



## State Actions in Massachusetts to Support Local and Regional Food Systems Producers March 24, 2020

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As the United States responds to the coronavirus (COVID-19) crisis, the Harvard Law School Food Law and Policy Clinic (FLPC) is tracking a variety of anticipated challenges across the food system. One of these concerns is the loss of market access for the many farmers and food producers who primarily sell to local and regional food systems. These producers rely primarily on direct-to-consumer markets, like farmers markets and farm stands, and purchases by large institutions, like schools and universities, all of which have been and will be heavily disrupted due to social distancing measures. CRS estimates show that the direct-to-consumer markets accounted for nearly \$12 billion in farm sales in 2017.<sup>1</sup>

Many farmers markets have been canceled for the coming weeks, and schools are no longer operating their farm-to-school procurement programs. Farmers selling in local and regional markets stand to lose much or all of their revenue for the coming weeks and months, and tons of good food will go to waste. At the same time, given business closures, more consumers will be struggling to purchase food and food banks and pantries will be stretched thin. As policymakers evaluate actions to protect the food system, particular care is needed to address the strains on local and regional producers.

**This fact sheet includes recommendations for what Massachusetts in particular and other states can do within the existing programs.** We have [additional recommendations](#) for Congress and USDA as to what changes can be made at the federal level to help free up more funds to help these local and regional food producers.<sup>2</sup>

### **I. Use Senior Farmers Market Nutrition Program (SFMNP) authority to bulk purchase and distribute local foods:**

The SFMNP regulations currently give states the authority to bulk purchase quantities of food from farmers and redistribute it to SFMNP participants.<sup>3</sup> Massachusetts and other states should immediately act by making bulk purchases of food from local producers,

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<sup>1</sup> RENEE JOHNSON, CRS, REP. NO. IF11252, 2018 FARM BILL PRIMER: SUPPORT FOR LOCAL FOOD SYSTEMS (2019), <https://fas.org/sgp/crs/misc/IF11252.pdf>.

<sup>2</sup> Emily Broad Leib, Chris Mawhorter, Brianna Johnson-King, and Emma Scott, Support for Local and Regional Food Systems in COVID-19 Response, March 16, 2020, [https://www.chlpi.org/wp-content/uploads/2013/12/COVID\\_Support-for-Local-and-Regional-Food-Systems\\_FLPC\\_NSAC\\_final-1.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/COVID_Support-for-Local-and-Regional-Food-Systems_FLPC_NSAC_final-1.pdf).

<sup>3</sup> 7 C.F.R. § 249.10(a)(6) (allowing states to “purchase bulk quantities of eligible foods directly from authorized farmers. Such foods must then be equitably divided among and distributed directly to eligible SFMNP participants.”); *see also*, *Senior Farmers’ Market Nutrition Program*, USDA-FNS (2020), <https://www.fns.usda.gov/sfmnp/senior-farmers-market-nutrition-program>.

especially those unable to sell produce due to COVID-19 restrictions, and distribute the produce directly to SFMNP participants. States can partner with local agencies to help with the distributions. In 2019, Massachusetts received \$534,416 in SFMNP benefits; these funds could go a long way to support local food system producers if spent in this way.<sup>4</sup>

## **II. Request that USDA also allow bulk purchases under WIC Farmers Market Nutrition Program (FMNP)**

Right now, the language authorizing bulk purchases is only in SFMNP. In order to also do bulk purchases through WIC FMNP, USDA will have to allow this. Massachusetts and other states can request for USDA to allow this flexibility. In 2019, Massachusetts received \$572,712 for WIC FMNP.<sup>5</sup>

## **III. By March 31, amend the state plan under The Emergency Food Assistance Program (TEFAP) to ask for funds under the new Farm to Food Bank project fund:**

First authorized in the 2018 Farm Bill, the Farm to Food Bank (TEFAP FTFB) program provides \$4 million in mandatory annual funds to state TEFAP agencies and Emergency Feeding Organizations to cover the “harvesting, processing, packaging, or transportation” of commodities that would otherwise be wasted.<sup>6</sup> USDA already has allocated TEFAP FTFB funding for each state; under its allocations, Massachusetts can receive just over \$62,000 for these projects in FY2020.<sup>7</sup> This funding could help divert unsold local produce into strained emergency systems, by paying for the harvesting and transport of those foods to food banks. States must file a state plan amendment to their TEFAP plan to access this funds – the information was released on March 12, 2020; in order to access these funds state plan amendments are due to USDA by March 31, 2020.

Additionally, if future federal changes allow for *purchasing* commodities, this would speed up their ability to use funds to further support local food by allowing the EFOs to purchase from local farmers rather than just pay for harvesting, processing, packaging and transportation.

## **IV. Use TEFAP administrative funds to facilitate more diversion of local foods into the emergency food system:**

The Families First Coronavirus Response Act allocated an additional \$400M to TEFAP. This allocation provides \$300M for purchasing nutritious foods and \$100M for

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<sup>4</sup> U.S. DEP’T OF AGRIC., FOOD AND NUT. SERVICE, *FY 2012 – FY 2019 Senior Farmers’ Market Nutrition Program Grant Amounts*, <https://fns-prod.azureedge.net/sites/default/files/resource-files/SFMNP-Grant-Amounts.pdf>

<sup>5</sup> U.S. DEP’T OF AGRIC., FOOD AND NUT. SERVICE, *FY 2012 – FY 2019 WIC Farmers’ Market Nutrition Program Grant Amounts*, <https://fns-prod.azureedge.net/sites/default/files/resource-files/WFMNP-Grant-Amounts.pdf>

<sup>6</sup> TEFAP – Farm to Food Bank Projects State Plan Requests and Fiscal Year 2020 Allocations, USDA-FNS (2020), <https://www.fns.usda.gov/tefap/farm-food-bank-projects>.

<sup>7</sup> *TEFAP Farm To Food Bank Project Potential Allocation Worksheet*, USDA-FNS (2020), <https://fns-prod.azureedge.net/sites/default/files/resource-files/Attachment%20B%20-%20FY2020TEFAP%20Farm%20to%20Food%20Bank%20Projects%20Potential%20Allocations.pdf>.

supporting storage and distribution of the foods.<sup>8</sup> This funding will allow states to expand their state TEFAP plans. Additionally, COVID-19 was identified as a pandemic, which allows USDA to implement flexibilities in their programs. TEFAP flexibilities include “adjust[ing] the types of commodities provided. . . and to provide deliveries to homes or other convenient pick-up points.”<sup>9</sup>

**a. States should utilize their authority to create and expand TEFAP plans to access additional federal funding for the purchasing and distribution of food:**

The Secretary of Agriculture may allow for the purchase of commodities, above the Federal obligations, for donation to emergency feeding organizations.<sup>10</sup> Per USDA-FNS guidance in 2009 and 7 C.F.R. 251.8(e)(1), “states may use TEFAP administrative funds to pay for indirect and direct expenses associated with distribution of TEFAP foods and of *foods secured from other non-Federal sources*.”<sup>11</sup> The state plan is limited to utilizing funds for “the harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by emergency feeding organizations.”<sup>12</sup> State plans are eligible for federal funding, but it cannot “exceed 50 percent of the total cost of the project.”<sup>13</sup> States should ensure that their plans incorporate a variety of commodities, especially “nutritious and useful” commodities approved by the Secretary are incorporated into their plans.<sup>14</sup>

**b. Purchase and distribute a wider range of commodities, especially from local producers:**

The Secretary has discretion to approve additional bonus commodities and under the current pandemic status of COVID-19, states have added flexibility to expand the commodities included in their state plans. While these additional commodities are usually determined when a commodity has a surplus for the year, the current economic problems call for inclusion of more commodities that have a surplus due to COVID-19 restrictions.<sup>15</sup> States should advocate for this wide range of produce, especially those sold by local producers who cannot sell their produce due to COVID-19 limitations on direct marketing avenues.

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<sup>8</sup> H.R. 6201, Families First Coronavirus Response Act, Title-By-Title Summary (2020), <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20summary.pdf>

<sup>9</sup> U.S. DEP’T OF AGRIC., FOOD AND NUT. SERVICE, *FNS Program Guidance on Human Pandemic Response*, <https://www.fns.usda.gov/disaster/pandemic>.

<sup>10</sup> 7 U.S.C. §§ 7502(a)-(g).

<sup>11</sup> 7 CFR § 251.8(e)(1); USDA-FNS, FD-095, FOOD DISTRIBUTION NATIONAL POLICY MEMORANDUM 1 (2020), [https://fns-prod.azureedge.net/sites/default/files/pmfd095\\_TEFAP-Use\\_of\\_TEFAP\\_Admin\\_Funds\\_0.pdf](https://fns-prod.azureedge.net/sites/default/files/pmfd095_TEFAP-Use_of_TEFAP_Admin_Funds_0.pdf).

<sup>12</sup> 7 U.S.C. § 7507(d)(1).

<sup>13</sup> 7 U.S.C. § 7507(d)(2).

<sup>14</sup> 7 U.S.C. § 7514 (b).

<sup>15</sup> KARA CLIFFORD BILLINGS, CRS REPORT NO. R45508, THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP): BACKGROUND AND FUNDING 10 (2020), <https://fas.org/sgp/crs/misc/R45408.pdf> (“USDA’s purchases of bonus commodities are based on agricultural surpluses or other economic problems, as raised by farm and industry organizations or USDA’s own commodity experts. The amount and type of bonus commodities that USDA purchases for TEFAP fluctuates from year to year...”).

## **V. Apply for GusNIP grants to support state producers, individuals and businesses:**

States agencies should apply for GusNIP grants or support nonprofits in their state in their applications, with a focus on partnering with nonprofit entities to collaborate on creative proposals that support small producers harmed by loss of market access during COVID-19. Such funds can increase opportunities for local producers to sell produce to SNAP beneficiaries. Applications for 2020 opened on March 13th and close on May 18th.

The Gus Schumacher Nutrition Incentive Program (GusNIP) provides grants to state agencies or partnerships between state agencies and other organizations, such as non-profit or for-profit entities.<sup>16</sup> These grants aim to “increase the purchase of fruits and vegetable among low-income consumers participating in the Supplemental Nutrition Assistance Program (SNAP) by providing incentives at the point of purchase.”<sup>17</sup>

Most importantly, these grants prioritize proposals that support “locally or regionally produced fruits and vegetables,” “offer supplemental services in high-need communities, including online ordering, transportation between home and store, and delivery services.,” and “coordinat[e] with multiple stakeholders.”<sup>18</sup> States should encourage agencies and entities that prioritize these goals in their proposals to support local producers effected by COVID-19 limitations. States should also incorporate plans for transportation and distribution of the produce to beneficiaries’ homes, therefore aiding with social distancing efforts. Finally, many different industries and businesses are negatively impacted by the changing economic conditions, thus state plans should support these businesses by partnering with a range of stakeholders to help develop and facilitate the program.

## **VI. Apply for FMLFPP grants to support local producers through online sales and direct-to-consumer delivery methods:**

The Farmers Market and Local Food Promotion Program (FMLFPP) provides grants to entities to assist farmers in selling products directly to consumers.<sup>19</sup> Entities eligible for grants include: agricultural businesses and cooperatives, food councils, local governments, nonprofit and public benefit corporations, and more.<sup>20</sup> States should encourage local governments and other entities to apply for these grants with a special focus on supporting producers impacted by loss of direct-marketing opportunities due to COVID-19. The current deadline to submit a grant proposal is May 11th, 2020.<sup>21</sup>

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<sup>16</sup> 7 U.S.C. § 7517(b)(1)(B).

<sup>17</sup> *Gus Schumacher Nutrition Incentive Program (formerly FINI)*, USDA-NIFA (2020), <https://nifa.usda.gov/program/gus-schumacher-nutrition-incentive-grant-program>.

<sup>18</sup> 7 U.S.C. § 7517(b)(2)(B).

<sup>19</sup> *Farmers Market Promotion Program*, USDA-AMS (2020), <https://www.ams.usda.gov/services/grants/fmpp>; *Local Food Promotion Program*, USDA-AMS (2020), <https://www.ams.usda.gov/services/grants/lfpp>.

<sup>20</sup> *Id.*

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

Grant proposals support and promote local food producers in a variety of ways, such as farmers markets, roadside stands, agritourism activities, community-supported agriculture programs, and online sales. Given limitations due to social distancing for many of these options, states should particularly encourage grant proposals focused on community-supported agriculture programs and online sales that allow farmers to deliver produce direct-to-consumers.