



October 28, 2025

Hon. Brooke L. Rollins
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Rollins:

Last week, you announced that the U.S. Department of Agriculture (USDA) had decided to not use approximately \$5 billion Congress provided in contingency Supplemental Nutrition Assistance Program (SNAP) funding to ensure that eligible United States citizens received nutrition assistance during the current lapse in appropriations.¹ As a result of USDA's decision, up to 42,000,000 people will immediately face impossible decisions about when and whether they will have their next meal.² By the end of the week, hardworking parents, retirees, and veterans, from Kansas to New York, Texas to Colorado, will be faced with whether they have enough money to pay for food, medicine, and shelter.

All of this is avoidable. USDA is not only authorized to use the SNAP contingency fund in the event of a lapse in normal appropriations, it is *legally obligated* to do so. Congress has directed USDA to reserve SNAP funding for use "as may become necessary to carry out program operations."³ By law, individuals who are eligible for SNAP are *entitled* to receive those benefits.⁴ As a result, failure to pay out SNAP funds when appropriations are available to do so

¹ U.S. Department of Agriculture, Impact of Government Lapse on November Supplemental Nutrition Assistance Program (SNAP) Household Benefits (Oct. 24, 2025), <https://www.dropbox.com/scl/fi/9a6bpd8w7rh0aky2b4x5k/November-Supplemental-Nutrition-Assistance-Program.pdf?rlkey=ngwpv8lc64jkrxoy2njgzm80z&e=1&st=fgdtzqdu&dl=0> (SNAP Lapse Memo); Tami Luhby, *Trump administration won't use contingency fund to pay November food stamp benefits*, CNN (Oct. 24, 2025), <https://www.cnn.com/2025/10/24/politics/usda-contingency-fund-november-snap>.

² See Letter from Ronald Ward, Acting Associate Administrator, Supplemental Nutrition Assistance Program, *Re: Supplemental Nutrition Assistance Program (SNAP) Benefit and Administrative Expense Update for November 2025* (Oct. 10, 2025), [snap-november-2025-issuance-file-guidance.pdf](#) (explaining that "if the current lapse in appropriations continues, there will be insufficient funds to pay full November SNAP benefits for approximately 42 million individuals across the Nation").

³ See P.L. 118-42, 138 Stat. 93 (Mar. 9, 2024); P.L. 119-4, § 1101, 1202, 139 Stat. 10 (Mar. 15, 2025); see also CENTER ON BUDGET AND POLICY PRIORITIES, THE TRUMP ADMINISTRATION CAN AND SHOULD TAKE AVAILABLE STEPS TO ENSURE SNAP PARTICIPANTS GET NOVEMBER FOOD BENEFITS (Oct. 21, 2025), <https://www.cbpp.org/blog/the-trump-administration-can-and-should-take-available-steps-to-ensure-snap-participants-get>.

⁴ See 7 U.S.C. § 2013(a) (providing that "eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment"); *Tindall v. Hardin*, 337 F. Supp. 563, 566 (W.D. Pa. 1972), *aff'd sub nom. Carter v. Butz*, 479 F.2d 1084 (3d Cir. 1973) ("We agree with other courts that have passed upon the issue that the right to receive benefits under the food stamp program is a statutory entitlement. Issuance to eligible recipients is mandatory under the Act").

violates the executive branch's core obligation to "take Care that the Laws be faithfully executed"⁵ and constitutes an improper impoundment in contravention of the Impoundment Control Act of 1974.⁶ Democracy Defenders Fund (DDF) therefore calls on your office to reverse course and commit to using SNAP reserve funds to ensure that our citizens receive the nutrition benefits to which they are legally entitled.

Background

Congress established SNAP "to safeguard the health and well-being of the Nation's population by raising the levels of nutrition among low-income households."⁷ As Congress recognized, "the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households."⁸ SNAP was enacted to "alleviate such hunger and malnutrition."⁹

SNAP allotments are provided to eligible low-income households monthly through payments made by USDA to the States, and the amount provided is dependent on the amount of income received by household members. *See* 7 U.S.C. §§ 2012(u), 2013(a), 2017(a). The total allotments issued each year are limited "to an amount not in excess of the appropriation for such fiscal year."¹⁰ If USDA "finds that the requirements [of the program] will exceed the appropriation, the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the supplemental nutrition assistance program to the extent necessary to" stay under the appropriation level.¹¹

Title IV of the Consolidated Appropriations Act, 2024, provided USDA with \$122,382,521,000 for fiscal year 2024 to "carry out the Food and Nutrition Act of 2008", including the Supplemental Nutrition Assistance Program. However, the law also provided that from the total amount, "\$3,000,000,000, [was] to remain available through September 30, 2026, shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations."¹² The Full Year Continuing Appropriations and Extensions Act, 2025, provided that USDA would receive SNAP funding for fiscal year 2025 at the level authorized in 2024 and "under the authority and conditions provided in applicable Appropriations Acts for fiscal year 2024."¹³ This included \$3 billion in reserve funds that are available until September 30, 2027.¹⁴

⁵ U.S. Const. Art. II, § 3.

⁶ 2 U.S.C. § 682, et seq.

⁷ *Hall v. U.S. Dep't of Agric.*, 467 F. Supp. 3d 838, 840 (N.D. Cal.), *aff'd sub nom. Hall v. United States Dep't of Agric.*, 984 F.3d 825 (9th Cir. 2020) (citing 7 U.S.C. § 2011).

⁸ *Id.*

⁹ *Id.*

¹⁰ 7 U.S.C. § 2027(b).

¹¹ *Id.*

¹² P.L. 118-42, 138 Stat. 93 (Mar. 9, 2024).

¹³ P.L. 119-4, § 1101, 1202, 139 Stat. 10 (Mar. 15, 2025).

¹⁴ *Id.*

Discussion

A. SNAP Contingency Funds Are Available for Obligation

The language of the 2024 and 2025 funding acts each provide that \$3,000,000,000 was required to be set aside in reserve in the event that it became “necessary to carry out program operations” in the future.¹⁵ That money did not lapse at the end of the 2024 or 2025 fiscal year. Rather it “remain[s] available” through September 30, 2026 and 2027, respectively.¹⁶ Thus, while most SNAP funding is single-year money that ends in the year it is appropriated, the SNAP reserve fund is not. Instead, the SNAP reserve fund is a multi-year appropriation.¹⁷ USDA itself recognized the multi-year nature of the funds in its September 30, 2025, lapse plan, (which has subsequently been removed from your website),¹⁸ which explained that:

Congressional intent is evident that SNAP’s operations should continue since the program has been provided with multi-year contingency funds that can be used for State Administrative Expenses to ensure that the State can also continue operations during a Federal Government shutdown. These multi-year contingency funds are also available to fund participant benefits in the event that a lapse occurs in the middle of the fiscal year.¹⁹

Your office has now, however, reversed position. In a memo released on October 24, 2025, USDA advised that “[t]he contingency fund is not available to support FY 2026 regular benefits, because the appropriation for regular benefits no longer exists.”²⁰ Rather, your office explained that the “contingency fund is a source of funds for contingencies, such as the Disaster SNAP program, which provides food purchasing benefits for individuals in disaster areas, including natural disasters like hurricanes, tornadoes, and floods, that can come on quickly and without notice.” This reasoning is flawed for several reasons.

First, Congress has expressly set aside \$3 billion dollars in both 2024 and 2025 as a “reserve” and has explicitly provided that such money will be available beyond the year in which the appropriation was made. Congress frequently provides “multiple periods of availability within an account . . . by specifying the amounts within the total that will be made available for a different period.”²¹ As a matter of law, multi-year funds that have not expired are available, even

¹⁵ See, P.L. 118-42, 138 Stat. 93 (Mar. 9, 2024); P.L. 119-4, § 1101, 1202, 139 Stat. 10 (Mar. 15, 2025).

¹⁶ *Id.*

¹⁷ See, e.g., GOVERNMENT ACCOUNTABILITY OFFICE, PRINCIPLES OF APPROPRIATIONS LAW 5-7 (2017) (explaining that “Multiple year appropriations are available for obligation for a definite period in excess of one fiscal year”).

¹⁸ <https://www.usda.gov/sites/default/files/documents/fy2026-usda-lapse-plan.pdf> (last visited, Oct. 27, 2025).

¹⁹ See USDA, Lapse of Funding Plan, 15 (September 30, 2025), available at <https://web.archive.org/web/20251002080826/https://www.usda.gov/sites/default/files/documents/fy2026-usda-lapse-plan.pdf> (USDA September Lapse Plan)

²⁰ SNAP Lapse Memo, *supra* n. 1.

²¹ CONGRESSIONAL RESEARCH SERVICE, APPROPRIATIONS DURATION OF AVAILABILITY: ONE-YEAR, MULTI-YEAR, AND NO-YEAR FUNDS 9 (June 7, 2024), <https://www.congress.gov/crs-product/R48087#:~:text=Congress%20provides%20budget%20authority%20in%20appropriations%20bills%20to,fiscal%20years%20%28multi-year%20funds%29%2C%20or%20indefinitely%20%28no-year%20funds%29> (explaining that “One common way Congress provides for multiple periods of availability within an account is by specifying the amounts within the total that will be made available for a different period”).

if the period of availability for other funds in the account has expired.²² That is the case with the SNAP contingency fund.

Second, SNAP contingency funds are legally available *whenever* it “become[s] necessary to carry out program operations.”²³ No other precondition appears in the text of the law, nor does the law provide a list of qualifying events or criteria for which contingency funds can be used. Nothing suggests that reserve funds can only be used, as your October 24 letter suggests, for non-“regular” benefits arising because of “natural disasters like hurricanes, tornadoes, and floods, that can come on quickly and without notice.”²⁴ The Appropriations Act sections that set aside SNAP reserves make no reference to “regular” benefits and non-“regular” benefits. Rather, reserve funds are simply available to “carry out program operations,” a broad and open-ended term that seems to cover all expenses of the SNAP program, when “necessary.”²⁵ Moreover, Congress already knows how to limit SNAP funds to specific activities if it wants to do so.²⁶ For example, in 2024, Congress provided \$3 million in SNAP funds that were required to be used to carry out the Healthy Fluid Milk Incentive Project established under section 4802 of the Agriculture Improvement Act of 2018.²⁷ If Congress had intended to limit funds to non-“regular” benefits, it could have done so. But Congress did not. Rather, Congress used expansive language to provide that reserve funds are available whenever “necessary to carry out program operations.”

Third, USDA’s premise that ‘regular’ SNAP money must be available *before* contingency funds are available violates the basic logic of the appropriations acts. As is clear from the acts, contingency funds can “only” be used “at such times as may become necessary to carry out program operations.”²⁸ But contingency funds are *never* or essentially never necessary to carry out program operations when there already exists regular funding available for the SNAP program. If USDA were correct, then the very conditions that create the need for contingency funding (i.e., a lack of other available appropriations) would be the very same conditions that preclude use of such funds. It seems implausible that Congress would have enacted legislation containing a self-defeating Catch-22 of this nature.²⁹

Fourth, and finally, even if USDA’s reasoning had a passable basis in the text or structure of the law, the Comptroller General has already opined that SNAP reserve funds can be used when other SNAP funding has lapsed.³⁰ In 2019, the Government Accountability Office (GAO) was asked to review USDA’s obligation of SNAP funds against an expired appropriation

²² *Id.*

²³ P. L. 118-42, 138 Stat. 93 (Mar. 9, 2024).

²⁴ SNAP Lapse Memo, *supra* n. 1.

²⁵ P.L. 118-42, 138 Stat. 93 (Mar. 9, 2024).

²⁶ *Cf. Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1168 (11th Cir. 2003) (“And Congress knows how to use specific language to identify which particular entities it seeks to regulate”).

²⁷ P.L. 118-42, 138 Stat. 93 (Mar. 9, 2024).

²⁸ P.L. 118-42, 138 Stat. 93 (Mar. 9, 2024); P.L. 119-4, § 1101, 1202, 139 Stat. 10 (Mar. 15, 2025).

²⁹ “Borrowed from the title of Joseph Heller’s classic war novel *Catch-22*, a ‘Catch-22’ is a problem where the only solution to the problem is denied by a circumstance of the problem.” *Doe #1 v. Trump*, No. 25 C 4188, 2025 WL 1341711, at *6 (N.D. Ill. May 8, 2025) (cleaned up).

³⁰ Government Accountability Office, B-331094, U.S. Department of Agriculture—Early Payment of SNAP Benefits (Sep. 5, 2019), <https://www.gao.gov/products/b-331094>.

contained in a 2018 continuing resolution.³¹ GAO advised that practice was illegal.³² However, GAO explained that some or all of a similar SNAP “contingency fund [was] available during the lapse in appropriations.”³³ As GAO explained, “USDA could properly incur obligations for the early issuance of . . . benefits only if it had available budget authority to make the payments, such as remaining funds in the SNAP contingency fund.”³⁴ In fact, GAO explained that USDA itself “noted the legal availability of the contingency fund”³⁵ a fact that, until Friday, appears to have been the consistent position of the office.³⁶

B. SNAP Contingency Funds Cannot Be Impounded

Text, precedent, and logic dictate that SNAP contingency funds are currently available for obligation. And given that such funds are both available and the conditions for their use have arisen, it is undoubtedly the case that USDA is under a concomitant obligation to spend those funds.

The federal Constitution places the power of the purse exclusively with Congress.³⁷ As GAO recently advised, “[o]nce enacted, an appropriation is a law like any other, and the President must implement it by ensuring that appropriated funds are obligated and expended prudently during their period of availability unless and until Congress enacts another law providing otherwise.”³⁸ The Impoundment Control Act of 1974 operationalizes this congressional prerogative by explicitly prohibiting the executive from delaying or failing to spend money (i.e., impounding funds) that Congress has approved, except in two instances.³⁹ First, an agency can ask Congress to rescind an appropriation.⁴⁰ That has not happened. Second, an agency can defer obligating funds if, *and only if*, it meets one of three criteria: the deferral will “provide for contingencies,” will “achieve saving made possible by or through changes in requirements or greater efficiency of operations” or is “specifically provided by law.”⁴¹

None of the three available bases for deferral exist. Deferring the use of contingent funds that are aimed at filling gaps where ‘regular’ appropriations are not available “to provide for contingencies” is nonsensical. USDA has provided no explanation of how not meeting its mandatory obligations to pay out SNAP payments by using contingency funds would “achieve

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ USDA September Lapse Plan, *supra* nt. 19.

³⁷ U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause); *Clinton v. City of New York*, 524 U.S. 417, 438 (1998); *see also Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools*, Supp. Op. O.L.C. (Dec. 1, 1969) (“With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent”).

³⁸ GOVERNMENT ACCOUNTABILITY OFFICE, B-337233, DEPARTMENT OF THE INTERIOR—APPLICABILITY OF THE IMPOUNDMENT CONTROL ACT TO PAUSE OF LARGE-SCALE WATER RECYCLING AND REUSE PROGRAM (Jul. 23, 2025), https://www.gao.gov/products/b-337233#_ftnref12.

³⁹ 2 U.S.C. §§ 683-684.

⁴⁰ 2 U.S.C. § 683.

⁴¹ 2 U.S.C. § 684.

saving” arising from “greater efficiency of operations.” And deferral is not “specifically provided by law.”

More importantly, eligible SNAP recipients are *entitled* to benefits unless there is no funding available.⁴² The Secretary of Agriculture is permitted to reduce SNAP benefit allotments if funding falls below the full level needed to meet each beneficiary’s need, but the Secretary must continue to provide benefits so long as money is available.⁴³ In fact, the very existence of a reserve pot recognizes Congress’s intention that recipients continue to receive funding if other funding is not available. To put it bluntly, in the face of a statutory obligation to provide SNAP benefits, USDA has no basis to refuse to disburse SNAP reserve funds.

Conclusion

Congress has provided USDA with billions of dollars in SNAP reserve funds to ensure that Americans do not go hungry. Less than a month ago, USDA promised it would tap into those funds during the current lapse in appropriations. Now, with mere days before regular SNAP appropriations lapse, USDA has changed position and is apparently ignoring the plain text of congressional appropriations laws, legal precedent, and its own prior positions to deprive Americans of access to funds necessary to avoid going hungry. It does not have to be this way. DDF therefore calls on you to reverse your position immediately and ensure that our citizens receive the benefits to which they are entitled.

Sincerely,

/s/

Ambassador Norman L. Eisen (ret.)
Executive Chair and Founder
Democracy Defenders Fund

/s/

Virginia Canter
Chief Counsel and Director for Ethics and
Anticorruption
Democracy Defenders Fund

/s/

Christopher Swartz
Senior Ethics Counsel
Democracy Defenders Fund

CC:

Chairman John Boozman
Committee on Agriculture, Nutrition, &
Forestry
U.S. Senate
555 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Amy Klobuchar
Committee on Agriculture, Nutrition, &
Forestry
U.S. Senate
425 Dirksen Senate Building
Washington, DC 20510

⁴² 7 U.S.C. §§ 2013(a), 2027(b)-(c).

⁴³ 7 U.S.C. § 2027(b)-(c); *Gilliam v. United States Dep’t of Agric.*, 486 F. Supp. 3d 856, 863 n. 3 (E.D. Pa. 2020) (discussing that in the modern era USDA has never been required to reduce benefits).

Chairman Glenn “GT” Thompson
Committee on Agriculture
U.S. House of Representatives
400 Cannon House Office Building
Washington, DC 20515

Ranking Member Angie Craig
Committee on Agriculture
U.S. House of Representatives
2052 Rayburn House Office Building
Washington, DC 20515

Acting Inspector General
U.S. Department of Agriculture
Room 117-W Jamie Whitten Bldg
1400 Independence Avenue SW
Washington, D.C. 20250

Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548