seniors age sixty or older to exchange coupons for eligible foods such as fruit, vegetables, honey, and fresh herbs at farmers markets, roadside stands, and other

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<sup>123</sup> Lauren E. Au, *The Academy of Nutrition and Dietetics' Priorities in the 2018 Farm Bill*, 118 J. OF THE ACAD. OF NUTRITION & DIETETICS, 767, 769 (2018).

<sup>124</sup> *Id.*

<sup>125</sup> *Supplemental Nutrition Education Program*, U.S. DEP'T OF AGRIC. NAT'L INST. OF FOOD & AGRIC., <https://nifa.usda.gov/program/supplemental-nutrition-education-program-education-snap-ed> [<https://perma.cc/CM6Q-B2SU>].

<sup>126</sup> *Id.*

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

<sup>128</sup> *Education and Administrative Reporting System (EARS) Factsheet*, U.S. DEP'T OF AGRIC. (Dec. 2016) [https://snaped.fns.usda.gov/sites/default/files/documents/EARS\\_Factsheet\\_December%202016\\_508\\_Compliant\\_0.pdf](https://snaped.fns.usda.gov/sites/default/files/documents/EARS_Factsheet_December%202016_508_Compliant_0.pdf) [<https://perma.cc/LSS9-PJZR>].

<sup>129</sup> *Id.*

<sup>130</sup> 7 U.S.C.S. §3007 (2019).

community-based agriculture programs.<sup>131</sup> The program aims to support local farmers while increasing older Americans' access to nutritious local foods.<sup>132</sup> Studies have shown that every \$1 in SNAP results in a \$1.70 return to the community.<sup>133</sup> In 2018, fifty-three grants were awarded to various state agencies and tribal nations, although not all of them participate on a statewide level.<sup>134</sup> The previous year saw the program reach over 800,000 seniors at over 6,000 farmers markets, roadside stands, and community programs.<sup>135</sup> Benefits are only given during harvest season, generally May through October, and are based on the states individual climate.<sup>136</sup> The 2018 Farm bill Extends the program's \$20.6 million in annual funding until 2023.<sup>137</sup>

vi. *Community Food Projects*

Community food projects faced a substantial hit, losing \$4 million in funding in the newest iteration of the Farm Bill; in section 4017, Assistance for Community Food Projects, Section 25(b)(2) of the Food and Nutrition Act of 2008 was amended to decrease funding from \$9 million in 2015 and every year after, to \$5 million for 2019 and every year after that.<sup>138</sup> A community food project is defined as a localized project that becomes self-sustaining after a one-time contribution from the federal government and aims to help the food needs of low-income individuals through distribution, community outreach, and education.<sup>139</sup> It should also hope to increase a community's self-reliance and access to fresh produce and local food.<sup>140</sup>

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<sup>131</sup> *Senior Farmers Market Nutrition Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/sfmnp/overview>[<https://perma.cc/JS2X-AANX>].

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

<sup>133</sup> *Policy Basics: The Supplemental Nutrition Assistance program (SNAP)*, CTR. ON BUDGET & POLICY PRIORITIES (Jun. 25, 2019), <https://www.cbpp.org/research/food-assistance/policy-basics-the-supplemental-nutrition-assistance-program-snap> [<https://perma.cc/945R-5VJL>].

<sup>134</sup> U.S. DEP'T OF AGRIC., *supra* note 125.

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

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

<sup>137</sup> 7 U.S.C.S. §3007 (2019).

<sup>138</sup> 7 U.S.C.S. § 2034(b)(2) (2019); Agriculture Improvement Act § 4017.

<sup>139</sup> 7 U.S.C.S. § 2034(a)(1)(B)(i)(I) (2019).

<sup>140</sup> *Id.*



In the past, the USDA has approved a variety of projects, ranging from community gardens to Native People's food independence and more.<sup>141</sup> Whether it be in the creation of a farm-to-table snack program or “pay what you can” restaurant that serves local produce, federal money is being utilized to serve communities that may not have access to fresh, local produce.<sup>142</sup> These projects show the depth of a community's ingenuity.<sup>143</sup>

One successful example of a community food project is the Open Door Café in Wytheville, VA.<sup>144</sup> Through private funding, a federal grant, and the fortuitous sale of a local building, the non-profit expanded their two-day-a-week community food kitchen to a five day “pay what you can” lunch program.<sup>145</sup> The project collects detailed information on average donations per meal and the average costs per meal.<sup>146</sup> They also offer tokens for one free meal as a promotional measure.<sup>147</sup> Furthermore, one-third of the program's “main entre proteins” comes from local farms.<sup>148</sup> Director Andy Kegley wrote in an email that of the 59 other “pay what you can” programs, Open Door Café – to his knowledge – is the only one to have taken advantage of these community food project grants.<sup>149</sup> The success of Open Door Café may encourage other similarly-situated programs around the country to seek out federal funding as well.<sup>150</sup>

However, the unfortunate reality is that federal grants for such programs cannot sustain large-scale programs on their own without additional outside funding.<sup>151</sup> The Open Door Café's budget is illustrative of this issue; the Café only received \$240,000

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<sup>141</sup> *Current Research Information Systems*, U.S. DEPT OF AGRIC. NAT'L INST. OF FOOD & AGRIC., [https://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=\(GC=LN\\*\)%20AND%20\(IY=2007:2017\)&format=WEBTITLESG](https://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=(GC=LN*)%20AND%20(IY=2007:2017)&format=WEBTITLESG) [<https://perma.cc/9QZM-HPT4>].

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> E-mail from Andy Kegley, Exec. Dir., Helping Overcome Poverty's Existence, Inc., to Lexington Souers (Jan. 24, 2019, 08:22 EST) (on file with author).

<sup>145</sup> OAK HILL FUND, NARRATIVE REPORT 1 (2019).

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

<sup>147</sup> Andy Kegley, Executive Director, Helping Overcome Poverty's Existence, Inc., Open Door Café, Address at One World, Everyone Eats (Jan. 19, 2019).

<sup>148</sup> OAK HILL FUND, *supra* note 145.

<sup>149</sup> E-mail from Andy Kegley, *supra* note 144.

<sup>150</sup> *See id.*

<sup>151</sup> *See* OAK HILL FUND, *supra* note 145.

of their estimated \$964,028 budget from the federal government.<sup>152</sup> The USDA, now \$4 million short of their previous budget in the 2014 Farm Bill, must calculate which of these programs is most deserving of funding.<sup>153</sup> Community Food Projects like the Open Door Café have the most potential to have an impact on a community because they change the environment of a food desert, but constrained budgets require these programs to seek funding from private entities instead of relying solely on federal monies.

*vii. Healthy Food Financing*

The Healthy Food Financing Initiative increases access to healthy food by creating and preserving employment in low-income areas that are commonly considered as food deserts.<sup>154</sup> Eligible programs under the initiative attempt to expand the quality of staple food items through the increase or maintenance of retail spaces that sell perishable food items, and accept SNAP benefits.<sup>155</sup> The program works through several entities, beginning with the USDA, which then transfers money to state and regional initiatives, and funds are finally distributed to individual food projects in the community.<sup>156</sup> One distinguishing factor of the Initiative is that priority is given to projects with one or more specific factors, which include gender or race-based minority-owned businesses, areas served by public transit, or the use of locally grown foods.<sup>157</sup> The Healthy Food Financing Initiative was a product of President Obama's White House Task Force on Childhood Obesity, that sought to combine resources from the USDA, Treasury, and Health and Human Services.<sup>158</sup> These

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

<sup>153</sup> Letter from Keith Hall, Director, Congressional Budget Office, to Hon. Michael Conaway (Dec. 11, 2018) (on file with author).

<sup>154</sup> 7 U.S.C.A. § 6953(a) (2014).

<sup>155</sup> 7 U.S.C.A. § 6953(c)(B)(i)(ii) (2014).

<sup>156</sup> See *2018 Farm Bill: Healthy Food Financing Initiative Legislative Summary & Outline*, POLICYLINK, REINVESTMENT FUND & THE FOOD TRUST (Jan. 28, 2018) <https://fudge.house.gov/uploads/HFFI%20Bill%20Summary.pdf> [<https://perma.cc/MJ9U-QRGH>] [hereinafter *2018 Farm Bill*].

<sup>157</sup> 7 U.S.C.A. § 6953(C)(II)(III)(IV) (2014).

<sup>158</sup> Anne Stych, *Better nutrition is FDA's latest life-saving initiative*, AM. CITY BUS. J. (Mar. 30, 2018, 8:58 AM), <https://www.bizjournals.com/bizwomen/news/latest->

agencies used their resources, either through grants or financial planning assistance, to promote access to healthy food.<sup>159</sup> Furthermore, the 2018 Farm Bill added the term “enterprises” to the language in Section (a) and section (b)(3)(B)(iii).<sup>160</sup> However, the document failed to define “enterprises,” leaving a bevy of interpretations ranging from a “purposeful activity” to a “developed business organization.”<sup>161</sup> Further study of aggregated legislative history beyond the 2018 Farm Bill indicates the definition may lean more toward the business organization interpretation.<sup>162</sup> The amendment brought by Reps. Fudge, Evans and Lee references enterprises as defined by the Code of Federal Regulations which defines “business enterprise” as “an entity organized for the profit with a place of business located in the United States, and which operates primarily within the United States or which makes significant contribution to the United States economy through the payment of taxes or use of American products, material or labor.”<sup>163</sup> A policy document produced by PolicyLink indicated that “enterprises” should be defined as the pertinent legislative history suggests.<sup>164</sup> However, this information only concerns the amendment to the Healthy Food Financing Initiative Reauthorization Act, which was only accepted in part in the 2018 Farm Bill.<sup>165</sup> Creating more confusion in the interpretation of “enterprise,” the Code of Federal Regulations defines an “enterprise” as possibly including a foreign entity,<sup>166</sup> but the PolicyLink document contradicts this notion, stating instead that “enterprises” are regional, state or local collaborative entities.<sup>167</sup> It is hard, but not impossible, to imagine a foreign entity taking part in such a program. This confusion, however,

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[news/2018/03/better-nutrition-is-fdas-latest-life-saving.html?page=all](https://www.fda.gov/news/2018/03/better-nutrition-is-fdas-latest-life-saving.html?page=all)  
[<https://perma.cc/M4NF-85TS>].

<sup>159</sup> CED Healthy Food Financing Initiative FY 2016, OFF. OF COMMUNITY SERV., <https://www.acf.hhs.gov/ocs/programs/community-economic-development/healthy-food-financing> [<https://perma.cc/K636-ZBV6>].

<sup>160</sup> Agriculture Improvement Act of 2018 § 4204.

<sup>161</sup> *Enterprise*, MERRIAM-WEBSTER <https://www.merriam-webster.com/dictionary/enterprise> [<https://perma.cc/EV2K-8WZZ>].

<sup>162</sup> *See* 49 C.F.R. § 26.5(2) (2019).

<sup>163</sup> *Id.*

<sup>164</sup> *2018 Farm Bill*, *supra* note 156.

<sup>165</sup> *Id.*

<sup>166</sup> *See* 49 C.F.R. § 26.5(2) (2019).

<sup>167</sup> *2018 Farm Bill*, *supra* note 156.

leaves the Healthy Food Financing Initiative with much room for improvement and clarification.

*viii. Food Donation standards*

Slightly damaged items may be donated under the 2018 Farm Bill, allowing previously wasted foods to be included in donations brought to food insecure communities.<sup>168</sup> Now, the Emergency Food Assistance Act of 1983 has been amended to include “apparently wholesome” (following the Child Nutrition Act of 1966) foods.<sup>169</sup> “Apparently wholesome” means the food satisfies all federal, state and local quality and labeling laws and regulations, even if the food is not marketable because of freshness, age, appearance, grade, or other condition.<sup>170</sup> Essentially, items that are donated must meet specific government guidelines but not the other standards selective or wealthier consumers may have. This is a way to utilize food that might otherwise be wasted due to its imperfections. The amendment also requires that the Secretary make this change known to the public, as well as provide guidance for those interested in donating.<sup>171</sup>

*ix. Purchase of Fresh Produce in Schools and Service Institutions*

The 2018 Farm Bill also extends the purchase of fresh fruits and vegetables for schools and service institutions to 2023.<sup>172</sup> The extension allows the Secretary of Agriculture to spend a minimum of \$50 million each year to purchase fruits vegetables and other food crops, and then distribute them to schools and service institutions.<sup>173</sup> The Department of Defense also manages contracts with vendors, some of which are local growers.<sup>174</sup> The USDA and

<sup>168</sup> See Agriculture Improvement Act of 2018 § 4104.

<sup>169</sup> *Id.*

<sup>170</sup> 42 U.S.C.A. § 1791(b)(2) (2019).

<sup>171</sup> Agriculture Improvement Act of 2018 § 4104.

<sup>172</sup> 7 U.S.C.A. § 612c-4(b) (2014).

<sup>173</sup> *Id.*

<sup>174</sup> *USDA DoD Fresh Fruit and Vegetable Program*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (Aug. 30, 2019), <https://www.fns.usda.gov/fdd/usda-dod-fresh-fruit-and-vegetable-program> [<https://perma.cc/4D4Q-Z97M>].

the Department of Defense's Fresh Fruit and Vegetable Program began in 1994 and now reaches forty-eight states, as well as additional territories.<sup>175</sup> This allocation can change throughout the year, and there is no cap on the entitlements available.<sup>176</sup> The USDA has a multitude of resources schools can use to increase their local food production, providing them with examples of successful programs, guidelines, and meal plans.<sup>177</sup>

*x. Service of Traditional Foods in Public Facilities*

The 2018 Farm Bill amended the 2014 version of the bill to extend protections to state, county, and local entities who serve traditional foods as a part of food service programs.<sup>178</sup> Alaskan Native Peoples have especially supported this program.<sup>179</sup> Previously, if an organization received federal funding, traditional foods could not be supplied as federal funding did not include guidelines for traditional foods.<sup>180</sup> Now, childcare facilities, food programs, and senior living centers can serve foods like whale blubber, roasted seal meat or reindeer, which many native people have eaten their entire lives.<sup>181</sup> Additionally, Alaska's creation of a traditional foods processing facility in order to safely process these foods generated industrial growth throughout the state.<sup>182</sup>

III. FOOD DESERT PREVENTION AND ELIMINATION SHOULD FOCUS ON COMMUNITY CENTERED INITIATIVES WITH SOME FEDERAL ASSISTANCE, RATHER THAN SOLELY GOVERNMENT INTERVENTION

*A. Community gardens*

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup>NATIONAL FARM TO SCHOOL NETWORK, <http://www.farmtoschool.org> [https://perma.cc/4N9U-J4YS].

<sup>178</sup> Casey Leins, *The Push for Traditional Foods in Alaska*, U.S. NEWS (Jan. 19, 2018 12:01 AM) <https://www.usnews.com/news/best-states/articles/2018-01-19/now-on-the-menu-at-some-alaska-public-facilities-caribou-and-seal> [https://perma.cc/88D2-HTYU].

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

The solution for food deserts can be found by first looking at community food security, which invites the entire community to focus their diets on nutritious food while simultaneously establishing environmentally sustainable actions by way of projects like community gardening.<sup>183</sup> Community gardens encourage individuals to contribute to the food system as a cohort.<sup>184</sup> One example of this is the Duncan Street Miracle Garden, a community garden in Baltimore, Maryland, which is situated within a food desert.<sup>185</sup> The local garden is surrounded by restaurants, bars, and corner stores, all of which sell unhealthy or expensive food options and almost no fruits or vegetables.<sup>186</sup> The community's only access to low-priced produce is a single supermarket in the area.<sup>187</sup> Amidst this disparity, eleven gardeners on seventeen plots work with the land, as both a beautification and practical endeavor.<sup>188</sup> Any surplus food is donated to local churches and soup kitchens, as well as specific families and individuals in need.<sup>189</sup> The garden serves as a learning environment for families but also creates a community space for children, who know the garden provides access to fresh fruits.<sup>190</sup>

While community gardens do not serve as the ultimate solution to food insecurity, they do successfully provide communities with access to fresh foods.<sup>191</sup> Food deserts appear to provide a plethora of food options and serve an area that may be low-income, but not so low that government assistance is needed.<sup>192</sup> Community gardens offer a temporary solution by utilizing vacant lots until more permanent plans develop for the space, while also providing the community with healthy food options and the therapeutic aspect of working with the land.<sup>193</sup> However, the success of a garden depends upon a reliable group of

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<sup>183</sup> Corrigan, *supra* note 23, at 1234.

<sup>184</sup> *Id.* at 1232.

<sup>185</sup> *Id.* at 1235.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 1236.

<sup>188</sup> *Id.* at 1233.

<sup>189</sup> *Id.*

<sup>190</sup> Corrigan, *supra* note 23, at 1238.

<sup>191</sup> *Id.* at 1233.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 1234.

community volunteers.<sup>194</sup> Gardens operating on a “bottom-up” or community-centered planning process are more successful because they focus on the ideas of the community, and place growing responsibility on those individuals.<sup>195</sup> Community and urban gardening are unique because they typically do not require a permit when done for personal use, which means that vacant lots can be easily transitioned from empty spaces to accessible locations for healthy food.<sup>196</sup> After looking to the 2018 Farm Bill for guidance, communities seeking to expand their community garden programs should strongly consider community food projects, public-private partnerships, urban food projects, and micro-grants (if eligible).

*i. Food Surplus*

As a highly regulated commodity, food surplus regulation fluctuates with every presidential administration, often leaving those in food insecure areas outside of the parameters of distribution.<sup>197</sup> Food assistance is closely related to surplus—rising and falling with the resources.<sup>198</sup>

Edible food is frequently discarded, creating massive amounts of food waste.<sup>199</sup> This process creates a vacuum of waste that is more than double the cost of the 2018 Farm Bill.<sup>200</sup> Were Congress to address the issue, the unnecessary costs caused by food waste would decrease, and access to farm-fresh foods in insecure areas would increase.<sup>201</sup> By utilizing even just one-third of wasted food products, millions of Americans in food insecure areas would experience greater security.<sup>202</sup> Increased environmental benefits, such as methane gas reduction, also

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<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> See RICHARD PAARLBERG, *FOOD POLITICS: WHAT EVERYONE NEEDS TO KNOW* 180-81 (Oxford University Press, 2nd ed. 2013) (explaining the benefits provided by a non-permit requirement for urban gardens).

<sup>197</sup> See Luna, *supra* note 1, at 214.

<sup>198</sup> *Id.* at 248.

<sup>199</sup> Laurie Ristino, Emily Speigel, & Nico Lustig, *Creating a Systemic Solution for Food Waste Through the Farm Bill*, 33 NAT. RESOURCES & ENV'T 1, 1 (2018).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 1-2.

<sup>202</sup> *Id.* at 2.

encourage a significant reduction in food waste.<sup>203</sup> The EPA created the Food Recovery Hierarchy, which suggests consumers, retailers, and restaurants employ a strategy called source reduction, which encourages these individuals and business to only buy as much produce as is necessary.<sup>204</sup>

A second suggestion includes donating the edible food that would typically be thrown away to food banks, soup kitchens, and shelters instead.<sup>205</sup> This strategy is reminiscent of gleaning, a centuries-old practice of gathering unused produce from fields and redistributing them to food insecure areas.<sup>206</sup> A variety of non-profits address food insecurity by connecting farmers to those with limited access to healthy food options.<sup>207</sup> In central Kentucky, Glean KY has gathered 1.3 million pounds of food since 2010 with the help of over 500 volunteers, and distributed it to over 100 non-profits.<sup>208</sup> Another organization, Concrete Jungle, is an Atlanta-based organization that collects fruit from a documented network of fruit trees across the city.<sup>209</sup> Concrete Jungle also grows and harvests on a plot of personal land in Southwest Atlanta, and since its creation has harvested 93,564 pounds of fruit.<sup>210</sup> Nationwide, organizations like the Society of St. Andrew partner with secular and non-secular groups to glean a variety of food items.<sup>211</sup> Society of St. Andrew is most well-known for its potato collection program, which harvested more than ten million pounds of potatoes in 2017.<sup>212</sup> The USDA advises that those with questions about these organizations should contact the Center of Faith-Based and Neighborhood Partnerships, further illustrating the connection between faith-based organizations and gleaning practices.<sup>213</sup>

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<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> Ristino, et al, *supra* note 199.

<sup>207</sup> *See e.g.*, GLEANKY, <http://gleanky.org> [<https://perma.cc/7UJQ-PETC>]; CONCRETE JUNGLE, <https://www.concrete-jungle.org> [<https://perma.cc/7BYG-VNN2>]; SOCIETY OF ST. ANDREW, <https://endhunger.org> [<https://perma.cc/EEW6-AV7P>].

<sup>208</sup> GLEANKY, *supra* note 207.

<sup>209</sup> CONCRETE JUNGLE, *supra* note 207.

<sup>210</sup> *Id.*

<sup>211</sup> SOCIETY OF ST. ANDREW, *supra* note 207.

<sup>212</sup> *Id.*

<sup>213</sup> LET'S GLEAN! UNITED WE SERVE TOOLKIT, U.S. DEP'T OF AGRIC. 1, 6 (2010), [https://www.usda.gov/sites/default/files/documents/usda\\_gleaning\\_toolkit.pdf](https://www.usda.gov/sites/default/files/documents/usda_gleaning_toolkit.pdf) [<https://perma.cc/CN78-ZNK5>]. (suggesting that the Bible contains passages on gleaning, and as such, many of these organizations are religiously motivated).



The USDA also promoted gleaning in a 2010 document by explaining how to find donors, how to connect those donors with food banks, and how to recruit volunteers.<sup>214</sup> The publication cites several reasons for introducing gleaning into a community, such as preventing unnecessary food waste, increasing access to quality food, adding resources to non-profits, and fostering relationships between farmers and communities.<sup>215</sup>

Many non-profits promote gleaning, but state governments can also positively influence gleaning through tax incentives, as Colorado, Iowa, and Oregon have done.<sup>216</sup> An estimated \$218 billion is spent each year on wasted food, which means that nearly 20 percent of agricultural land in America is utilized to produce food that will end up being wasted.<sup>217</sup> Efforts such as a 2015 food waste reduction goal have become a primary focus of the USDA and the Environmental Protection Agency.<sup>218</sup> Many state governments have also focused on reducing food waste.<sup>219</sup> The New Jersey legislature, at the prompting of local agricultural societies, created a commemorative day called “Farmers Against Hunger Day” in 2016, which is situated in the middle of New Jersey Gleaning Week and is aimed at encouraging the community to provide healthy food to those in need.<sup>220</sup> The preamble to the bill states the potential to alleviate food waste, the issue of increased methane emissions, and hunger as reasons for the local holiday’s creation.<sup>221</sup> This program was driven by community farmers who saw a need for change and is an example of how communities can be altered by providing fresh produce to its residents and allowing farmers to prevent food waste.<sup>222</sup> Community food projects, public-private partnerships, and urban food research grants would be the most helpful way to introduce federal resources in food insecure

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<sup>214</sup> *Id.* at 2.

<sup>215</sup> *Id.* at 4.

<sup>216</sup> Ristino, et al, *supra* note 199, at 3, 4.

<sup>217</sup> *The Harvard Law School Food Law and Policy Clinic: Report Urges Congress to Save the U.S. Billions in Resources by Tackling Pervasive Food Waste in the 2018 Farm Bill* Harvard Law School Food Law and Policy Clinic, AGRICULTURE WEEK (May 18, 2017).

<sup>218</sup> *Id.*

<sup>219</sup> *See id.*

<sup>220</sup> N.J. STAT. ANN. § 4:1-20.3 (West 2016).

<sup>221</sup> *See* St. Healthcare L. Libr. 36:2-260, 2016 WL 6625865 (current through Sep. 30, 2019).

<sup>222</sup> *See id.*

areas. Further, farmers and community leaders should take notice of changes to food donation standards, which allow them to utilize more fruits and vegetables.

*ii. Rural Hunger Initiative*

Rural hunger grants sponsored by public entities, the government (including universities), and non-profit organizations enhance local food use and/or food security through specialized community programs.<sup>223</sup> Community members can also utilize resources for solving rural hunger through public-private partnerships, as well as by taking advantage of the nutrition education provisions of the 2018 Farm Bill.<sup>224</sup> While much of the research on food deserts is focused on urban America, rural Americans face far more negative health outcomes than their city-dwelling counterparts.<sup>225</sup> These rural communities are more likely to be in poor or fair health nationwide, and are often at risk for childhood obesity.<sup>226</sup> For example, a 2016 report found that more than half of the counties with the highest rates of food insecurity are outside of metro or micropolitan boundaries.<sup>227</sup> Less than half of the counties in the United States are classified as rural, which makes this fact even more startling.<sup>228</sup> Rural communities are deserving of increased research and support and public entities, government groups and others should focus their attention here.

*iii. Community-owned grocery stores*

Some refuge for those in food deserts may be in community-owned grocery stores, like Mandala Grocery in Oakland,

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<sup>223</sup> *Rural Hunger and Access to Healthy Food Funding & Opportunities*, RURAL HEALTH INFO HUB, <https://www.ruralhealthinfo.org/topics/food-and-hunger/funding> [https://perma.cc/ENP7-3RS6].

<sup>224</sup> *Id.*

<sup>225</sup> *Rural Hunger in America: Get the Facts*, FOOD RESEARCH & ACTION CTR. (2018), <https://frac.org/wp-content/uploads/rural-hunger-in-america-get-the-facts.pdf> [https://perma.cc/7JYC-JM3L].

<sup>226</sup> *Id.*

<sup>227</sup> FEEDING AMERICA, MAP THE MEAL GAP 2016 17 (2016), <https://www.feedingamerica.org/sites/default/files/research/map-the-meal-gap/2014/map-the-meal-gap-2014-exec-summ.pdf> [https://perma.cc/2TNT-EXED].

<sup>228</sup> *Id.*

California, which began in 2009.<sup>229</sup> Mandala Grocery allows employees who work over 1,000 hours to buy into the company and become worker-owners.<sup>230</sup> In 2017, Indiana Representative André Carson proposed the Food Deserts Act of 2017, which asked the Secretary of Agriculture to create grants that establish and support grocery stores in needed communities.<sup>231</sup> The bill was referred to the committee on agriculture<sup>232</sup> and then to the subcommittee on nutrition, but it never left committee.<sup>233</sup> This bill attacks some of the issues that researchers have criticized, such as placing raw or unprocessed healthful foods at prices at or below market value, rather than just placing grocery stores in low-income areas.<sup>234</sup> Had it passed, or even entered floor debate, the bill would have impacted grocery stores like Mandala Grocery, and helped avoid issues that other stores face, like intense gentrification.

A 2012 article calls into question the realistic potential of solving food deserts, which often follows an “if you build it, they will come model.”<sup>235</sup> A study found, rather unsurprisingly, that variety and quality of products are a key factor in a low-income shopper’s decision.<sup>236</sup> This research is vital in helping both government and non-profit entities serve these communities by promoting healthy eating.<sup>237</sup> By creating safe, clean grocery stores with engaging customer service, customers are more likely to make healthy decisions, better targeting the issues that food deserts genuinely cause.<sup>238</sup>

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<sup>229</sup> Adele Peters, *To End a Food Desert, These Community Members Opened their Own Grocery*, FAST CO. (Jan. 8, 2018), <https://www.fastcompany.com/40514428/to-end-a-food-desert-these-community-members-opened-their-own-grocery> [https://perma.cc/EE4Z-TLK2].

<sup>230</sup> *Id.* at 2.

<sup>231</sup> Food Deserts Act of 2017, H.R. 3104, 115th Cong. (2017).

<sup>232</sup> *Id.*

<sup>233</sup> *H.R. 3104—Food Deserts Act of 2017: Actions*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/3104/all-actions?overview=closed#tabs> [https://perma.cc/8PVB-YAXQ].

<sup>234</sup> Food Deserts Act of 2017, H.R. 3104, 115th Cong. (2017).

<sup>235</sup> Rachel Estabrook, *There’s More to Fixing Food deserts than Building Grocery Stores*, THE SALT (March 20, 2012, 3:54 PM), <https://www.npr.org/sections/thesalt/2012/03/20/149000673/theres-more-to-fixing-food-deserts-than-building-grocery-stores> [https://perma.cc/9t92-6LVQ].

<sup>236</sup> *Id.*

<sup>238</sup> *Id.* at 2–3.

<sup>238</sup> *Id.* at 3.

### CONCLUSION

The fight to end food deserts is not an easy one, and while many federal programs act as a band-aid for the real issue, community-based models, which utilize federal micro-grants or community food projects, appear to be a more successful answer to food insecurity. The 2018 Farm Bill has the answers, even with limited funding, but it is dependent on community partnerships. Excluding instances of federally run programs, like the Schumacher Initiative and SNAP-ED, eligible entities must be the ones to advocate for their community. Ultimately, food insecurity can be solved, or at least considerably eased, by food assistance. However, food security and healthy food choices are often not synonymous. By offering farmers market coupons or other subsidies on fresh fruits and vegetables, households can live healthier lifestyles. Further, federal education programs help alter environments and act as accurate indicators of healthy lifestyle changes that will affect generations to come.