



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: United States

*More than enough food is produced to feed every person, yet one-third of all food is wasted. Redirecting safe, surplus food is an effective and compassionate solution, but it can be complicated because food is a heavily-regulated product.*

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

### U.S. FOOD LOSS AND WASTE

The U.S. sends about 63 million tons of food to landfills each year. This waste consumes 21% of all fresh water, 19% of fertilizer, and 18% of cropland in the U.S. At the same time, 11 percent of U.S. households were food insecure in 2018. The U.S. has attempted to address food waste through liability protections and tax incentives for food donations, as well as federal agency actions. Some states and localities have enacted organic waste bans or food waste diversion requirements. However, studies still show that \$218 billion is spent per to grow, process, transport and dispose of food that is never eaten.

#### United States: By the Numbers

- Population: 329,350,564
- GDP: \$20.544 trillion
- Poverty Rate: 11.8%
- Prevalence of Severe Food Insecurity: 1.0%
- Global Food Security Index: 83.7
- Food Sustainability Index: 68.6
- FLW Estimates: 63 million tons

### U.S. FOOD DONATION POLICY HIGHLIGHTS

**LIABILITY PROTECTION FOR FOOD DONATIONS:** The U.S. was the first country to offer liability protections for food donations, and still maintains **one of the strongest protections around**. The Bill Emerson Good Samaritan Act of 1996 provides **comprehensive federal protection from civil and criminal liability** to food donors and the nonprofit organizations that distribute food donations. The protection is available so long as the food is donated to a nonprofit that distributes food to the needy, the ultimate recipients are not charged for the food, the donations are made in good faith, and the donated food meets all food safety standards imposed by law. This is the baseline protection nationally; some U.S. states provide even more protection for additional types of donation.

**ACTION OPPORTUNITY:** In many ways the U.S. has the gold standard for liability protection; however, many businesses still report that they do not donate because of liability fears. The protection may be strengthened through the following actions: issuing interpretive regulations to answer the most common questions about the Act and to raise awareness about its protections; extending liability protection for direct donations and those that charge a nominal fee; and clarifying that liability protection extends to the donation of past-date food when the date refers to quality rather than safety.

**TAX INCENTIVES:** The U.S. offers **one of the most generous tax incentives** for food donors. U.S. taxpayers who donate food are eligible for two deductions under federal law: (1) a general tax deduction of the basis value of the food that applies to all charitable contributions, and (2) an enhanced tax deduction for qualified food donations that offers a higher benefit (up to 2x the basis value). To qualify for the enhanced deduction, donations must be made to a nonprofit organization that uses the food in a manner consistent with the organization's non-profit exempt status. The recipient organization must distribute the food for no cost and the food must comply with the Federal Food, Drug, and Cosmetic Act at the time of donation. The donor must receive a written statement from the nonprofit organization in order to claim the enhanced deduction

**ACTION OPPORTUNITY:** While incredibly generous, the U.S. tax incentives could further be strengthened by providing a tax credit, instead of deduction, as an alternative for farms and small businesses that do not generate enough annual income to claim the deduction. The enhanced deduction should include a deduction for the costs of donated food transportation, and could be modified to support innovative food donation practices.

**GOVERNMENT GRANTS AND INCENTIVES:** The U.S. stands out among countries as **one of the most generous in terms of governmental support** for food recovery and donation. Ongoing federal support goes to all states from The Emergency Food Assistance Program (TEFAP), which provides nearly \$100 million in administrative support and \$500 million in surplus food items to local agencies per year. Several federal competitive grant programs also support food banks and food donation efforts. Various states also appropriate funds for state food purchase programs, including the Massachusetts Emergency Food Assistance Program (MEFAP).

## **U.S. FOOD DONATION POLICY OPPORTUNITIES**

**FOOD SAFETY FOR DONATIONS:** One area for action in the U.S. is to clarify the food safety rules that apply to donated foods, as the country has no clear regulations or guidance regarding the requirements or best practices for safety of donated foods, and very few states have implemented such resources at the state level.

**ACTION OPPORTUNITY:** To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the federal government should **amend federal food safety laws, such as the Food Drug and Cosmetics Act to feature donation-specific sections** to ease the burden on food donors and food recovery organizations seeking to ensure compliance with relevant provisions; **produce and disseminate clarifying guidance from the FDA and USDA on food safety requirements relevant to donation;** and **update the FDA Food Code to include model language on food safety for donations,** to help state regulators identify how the Food Code and other food safety laws apply to donations.

**DATE LABELING:** Unclear and misleading date labels in the U.S. lead to millions of tons of waste. Unlike other countries, which have standard labels to distinguish foods that are likely to decline in quality past the date versus those that will decline in safety, the U.S. does not have standard labels, though both FDA and USDA suggest that manufacturers use the term "Best if Used By" when the label is intended to indicate a quality date.

**ACTION OPPORTUNITY:** To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the federal government **should standardize and clarify date labels**, requiring that manufacturers or retailers who choose to affix date labels on foods use one of two prescribed labels: “BEST If Used By” for foods that are labeled to indicate quality, and “USE By,” if the date intends to communicate when a food should be discarded for safety reasons; **should expressly permit the donation of food after the quality date**; and **should promote consumer education and awareness on the meaning of date labels**, once the labels are standardized.

## U.S. FOOD DONATION POLICY: HOW DOES IT COMPARE?

In terms of policy successes, the U.S. has adopted progressive policies with respect to liability protection and tax incentives for food donations, and grant funding for food recovery that effectively promote food recovery and donation efforts. However, the existing framework can be strengthened by clarifying and standardizing date labels and providing better guidance on food safety rules that apply to donated foods.

| Food Safety for Donations | Date Labeling | Liability Protection for Food Donations | Tax Incentives | Tax Barriers | Donation Requirements or Food Waste Penalties | Government Grants and Incentives |
|---------------------------|---------------|---|----------------|--------------|---|----------------------------------|
| No policy                 | No policy     | Strong policy                           | Strong Policy  | No policy    | Weak policy                                   | Strong policy                    |

For more detail on how the U.S. measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org). For more information about the food donation legal framework in U.S. and policy recommendations for strengthening this framework, check out the U.S. Food Donation Legal Guide and the U.S. Food Donation Policy Recommendations.

## BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

**Food Safety for Donations:** A key barrier to food donation is lack of knowledge regarding safety procedures for donated food. All donated food should be safe for consumption and comply with applicable food safety laws. Potential donors, however, are often uncertain which food safety regulations apply to donated food and the steps necessary to comply.

**Date Labeling:** Date labels, such as “use by,” “best before,” “sell by,” and “expires on,” are a major driver of food waste and obstacle to donation. For the majority of foods, date labels are used by manufacturers to reflect freshness or quality rather than safety, yet without standard labels delineating safety versus quality, safe food often goes to waste rather than being donated.

**Liability Protection for Food Donations:** A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Many countries are moving to adopt liability protections to mitigate this concern. In such countries, donors and food recovery organizations may still face uncertainty as to the parameters of this protection.

**Tax Incentives and Barriers:** Donating surplus food can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax incentives (deductions or credits), can help offset these costs and make donation a more attractive option. In some countries, such as several countries with a Value Added Tax, tax schemes are themselves a barrier to donations.

**Donation Requirements or Food Waste Penalties:** Some countries have employed food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) in order to influence business behavior and promote more sustainable solutions such as food donation and recovery.

**Government Grants and Incentives:** Grants and incentive programs funded at the federal or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts.

## THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

**Project Partners:** The Global Food Donation Policy Atlas is a project of the Harvard Law School Food Law and Policy Clinic, with support from the Global FoodBanking Network.



Support from the Walmart Foundation:



This research was made possible through funding by the Walmart Foundation. The findings, conclusions, and recommendations are those of Harvard Law School Food Law and Policy Clinic alone, and do not necessarily reflect the opinions of the Walmart Foundation.