

To the 117th United States Congress:

We write to you today to discuss the issue of food insecurity in the United States. During the coronavirus pandemic, levels of food insecurity increased dramatically: Early evidence suggests that in 2020, over 17 million more Americans experienced food insecurity than in 2019.¹ And in 2021, that number is estimated to rise even further to an unprecedented 42 million people.²

At the same time, \$408 *billion* is spent processing, transporting, storing, and disposing of food that's never eaten each year, meaning *millions* of pounds of fresh food going to waste.³ Therefore, the issue is not so much lack of food—it's the inability to effectively leverage our food system.

In 1996, Congress passed the Federal Bill Emerson Good Samaritan Food Donation Act (42 U.S. Code § 1791) with bipartisan support. This legislation was designed to encourage companies to donate their surplus food and grocery products to nonprofits by providing civil and criminal liability protection to food donors and food recovery organizations. However, many food manufacturers, retailers, farmers, and restaurants still cite fear of liability as one of the main reasons they don't donate, which leads to massive amounts of food waste. Expanding and clarifying existing liability protections for food donation is crucial to ensuring that companies can donate safe, quality foods, including fresh produce, without a preventable concern about litigation.

We, the undersigned companies and nonprofit organizations, believe that with the right policy actions and guidance, such as the changes outlined in the Food Donation Improvement Act of 2021 introduced by Senator Blumenthal and Senator Toomey on November 30, 2021, we can make meaningful progress on this issue—which would provide immediate relief to the millions of Americans in our communities experiencing food insecurity. Specifically, we recommend members of Congress take the following steps:

1. Direct USDA to clarify key terms and conditions within the Emerson Act to raise awareness and reduce fear of retribution. Some provisions of the Emerson Act are still unclear, so donors remain afraid of legal liability. We recommend publishing clearer guidance, including an interpretation of key terms and best practices for food

¹ "Food Insecurity during COVID-19" *Craig Gundersen, Monica Hake, Adam Dewey, Emily Engelhard*. <https://onlinelibrary.wiley.com/doi/10.1002/aep.13100>

² "Hunger in America Is Growing." *Feeding America*, www.feedingamerica.org/hunger-in-america.

³ "Roadmap to 2030: Reducing U.S. Food Waste by 50% and the ReFED Insights Engine" *ReFED*. https://refed.com/uploads/refed_roadmap2030-FINAL.pdf

donations, as the current guidance does not address this issue. The guidance should do the following:

- **Clarify terms** such as “in good faith,” to help organizations understand what and when foods can be safely donated.
- **Clarify the quality and labeling standards** that donated foods must meet in order to qualify for liability protection.
- **Separately, draft guidance** around time/temperature controls, transportation, and date labeling in partnership for food donation with the FDA, similar to the FSIS published draft guidance on food safety for the donation of meat or poultry.⁴

2. Broaden protections to include more types of food donations, including items sold at low cost and donations offered from food businesses directly to end recipients. This will help the EPA and USDA reach their goal of reducing food loss and waste by 50% by 2030⁵, in alignment with the UN SDG2 goal of halving per capita food waste at the retail and consumer levels and reducing food waste along production and supply chains. The protections should accomplish the following:

- **Extend liability protection to donations provided at a low price.** Currently, the act only protects food donations where the end participant receives food free of charge. Expanding protections to cover nonprofit organizations that provide products at a low price (an amount that covers the cost of handling, administering, and distributing the food) would help support different food-donation models, such as social supermarkets or nonprofit grocery stores that sell donated and recovered food at a very low price.
- **Extend liability protection to certain “direct donations” made by food businesses directly to those in need.** The Emerson Act only covers donations to nonprofits, which creates an unnecessary barrier for businesses, restaurants, schools, and other organizations looking to donate food. The pandemic showed that local retailers, restaurant owners, and farmers are more than willing to step up and function as the backbones of their communities—and often have immediate access to community members not always reached by food pantries. Most food donors are required to have food protection and food handler certifications that adhere to safety standards comparable to food banks and pantries. Protecting direct donations by businesses and food service institutions

⁴ “FSIS Guideline to Assist with Donation of Eligible Meat & Poultry Products to Non-Profit Organizations December 2020.” *Food Safety and Inspection Service*, https://www.fsis.usda.gov/sites/default/files/media_file/2021-01/FSIS-Guideline-Food-Donation.pdf

⁵ “United States 2030 Food Loss and Waste Reduction Goal.” *Environmental Protection Agency*, <https://www.epa.gov/sustainable-management-food/united-states-2030-food-loss-and-waste-reduction-goal>

(or by farmers, who donate low-risk products such as produce) that adhere to these same high standards can allow individuals to pick up food from more accessible locations and prevent many “last mile” food delivery challenges.

3. Expand the federal enhanced tax deduction for food donation. The current US federal enhanced tax deduction for food donation provides an incentive for businesses by allowing them to deduct nearly twice the amount for food donations as can be deducted for other charitable donations. However, the current tax deduction isn't suited for farmers and doesn't cover nonprofit sales of donated food or transportation costs associated with donation. This discourages farmers from donating and nonprofits from innovating, which leads to excess waste. We recommend the following changes to the tax deduction:

- **Include transportation of donated food as a separate cost eligible for an enhanced tax deduction.** This will help businesses overcome one of the most expensive barriers to donating excess food: cost of transportation.
- **Provide an alternative tax credit for food donation by farmers.** Most farmers operate at such low-profit margins that they don't make enough to claim the enhanced tax deduction for food donation. Because of this, they are not adequately compensated for the costs of making those donations, often leading to lack of incentive and increased waste. Offsetting some of the cost of donation, including cost of labor, with an alternative tax credit that is better tailored to farmers would incentivize more farmers to donate.

By taking these actions, we can provide the necessary flexibility to encourage corporations, farmers, restaurants, business owners, nonprofits, and recovery networks to distribute safe, fresh food to those who need it most.

We are committed to using our resources to combat food insecurity—and identifying key opportunities to encourage accelerated progress through collective action. We believe that passing the Food Donation Improvement Act of 2021 is the first step toward making this a reality, and we urge Congress to prioritize the passing of the legislation. Thank you for your attention, and we welcome the opportunity to collaborate with you on this important issue.

The undersigned companies and nonprofit organizations include:

WW International

New York, NY

Harvard Law School Food Law and Policy Clinic

Cambridge, MA

Grubhub

Chicago, IL

Ahold Delhaize USA

Salisbury, NC

Blue Apron

New York, NY

ButcherBox

Boston, MA

City Harvest

New York, NY

Copia

San Francisco, CA

DC Central Kitchen

Washington, D.C.

Dole Packaged Foods, LLC

Westlake Village, CA

Eat Just, Inc.

San Francisco, CA

Farmers Fridge

Chicago, IL

Farmstead

Burlingame, CA

Food for Climate League

Chicago, IL

Food Recovery Network

Washington, D.C.

Hellmann's

Englewood Cliffs, NJ

Impossible Foods

Redwood City, CA

Just Salad

New York, NY

Lineage Logistics

Novi, MI

Misfits Market

Delanco, NJ

Natural Resources Defense Council

New York, NY

Oak View Group

Los Angeles, CA

Once Upon a Farm

Berkeley, CA

Panera Bread

St. Louis, MO

Rescuing Leftover Cuisine

New York, NY

Too Good To Go

New York, NY

World Wildlife Fund

Washington, D.C.