Diversified Agricultural Economies

MARCH 2018

FARM BILL LAW ENTERPRISE
FBLE

PUBLISHED BY

Duke Law School, Environmental Law and Policy Clinic

Harvard Law School, Emmett Environmental Law and Policy Clinic

Harvard Law School, Food Law and Policy Clinic

Harvard Law School, Health Law and Policy Clinic

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ACKNOWLEDGEMENTS

FBLE is grateful to the many individuals and organizations who enriched this report by sharing their time and ideas: Ray Archuleta, John Boyd, Andrew Branan, Michael S. Brown, California Certified Organic Farmers, Alyssa Charney, Saskia Cornes, Olivier De Schutter, Davon Goodwin, Renée Johnson, Sandi Kronick, Scott Marlow, Emily McGinty, Jim Monke, the National Sustainable Agriculture Coalition, the National Young Farmers Coalition, Debbie Roos, Michael Sligh, Julius Tillery, and Heather Wong.

FBLE thanks the following people for reviewing this report and providing feedback. The reviewers do not necessarily concur with the report's recommendations. **Marcia DeLonge** *(Senior Scientist),* **Michael Lavender** *(Senior Washington Representative),* **Glynis Lough** *(Deputy Director/Research Director),* **Kranti Mulik** *(Senior Agricultural Economist),* **Sarah Reinhardt** *(Food Systems and Health Analyst),* and **Ricardo Salvador** *(Director), Union of Concerned Scientists Food and Environment Program;* **Ferd Hoefner**, *Founding Member and Senior Strategic Advisor, National Sustainable Agriculture Coalition.*

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FBLE is indebted to **Jody Freeman** and the *Harvard Environmental and Energy Law Program* for their support and encouragement.

Finally, FBLE is grateful for the financial support of the Charles M. Haar Food and Health Law and Policy Fund, GRACE Communications Foundation, the Yale Law Journal Public Interest Fellowship, and two very generous Anonymous contributors.

The Promise of a New Farm Bill

If it seems like everyone is talking about the farm bill, there are good reasons. New farm bills are proposed, debated, and passed once every five years, sometimes longer, and they shape virtually every aspect of our food and agricultural systems. Many programs authorized by the most recent farm bill, the Agricultural Act of 2014, will expire in September 2018. For this reason, and despite everything else competing for attention on Capitol Hill, Congress is working to pass a new farm bill this year.

The farm bill grew out of Depression-era policies designed to keep farmers out of bankruptcy, ensure a reliable food supply, and protect against soil loss in the wake of the Dust Bowl.

Today, farm bills continue to evolve the body of laws that authorize and fund a broad array of food and agriculture programs. The 2014 Farm Bill included twelve separate titles covering a wide variety of issues including Depression-era carryovers like commodities, conservation, and crop insurance programs, the country's largest nutrition safety net program, and new support for expanding local food and biofuel markets.

With all this and more combined into one piece of legislation, even the most passionate supporters of farmers, eaters, and the environment struggle to make sense of how the pieces fit together. Even though most Americans agree on basic goals such as a safe and nutritious food supply, an honest living for farmers, a healthy environment, and a guarantee against hunger, the legislation itself is so complex and specialized that it can be hard to know where to begin. For most Americans, there is a gulf between caring about these goals and understanding how to champion solutions through the farm bill.

TITLES OF THE 2014 FARM BILL

I. Commodities
II. Conservation
III. Trade
IV. Nutrition
V. Credit
VI. Rural Development
VII. Research and Extension
VIII. Forestry
IX. Energy
X. Horticulture and Specialty Crops
XI. Crop Insurance
XII. Miscellaneous

Click to learn more about each title in FBLE's background library.

The Farm Bill Law Enterprise

The Farm Bill Law Enterprise (FBLE) helps bridge this gulf between public goals and policy solutions. FBLE is a national partnership of law school programs working toward a better farm bill that reflects the long-term needs of our society. Our members' expertise in the laws and policies of food, agriculture, public health, and the environment make it possible to cut across special interest and partisan boundaries. Beyond our diverse research backgrounds, our work is driven by our shared beliefs that the farm bill should advance economic opportunity and stability, public health and nutrition, public resources stewardship, and principles of fair access and equal protection.

This publication belongs to a collection of reports based on the collaborative research of FBLE members.

- ***Diversified Agricultural Economies*** addresses the barriers facing small, medium-scale, diversified, beginning, female, and minority farmers and ranchers. It sets goals and makes recommendations to create opportunities for these producers by improving access to markets, insurance, credit, and land.
- ***Food Access, Nutrition, and Public Health*** focuses on the farm bill's nutrition safety net for low-income families, the elderly, people living with disabilities, and unemployed Americans. It sets goals and makes recommendations to improve food access, nutrition, public health, infrastructure, and economic development.
- ***Productivity and Risk Management*** focuses on the farm bill's commodities, conservation and crop insurance programs that govern the complex interactions between large-scale production agriculture, the risks presented by both weather and market volatility, and natural resources protection. It sets goals and makes recommendations to better align production with the stewardship of resources like water, the health and productive capacity of soils, and the vitality of rural communities.

Writing a new farm bill is a momentous opportunity, but much also depends on how the law gets implemented.

Implementation depends on the agency rulemaking process, Congress's budgeting and annual appropriations, and the decisions and priorities made by USDA leadership. FBLE will monitor implementation of the new farm bill and keep readers informed on our website, FarmBillLaw.org. The website contains a wealth of resources, including background materials that go in depth on every title of the farm bill, tools for tracking the farm bill's progress through Congress, and information on getting involved in the legislative process. Finally, FBLE's blog is a great place to get timely and trenchant analysis from FBLE's members.

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EXECUTIVE SUMMARY

Rural communities are more than quaint relics of a bygone era. Most of the towns, villages, and hamlets that speckle the rural landscape underpin an agricultural economy that supplies the food, fuel, and fiber everyone needs to survive. Given their immense contributions to the nation's wellbeing, rural communities receive federal support through the farm bill. The farm bill is a wide-ranging, omnibus legislative endeavor that Congress undertakes every five years. It provides the primary vehicle to change federal food and agriculture policy and addresses issues including agricultural support programs, conservation, nutrition, and much more. Through nearly a century of farm bills, Congress has provided wide-ranging tools to farmers and rural communities. A new farm bill presents a unique occasion to promote an inclusive and diversified agricultural sector, from the crops grown to the farmers that grow them.

Congress has long bolstered the agriculture sector as a whole, but structural changes in American agriculture have shifted the benefits of farm bill programs toward fewer, larger operations. The consolidation of agricultural production, wealth, land, and federal support handicaps smaller farms, especially those that grow a diversity of crops. Yet small- and mid-size farms undergird a robust and sustainable agricultural economy and contribute significantly to the economic vitality of rural communities. For example, smaller operations disproportionately incorporate environmentally sustainable production methods, provide more jobs, and increase civic engagement relative to their counterparts. Despite these important benefits, it is becoming harder to make a living by operating a smaller farm. The number of these farms declined over the past few decades, and the principal operators of smaller farms can rarely earn a living from farming alone. Three quarters of farmers earn most of their living from something other than running their farm.

Despite these trends, many remain eager to earn a living by farming. With the right supports, the smaller farms that animate many rural economies can come bounding back. With innovative local and regional processing and marketing infrastructures and tailored federal incentives, existing farms can not only survive but begin to really thrive. A new generation of farmers and ranchers are anxious to get the land and capital they need to join this renaissance.

Women and minority farmers, who have long been underrepresented or actively disadvantaged, will likewise bolster rural economies if they have the same access and support as other farmers. In response to these opportunities, recent farm bills have made modest investments to enhance the viability of small- and medium-scale farms, encourage sustainable practices, and expand options for minority, women, and beginning farmers.

This report attempts to accelerate progress by addressing the barriers facing a more diverse and robust rural economy. Chief among these are access to markets, insurance, credit, and land. This report champions *Diversified Agricultural Economies* and recommends policy changes that will increase opportunities for all farmers to enter and compete in a variety of markets. This report focuses on goals and recommendations, including specific legislative changes, tailored to advancing these objectives within the next farm bill. The full report is part of a series. When considered in total they offer a dynamic and wide-ranging suite of ideas for the future of American agriculture and American eating. Other reports in the series address *Food Access, Nutrition, and Public Health*, and *Productivity and Risk Management*.

Given its distinctive breadth, the farm bill offers a unique opportunity to address the myriad challenges facing agricultural producers and their communities. These challenges may seem diffuse, but are entwined through the complex workings of our food and agriculture system. This report, like the others in this series, demonstrates how this essential interconnectivity offers opportunities to seize the farm bill as a tool to improve the lives of all Americans.

GOAL I

Enhance market opportunities for small- and mid-size operations, beginning farmers and ranchers, specialty crop producers, and independent meat producers, thereby also increasing consumer access to diverse sources of food.

While large-scale agricultural producers can take advantage of a variety of outlets for their products, significant barriers prevent small and beginning farmers, specialty crop producers, and independent meat producers from accessing the full range of potential markets. Wholesale, institutional, and retail sales, for example, are more difficult to access. It is therefore critical that the next farm bill invest in scaling up direct markets for small and beginning farmers, while also expanding opportunities for farmers to break into intermediated markets. Though current farm bill programs include some support for market access and marketing training, more is needed. This report recommends that the next farm bill include provisions toward these goals, including scaling up support for farmers' markets and other direct markets, helping small- and mid-size producers and beginning farmers and ranchers to access existing market support programs, and improving market competitiveness of small, independent livestock producers and poultry growers.

Top Market Opportunity Solution for the Next Farm Bill

Support the development of farmers' markets and other farmer-driven distribution channels to improve small farmers' access to consumers

Small and mid-size producers face a number of barriers in accessing appropriate markets. Travel to profitable urban centers from rural areas can be both expensive and time-consuming. Some farmers lack the marketing and business skills to succeed in direct-to-consumer channels. Furthermore, smaller-scale farmers often do not meet the product minimums required to sell through intermediated channels.

The Farmers Market and Local Food Promotion Program (FMLFPP) and Specialty Crop Block Grant Program (SCBGP) help farmers overcome these barriers. FMLFPP offers grants to farmers participating in direct-to-consumer markets for training, improvement, and development and helps producers break into intermediated markets with grants that help them with expansion planing. SCBGP provides grants to make specialty crops more competitive on the market through a variety of means, such as marketing and promoting specialty crops or educating the public about the nutritional benefits of specialty crops. Both programs have been highly successful and have seen participation increase steadily. Congress should ensure funding keeps pace with growing demand, and provide permanent baseline funding to ensure these programs receive the resources they need year after year.

Additional Market Opportunity Recommendations

- Reduce barriers to grant and loan programs for producers, especially smaller operations and beginning farmers and ranchers
- Increase access to organic certification for small farms
- Improve market competitiveness for livestock and poultry growers and broaden access to slaughtering services for small independent livestock producers
- Maintain funding for vital farm bill rural development programs

GOAL II

Expand whole-farm insurance for diversified farms

Diversified farms—those growing or raising a variety of products—historically struggle to access insurance policies. Agricultural insurance protects farmers' livelihoods when bad weather or other mishaps interfere with their operations. This lack of access, in turn, makes it hard for smaller and diversified farms to access credit or survive unforeseen disasters. Whole-farm revenue insurance policies expand access to crop insurance for diversified farms that federal policy traditionally overlooked. This report urges Congress to continue improving the Whole Farm Revenue Protection (WFRP) program. In the next farm bill, Congress can direct USDA to better promote WFRP, make the program more accessible to small and mid-size operations, and increase incentives to reward diversified production that enhances natural resources.

Top Whole-Farm Insurance Solution for the Next Farm Bill

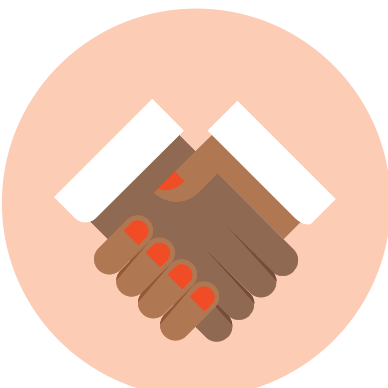
Make Whole Farm Revenue Protection more accessible

Comprehensive and affordable risk management is necessary to preserve small and mid-size farms, and to attract new farmers, who overwhelmingly seek opportunities on small and diversified operations. WFRP offers a vehicle to both insure and ensure the livelihoods of small farms by guaranteeing revenues sufficient to service debt and make a decent living. Paperwork and recordkeeping prevent broader participation in WFRP because farmers must produce extensive revenue histories in order to sign up, and then submit multiple interim reports throughout the growing season. Congress should require RMA to develop a simplified WFRP policy for small- and mid-size farms similar to the microloan program. Specifically, Congress should require that the new policy offer a simplified application process that allows farmers to demonstrate production and revenue histories using more flexible means, and minimize reporting requirements during the busy growing season.

Additional Whole-Farm Insurance Recommendations

- Increase support for diverse production systems under Whole Farm Revenue Protection

GOAL III



Improve access to credit for socially disadvantaged and beginning farmers and ranchers

Credit plays a critical role in the agricultural sector. Due to high start-up costs, such as the purchase of land and equipment, farm operators often must invest heavily in their farms before they produce enough revenue to pay for these investments. As a result, farmers and ranchers rely on loans to finance their operations. Yet, due to the cyclical and often unpredictable nature of farming, many loans are too risky for private lenders. Given this risk, the federal government either backs or directly lends a significant proportion of all farm debt. This report argues that the next farm bill should continue to improve federal loan programs. There are opportunities to boost funding for loan programs directed at socially disadvantaged and beginning farmers and ranchers, increase participation by these groups in such programs, and improve data collection and reporting.

Top Credit Solution for the Next Farm Bill

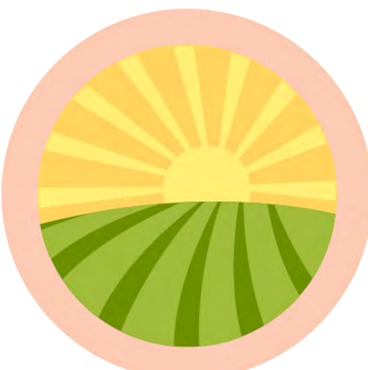
Increase the portion of Farm Service Agency loans, both guaranteed and direct, that reach socially disadvantaged and beginning farmers and ranchers

Target participation rates and set-asides have been successful in increasing the number and dollar amount of loans that reach socially disadvantaged (SDFR) and beginning (BFR) farmers and ranchers, but are not enough to meet demand. Data suggest that private lenders are not as successful at reaching SDFR and BFR as the government has been with direct loans, and that both private lenders and FSA can improve participation rates among SDFR. To address persistent shortfalls in credit access for racial minority populations, Congress should adjust target participation rates to match or exceed minority representation in state demographics. To increase private lending to target populations, Congress should require that lenders seeking Certified Lender Status first prove a satisfactory history of consistently lending to SDFR and BFR at rates matching FSA target participation rates.

Additional Credit Recommendations

- Improve outreach to socially disadvantaged and beginning farmers and ranchers to increase participation rates in USDA programs
- Grow mandatory spending on credit programs geared toward socially disadvantaged and beginning farmers and ranchers
- Ensure that existing credit programs are reaching socially disadvantaged and beginning farmers and ranchers
- Promote racial and gender diversity on Farm Service Agency county committees
- Improve access to data on socially disadvantaged groups and discrimination complaints

GOAL IV



Accelerate land ownership for socially disadvantaged and beginning farmers and ranchers

Land is by far the most valuable asset in agriculture, accounting for over 80 percent of total farm value. In addition to providing the means to produce crops and livestock, land is also an important form of collateral for farmers seeking loans. Finally, for many farmers, land holds intangible value representing their livelihood, home, and heritage. Today, farmland is overwhelmingly concentrated in the hands of farmers at or near retirement age: people over age 65 own 69 percent of United States farmland. Meanwhile, a new generation of farmers is anxious for land ownership but face challenges attempting to acquire land. Land is expensive and there is a dearth of farmland available for sale. Legal problems stemming from historic ownership patterns and discrimination create additional barriers to purchasing land, particularly among black farmers in the South and Native American farmers on reservations. The next farm bill should provide tools to address the challenges associated with land transition from aging farmers to beginning farmers, access to farmland for beginning and socially disadvantaged farmers and ranchers, and the legal problems associated with ownership of some farmland. The next farm bill should facilitate land transition planning, incentivize farmland transfers to beginning and minority farmers, and reduce the legal impediments that currently make long-term investments impossible in some communities.

Top Land Access Solution for the Next Farm Bill

Mitigate potential for loss of heirs' property

Issues surrounding heirs' property are varied and complex and serve as a barrier to entry for many socially disadvantaged farmers. In order to address these issues and put succession plans in place, those with heirs' property need access to a team of qualified professionals—attorneys, accountants, financial planners and real estate agents. This assistance is difficult to procure, especially in rural areas. To combat this issue, Congress should fund USDA partnerships with professional organizations that are already doing heirs' property work to expand their reach and train other professionals. In areas where there are no existing groups working on heirs' property issues, FSA and county extension agents should receive resources to seek out and provide such services for those in need.

Additional Land Access Recommendations

- Provide funding to train farmers, and the professionals who serve them, in appropriate transition planning and to incentivize aging farmers to prioritize transition planning
- Promote land transfers to beginning and socially disadvantaged farmers

2014 Farm Bill Titles Covered in This Report:

- Conservation (II)
- Credit (V)
- Rural Development (VI)
- Specialty Crops and Horticulture (X)
- Crop Insurance (XI)
- Miscellaneous (XII)

This report reviews the existing farm bill framework for supporting diversified agricultural economies and recommends policy changes that could increase opportunities for all farmers to enter and compete in a variety of markets. The introduction provides background on the evolution of agriculture over the past century, and a snapshot of farming and farmers today. Part I highlights opportunities to improve access to markets for small and medium-scale producers, specialty crop and independent meat producers, and beginning farmers and ranchers (BFR).[i] Part II recommends changes to better align the federal crop insurance system, particularly the Whole Farm Revenue Protection (WFRP) program, with the goal of supporting small and mid-sized farms and sustainable farming practices. Part III identifies opportunities to expand credit for BFR, socially disadvantaged farmers and ranchers (SDFR),[ii] and diversified crop growers. Finally, Part IV makes recommendations for improving access to land for BFR and SDFR, while assisting older farmers with better transition planning.

Introduction

The Farm Bill on the Horizon

The farm bill, under its expansive umbrella, has the potential to address challenges that seem diffuse but are entwined through the complex workings of our food and agriculture system. These challenges affect the daily lives of every individual. Food insecurity still plagues 41 million Americans almost a decade after the Great Recession.[1] Multiple diet-related diseases persist at epidemic proportions, driven at least in part by inaccessibility of health-promoting food options.[2] These and similar challenges are addressed in a companion report, *Food Access, Nutrition, and Public Health*. A distinct set of challenges emerges from the commodity segment of the agricultural sector, which produces most of the nation's agricultural products but whose bountiful productivity can mask persistent challenges to natural resources stewardship and the vitality of rural communities.

To tackle these challenges, a companion report, *Productivity and Risk Management* seeks a better return on the public's investment in the farm bill's commodities, conservation, and crop insurance programs.

Meanwhile, the average American farmer nears retirement age, and the new generation who would make a career in farming must first overcome capital constraints and market barriers to supply the fresh, affordable, and sustainably raised products that customers demand. This report, *Diversified Agricultural Economies,* addresses the barriers facing small, medium-scale, beginning, female, and minority producers. It recommends ways in which the farm bill can create opportunities for these producers by improving access to markets, insurance, credit, and land.

The Faces and Fields of the United States Farm

Through nearly a century of farm bills, the federal government has provided many different types of support to farmers and rural communities. Farmers receive such support to offset the unique risks they face and to ensure their continued role in growing goods necessary for human survival and flourishing. Much of the support the farm bill provides goes to larger operations producing a handful of agricultural commodities, but in recent years a new generation seeks opportunities to create livelihoods in farming by meeting the growing demand for food that is local,[3] sustainable, and nutrient-dense. This new generation requires support tailored to farms of different shapes and sizes and to meet growing demand among minority and women farmers. Farmers in the United States today are overwhelmingly white and male, not by chance but as a result of a pattern of discrimination by federal agencies and decision makers.[4] Widespread recognition and acknowledgement of the devastating effects of this discrimination have built the case that these populations deserve priority in future farm bill funding.

In response to these new interests and demands, the past few farm bills made modest investments to enhance the viability of small and mid-sized operations,[5] encourage sustainable farming practices, and expand opportunities for minority and women farmers. The 2002 Farm Bill implemented several programs focused on strengthening local food systems[6] and authorized the Secretary of Agriculture to create a new position and office within USDA, the Assistant Secretary for Civil Rights[7] and the Office of the Assistant Secretary for Civil Rights.[8] The 2008 Farm Bill was the first to include a separate title for horticultural crops and organics,[9] and added new programs and protections for socially disadvantaged farmers and ranchers (SDFR),[10] defined in the 1990 Farm Bill as those who belong to "a group whose members have been subject to racial or ethnic prejudice."[11] These are good first steps, yet there remains much work to be done.

The following sections of the introduction provide further context for the types of farms and farming practices featured in this report. Each underscores the need to create more sustained funding, adapt funding allocation criteria, and examine administrative opportunities for existing farm bill programs to increase their effectiveness. The first section focuses on the situation facing small and medium-scale farmers. It highlights this segment's propensity toward diverse agricultural systems that produce specialty crops, implement sustainable or organic practices, and meet growing demand for local food. The second section provides an overview of discrimination against minority farmers, subsequent lawsuits, and the USDA programs created in response. The final section underscores the potential for the farm bill to build and grow *diversified agricultural economies* through its next iteration. The rest of this report identifies opportunities for the next farm bill to build on existing support for small and mid-sized, sustainable, and local operations, and to continue and expand the commitment to providing dedicated support to SDFR and beginning farmers and ranchers (BFR).

A. Promote Diverse Agricultural Strategies

Small and mid-sized farms undergird a robust and sustainable agricultural economy and contribute to the economic vitality of rural communities. Small operations, in particular, disproportionately incorporate environmentally sustainable production methods.[12] Smaller farms tend to employ more people per acre, and smaller farm size has been linked to a stronger middle class, lower unemployment, greater socioeconomic stability, and more civically engaged communities.[13] There has been some growth over the past few decades in very small farms reported in the Census of Agriculture,[14] yet this growth may have been the result of changes made to the Census of Agriculture, rather than a bona fide increase.[15] The number of small and mid-sized farms declined over the same period,[16] while the share of cropland owned by large-scale farms—an important indicator of land consolidation—is greater than ever.[17]

Increasing the number and financial stability of small and mid-sized diversified farms can infuse life into rural development efforts. Large-scale farms and specialization have become the norm in United States agriculture. In 1900, the average farm grew five different products for sale, while in 2002 that number had decreased to just over one.[18] Farmland in the United States is overwhelmingly used to produce commodity crops in monoculture, and the top four crops in the United States—corn, soybeans, hay, and wheat—account for over 90 percent of harvested cropland acres.[19] However, while specialization can reduce labor costs,[20] there are also benefits to more diversified production. Diversified production can increase yields in organic systems,[21] reduce vulnerability to crop losses from pests and extreme weather events,[22] and help maintain farm profitability as commodity prices fluctuate.[23] Diversification also contributes to greater environmental sustainability by reducing erosion, improving soil health, and limiting reliance on pesticides and fertilizers.[24] Farmers at all scales have opportunities to diversify production, whether they grow commodity crops, specialty crops,[25] or some combination. This report focuses on ways to support small and mid-sized farms using diversified systems, with particular emphasis on specialty crop and small grain producers who are growing for local markets.

As consumer demand increases for food produced using organic practices, farmers have the opportunity to adapt and meet these demands. Specifically, there has been a rise in consumer demand for USDA certified organic products, which are produced without synthetic fertilizers, genetic engineering, sewage sludge, or irradiation.[26] While certified organic operations are sometimes highly specialized, or operate as monocultures, they must follow standards set by the National Organic Program that are designed to maintain or enhance soil and water quality, while also conserving wetlands, woodlands, and wildlife.[27] More and more farmers have adopted these and similar practices in recent years, responding to meet a dramatic rise in demand. Organic sales totaled $47 billion in 2016, and organic products now account for more than 5 percent of total food sales in the United States[28] This increase in demand and consequent price premium translate into more money for farmers and a stronger rural economy. There are, however, costs associated with organic certification. The following section on access to markets discusses how farm bill programs can aid small and medium-scale producers in achieving organic certification.

Consumers increasingly demand locally- and sustainably-raised agricultural products.[29] Growth in demand for local food is illustrated by the boom in farmers' markets, farm stands, and community supported agriculture programs (CSAs) over the past 20 years.[30] Purchasing food directly from farmers or through mediated channels such as food hubs can transform local economies[31] and allow significantly more revenue to remain within the local community, generating a multiplier effect wherein each dollar cascades through other local businesses.[32] Local purchases increase the farmer's share of each food dollar, while farmers who engage in local food systems are more likely to purchase inputs like livestock, seed, and equipment from local vendors, further spurring economic development.[33]

Although there are clear benefits to engaging in the local food economy, producers face many barriers. For example, small and independent livestock producers often struggle to access facilities that are willing and able to process their animals.[34] Additionally, unfair practices in the meat industry persist despite a decade-long effort to provide better protection against anti-competitive behavior and unfair contracting practices. The following section on access to markets addresses these issues.

This report specifically focuses on supporting and growing the subset of small and mid-sized farms whose agricultural production comprises a significant portion of their livelihoods. Such support is critical, as unlike hobby or retirement farmers, the livelihoods of these producers can depend on federal farm programs and the availability of credit, insurance, and reliable marketing channels to sustain their operations. The next farm bill represents an opportunity to scale up existing support systems and tailor additional programs—including crop insurance programs, market development programs, and research programs—to encourage broader adoption of crop diversification, organic practices and other diversified systems that offer important services like soil health and water quality.

B. Diversifying Farmer Demographics

The same policies that shaped the nature of farming throughout the 1900s have in many ways defined the identity of American agricultural producers. Over the past century, federal farm policy supported increases in scale and specialization,[35] which relied on expensive inputs and up-front investments and thus required farmers to have ready access to capital and credit.[36] Yet, the federal government provided that access to credit and capital on a discriminatory basis, in effect dispossessing minority farmers, in particular black farmers,[37] of farmland. The result today is a farming population that does not reflect the diversity of the United States While approximately 38 percent of the United States population identifies as a racial minority, only 7 percent of principal farm operators are minority farmers.[38] Meanwhile, white landowners own 98 percent of privately owned farmland[39] and white farmers receive 98 percent of federal farm program payments.[40] Women also are significantly underrepresented in farming operations, accounting for nearly 51 percent of the United States population but only 14 percent of all principal farm operators, 7 percent of farmland ownership, and 6 percent of farm program payments.[41]

The federal government has acknowledged its role in shaping the farmer demographics observed today. In a 1997 report, the USDA Civil Rights Action Team concluded: “Minority farmers have lost significant amounts of land and potential farm income as a result of discrimination” by USDA.[42] The result was black land loss: between 1910 and 1997, the amount of farmland owned by black farmers fell by more than 90 percent, while the amount of farmland owned by white farmers increased by almost 10 percent.[43]

In 1997, decades of complaints about USDA’s treatment of black farmers culminated in a class-action discrimination suit, *Pigford v. Glickman*.[44] The suit alleged discrimination by USDA in granting loans or other program assistance to black farmers, and further alleged that USDA had failed to investigate or respond to complaints by black farmers between 1983 and 1997.[45] D.C.’s District Court approved a settlement resulting in a $50,000 monetary award, as well as loan forgiveness and offset tax liability, to each claimant who could present *substantial evidence* that a USDA county office had discriminated against them, and that this discrimination had resulted in economic damage.[46]

Larger settlements were available to claimants who could prove individual claims and damages by a *preponderance of the evidence*.[47] The 2008 Farm Bill created a separate late filing process for claimants who missed the initial filing deadline, often referred to as *Pigford II*.[48] In total, over $2 billion was paid to black farmers and families to resolve the *Pigford* suits.[49]

Three additional class action suits followed soon after *Pigford*. Each followed the general format of *Pigford*, demonstrating discrimination by USDA in granting loans and benefits to minority farmers. In 1999, Native American farmers filed a class action lawsuit, which was eventually settled by USDA in 2011.[50] USDA also created a voluntary claims process in 2011 for Hispanic and women farmers after class action lawsuits filed on their behalf were denied class certification.[51] However, many minority and female farmers had already lost their land as well as the opportunity to train a future generation of farmers by the time payments were distributed, and the settlement terms did not return the dispossessed farmers to their land.

In addition to being denied credit, minority farmers were often granted loans on highly unfavorable terms or were not allowed to restructure their loans like white farmers.[52] As a result, many minority farmers participating in the lawsuits owed large sums of debt to USDA.[53] Nonetheless, few farmers were able to receive debt forgiveness from USDA because the evidentiary requirements were so burdensome—only five farmers received debt relief as a result of the *Pigford II* process, for example.[54] Instead, successful *Pigford II* claimants almost exclusively received a flat $50,000 payment.[55] While $50,000 is a significant sum for the average household, commercial farms often carry hundreds of thousands of dollars of debt,[56] much of it from loans to cover operating expenses, which hover around $355,000 per year.[57] These settlement payments were thus decades late, and insufficient to provide debt relief or restore land and expertise to minority farming communities.

In response to *Pigford* and the other discrimination cases, the 2002 Farm Bill authorized the Secretary of Agriculture to create a new position and office within USDA, the Assistant Secretary for Civil Rights and the Office of the Assistant Secretary for Civil Rights, responsible for carrying out the agency's efforts on this front.[58] Congress also created new programs for SDFR and BFR, described later in this report. Though these programs remain underfunded and need to be improved, their creation signaled an important step toward addressing equity in USDA programs. This report identifies opportunities in the upcoming farm bill to improve these programs and adjust others to better support minority and women farmers in the United States and help correct for USDA's discriminatory practices.

C. Supporting diverse farms and diverse farmers

Today, the typical farmer is white, male, and 58 years old.[59] The current generation of farmers is aging, and there are now twice as many farmers older than age 65 as younger than age 35.[60] At the same time, it is increasingly difficult to farm as a full-time profession. Off-farm income constitutes the majority of family income for 75 percent of principal operators,[61] and 61 percent of principal operators now work off the farm themselves.[62]

As the farming population ages, rural demographics are shifting as well, complicating efforts to draw new farmers into the fields. It is clear that the next generation of farmers will not be able to simply follow in the footsteps of their predecessors. In the coming years, agriculture will need to adjust to these conditions, and find new ways of growing the nation's food and fiber while making a profit and balancing environmental, health and equity considerations. Fortunately, there is a demonstrated desire from farmers to continue making a living off the land, and many more who would take up the vocation if given the opportunity.

The farm bill presents a unique occasion to promote an inclusive and diversified agricultural sector, from the crops grown to the farmers who grow them. The following sections of this report will highlight the obstacles faced by small and mid-sized farms, diversified operations, specialty crop producers, independent meat producers and SDFR and BFR, focusing specifically on areas in which changes to farm bill programs can improve access to markets, insurance, credit, and land. Part I focuses on farm bill program reform that will improve access to markets for these producers. Part II recommends reforms to the Whole Farm Revenue Protection (WFRP) program to better support small and mid-sized operations and BRF while rewarding greater diversification. Part III proposes better outreach and funding to encourage SDFR and BFR participation in credit programs. Part IV recommends broadening and reevaluating existing programs to facilitate access to land and better coordinate and fund

Discretionary, Mandatory and Baseline: A Primer on Farm Bill Funding

Congress writes the farm bill according to established federal budget rules and procedures. Chief among these rules is the process for "capturing" budget baseline, wherein the Congressional Budget Office projects the costs of all existing farm bill programs as if they were extended for ten years. This becomes the "baseline" pool of money available to write the new farm bill. Adding to this baseline is possible, but unlikely.

All farm bill funding is not created equal. Some programs receive ***mandatory*** funding through the farm bill. Mandatory funding is not contingent on annual appropriations because the farm bill already says how much funding to provide each year. A subset of mandatory spending is ***baseline*** funding. Baseline means that a program already has built-in funding going forward and Congress does not have to find new funding to keep the program in a new farm bill. Many of the largest farm bill programs, like the Supplemental Nutrition Assistance Program, the federal crop insurance program, and the major conservation programs have baseline funding.

However, programs with mandatory spending but no baseline face an uphill battle as Congress writes a new farm bill because Congress must find "new" money to support them. At least 39 farm bill programs have mandatory funding but no baseline. These programs, which include the Farmers Market and Local Food Promotion Program and the Organic Certification Cost-share Program, have received over $2.8 billion since 2014. Generally, the cutoff between mandatory and baseline funding is $50 million per year. Programs receiving $50 million in the last year of the current farm bill are considered part of the baseline and thereby achieve a more permanent status within the farm bill.

Finally, some programs receive authorization in the farm bill but depend on ***discretionary*** spending through the annual appropriations process. Authorization tells the agency what the program can and should do, but does not guarantee that there will be any money to carry out that mission. Initiatives like the Beginning Farmer and Rancher Individual Development Accounts and USDA's share of the Healthy Food Financing Initiative received authorization in the 2014 Farm Bill but have received little or no funding through the subsequent appropriations.

For more information about farm bill funding, including a list of programs with mandatory funding but no baseline, see Jim Monke, Cong. Research Serv., R44758, Farm Bill Programs Without a Budget Baseline Beyond FY2018 (2017).

GOAL I

Enhance market opportunities for small and mid-sized operations, beginning farmers and ranchers, specialty crop producers, and independent meat producers, thereby also increasing consumer access to diverse sources of food

transition planning.

While large-scale agricultural producers can take advantage of a variety of outlets for their products—distribution through wholesalers, institutions, retailers, or direct-to-consumer sales[63]—significant barriers prevent small-scale and beginning farmers, specialty crop producers, and independent meat producers from accessing the full range of potential markets. As a result, small-scale and beginning farmers typically sell their products close to the farm, most often within 20 miles.[64] Outside of direct-to-consumer markets, small-scale farmers struggle to branch into intermediated marketing channels, which often require a large quantity of product. To secure these intermediate contracts, small-scale producers must form structures like cooperatives or food hubs to aggregate their products.[65]

Bolstering local food systems has been suggested as a means of supporting small-scale, specialty crop, and independent meat producers. However, while local food systems do typically take advantage of short supply chains,[66] they include both direct and intermediated markets. Currently, the majority of food sold locally is marketed through intermediated channels dominated by a few large farms.[67] Direct-to-consumer markets, on the other hand, are more open to smaller farms, and tend to attract specialty crop producers and those utilizing environmentally sustainable production practices.[68]

It is critical that the next farm bill invest in scaling up direct markets for small-scale and beginning farmers, while also expanding opportunities for farmers to break into intermediated markets. Though current farm bill programs include some support for market access and marketing training, more is needed. The next farm bill should include provisions that promote these goals, including increased support for farmers' markets and direct markets, helping small and mid-sized producers and BFR access existing market support programs, and removing market barriers that undermine the competitiveness of small-scale, independent livestock producers and poultry growers.

RECOMMENDATION

Support the development of farmers' markets and other farmer-driven distribution channels to improve small-scale farmers' access to consumers

Farmers who sell their products directly to consumers often rely on urban markets that are difficult to access for farmers living more than 100 miles from a city.[69] On the consumer side, fresh foods are difficult to find in many communities that lack platforms like farmers' markets or community supported agriculture.[70] The next farm bill provides an opportunity to increase support for some of USDA's most successful efforts to scale up specialty crop production, while helping to connect producers with adequate markets and increase consumers' access to healthy foods.

LEGISLATIVE OPPORTUNITY

Provide increased and permanent baseline funding for the Farmers Market and Local Food Promotion Programs

The 2014 Farm Bill created the Farmers Market and Local Food Promotion Program (FMLFPP), merging the Farmers Market Promotion Program (FMPP) with a new initiative, the Local Food Promotion Program (LFPP), which shared the goal of connecting producers and consumers.[71] FMPP offers grants to direct-to-consumer markets, such as "domestic farmers markets, roadside stands, community-supported agriculture programs, [and] agritourism activities" for training, expansion, improvement, and development.[72] LFPP helps producers break into intermediated market channels, offering grants to businesses, producer groups, nonprofits, regional farmers' market authorities, and local and tribal governments to increase consumption, access, and market opportunities for locally grown and produced foods.[73]

FMPP and LFPP share $30 million in annual mandatory funding, split evenly between them.[74] The programs share a focus on low income and low access communities, and 10 percent of their funding is set aside for projects in these areas.[75] One key difference between FMPP and LFPP, however, is that LFPP requires grantees to match 25 percent of the project cost,[76] while FMPP does not have a matching requirement.[77]

FMPP has built an impressive record of success. When the Farmers Market Coalition surveyed FMPP grant recipients in 2013, they found that sales increased 27 percent on average, the number of producers involved per site increased by 34 percent on average, diversity of produce offered increased at 88 percent of sites, and FMPP-funded training programs produced an average increase of $85,366 in sales.[78] A 2016 USDA study found similar results, with grantees showing increased sales, customer traffic, new vendors, infrastructure, and training.[79] For instance, The Highland Center in Virginia hosted workshops for small-scale farmers, market supervisors, and other community members to improve their understanding of and outreach to target markets.[80] Over the next two years, sales in the target markets rose by 155 percent on average.[81] When the Penn's Corner Farm Alliance in Pennsylvania received a grant to improve its delivery vehicles, it went from being on the brink of collapse to expanding its membership from 8 to 30 farmers.[82] When the Michigan Farmers Market Association received a grant to expand acceptance of Supplemental Nutrition Assistance Program (SNAP) benefits, its training sessions led to 19 more markets taking SNAP benefits over a two-year period,[83] and to an overall increase of 1,776 percent in SNAP purchases across all markets.[84]

LFPP was created 12 years after FMPP,[85] and thus has less program evaluation data available.[86] However, in 2014 both LFPP and FMPP began requiring grantees to submit standardized performance reports that detail the outcomes of their grant spending.[87] Based on these data, LFPP's grantees demonstrate similar success to their FMPP counterparts. For example, as a result of its LFPP grant, Maine-based Blue Sky Produce, which works in the wholesale market for berries and herbs,[88] helped create about 100 jobs and increased market sales by 49 percent.[89] Union Kitchen, a D.C. food incubator dedicated to building new food businesses,[90] created 30 jobs and increased sales by 83 percent while bringing healthy food into socially disadvantaged neighborhoods.[91] A North Carolina project called Seal the Seasons, which offers freezing services to local farmers, increased sales by 260 percent and increased the number of farmers served by 66 percent.[92]

This success is the result of significant demand but, as currently funded, these programs cannot meet that demand. While FMPP funding consistently increased from 2006 to 2014, when it reached its current level of $15 million annually, the program was unable to fund approximately 60 percent of applications in 2015, the last year for which these data are available.[93] Data for LFPP's award rate are not yet available, although it is likely to be similar to FMPP's given the programs' similar structures.

It is time to build on the successes of these programs by increasing funding and by providing permanent baseline funding, which assures that funding will remain available without requiring new mandatory spending down the road.[94] Increased and sustained funding is key if FMLFPP is to keep pace with a growing applicant pool. Both FMPP and LFPP have shown themselves to be worthy investments in both farmers and consumers. Therefore, the next farm bill should provide at least $50 million in permanent baseline funding for the FMLFPP to support its continued success and to provide funding for a higher percentage of program applicants.

> When it comes to fostering thriving markets for fresh, local food, expanding direct and intermediated markets is only half of the equation. Farmers depend on having customers who can afford to pay a fair price for their products. To balance this equation, Congress should make permanent its commitment to increasing local foods purchasing power, especially among vulnerable populations. See FBLE's companion report, Food Access, Nutrition, and Public Health to learn how expanding initiatives like the Senior Farmers' Market Nutrition Program can bridge the gap to help neighbors become loyal customers.

LEGISLATIVE OPPORTUNITY

Increase funding and add guidance for the Specialty Crop Block Grant Program

The Specialty Crop Block Grant Program (SCBGP) provides grants to United States states and territories to increase the market competitiveness of specialty crops. This vital program supports a wide range of activities, including increasing consumer demand for specialty crops, raising awareness about the benefits of specialty crop consumption, improving the efficiency of specialty crop distribution systems, conducting research to improve pest control and develop new seed varieties, and developing local farm-to-school programs and school gardens. These projects benefit both farmers and consumers.

Any agriculture agency of a United States state or territory can apply for a specialty crop block grant from USDA.[95] The 2016 Specialty Crop Block Grant Program Request for Applications encourages states to "perform outreach prior to the development and release of the State's request for proposals or applications to interested parties, including socially disadvantaged and beginning farmers." There is no specific mandate for states to prioritize socially disadvantaged or beginning farmers, and no mention of small or mid-sized farms.[96] If granted, the funding given to those state and territory agencies may then be distributed to producers and organizations who will use it to promote the competitiveness of specialty crops.[97]

In FY 2017, every state, the District of Columbia, and five United States territories received funding support for a total of 678 projects.[98] These projects encompassed a wide range of approaches to specialty crop market improvement, including marketing and promotion, education, research, pest reduction, food safety, and productivity.[99] For instance, the Ohio Ecological Food and Farm Association used grant money to train organic farmers in marketing and productivity, help new farmers apply for organic certification, and work with farmers of varying experience to create plans for food safety.[100] The Northeast Organic Farming Association of Connecticut will conduct a campaign to increase farmer awareness of and engagement in environmentally sustainable production practices (e.g., cover cropping and pollinator habitat management) on specialty crop farms.[101]

While data about the effectiveness of the program are lacking at present, SCBGP recently moved in the right direction: the program required states to compile data about grant impact for the first time in FY 2016.[102] The full report has not yet been published.

Congress should increase current funding levels for the SCBGP. Funding for the program has grown over the past several years: the 2008 Farm Bill allocated $55 million per year, while the 2014 Farm Bill gave SCBGP $72.5 million per year from 2014 to 2017 and $85 million in 2018.[103] Despite these increases, demand for the program has continued to outpace available funding.[104] Congress should increase funding for SCBGP to $135 million to ensure continued support for specialty crop marketing and production in the coming years, while also requiring states to continue to compile data on the impact of their grants. To ensure that SCBGP strengthens specialty crop production and promotion among small and mid-sized producers,[105] SDFR, and BFR, Congress should also require that each state dedicate at least one-third of its SCBG funding to projects targeting these groups.

RECOMMENDATION

Reduce barriers to grant and loan programs for producers, especially smaller operations and beginning farmers and ranchers

The administration of programs that provide market support often presents unnecessary barriers to producers. Grants that can be used for market access or marketing development, including Rural Business Development grants, Rural Cooperative Development grants, and the Farmers Market and Local Food Promotion Program, each have a unique application process and often involve complex instructions.[106] Currently, USDA grant applicants must invest many hours in the application process, including attending workshops and compiling paperwork, in addition to writing the grant applications.[107] These application requirements should be streamlined to increase access to these programs for small-scale farmers and BFR, who lack the staffing resources to coordinate these details.

LEGISLATIVE OPPORTUNITY

Simplify application procedures and increase accessibility of market-related grants and loans

The process of applying for USDA grants is burdensome and may dissuade qualified applicants.[108] In its 2017 national survey, the National Young Farmers Coalition found that some of the biggest barriers to accessing USDA programs were unfamiliarity with the programs and their requirements, burdensome paperwork, and insufficient time to apply.[109]

In 2013, USDA addressed similar concerns about its loan programs by creating the microloan program, which lends up to $50,000 to farmers for operating or ownership expenses.[110] The program utilizes a streamlined application process that is less burdensome than application processes for other larger loan programs,[111] and has more flexible requirements for farming experience and production history reporting.[112] The microloan program has been incredibly successful, growing from 3,833 loan obligations totaling $88.8 million in 2013 to 5,674 loan obligations totaling $162.2 million in 2015.[113] During this time, the program attracted over 8,000 new borrowers, far surpassing the 3,606 new borrowers who had received small operating loans in the three years before the microloan program was created (2010-2012).[114] Thus, the microloan program has been successful at facilitating access to loans for small-scale and beginning producers.

In the next farm bill, Congress can adjust authorizing language for market-related grants and loans in several ways to make them more accessible for farmers. First, Congress could require USDA to streamline the application process for small grants and loans or create a uniform application form for similar types of funding. Second, Congress could set a cap on the number of hours required to complete an application for grant and loan programs, especially those targeted toward small-scale and beginning producers. Federal agencies are already required to manage the collection of information in such a way as to minimize collection burdens on the public, and to inform the public of the burden of the collection.[115] Therefore, Congress could set a limit on the expected burden of grant and loan application processes. These changes would reduce the barriers preventing small-scale and beginning producers from accessing program support.

RECOMMENDATION

Increase access to organic certification for small farms

According to USDA estimates from 2010, consumers pay a premium for organic foods ranging from 7 percent higher than conventional prices for spinach to 82 percent higher for eggs.[116] Certification is thus a valuable asset, but small-scale producers often struggle to afford the certification expenses. Certification itself can cost up to several thousand dollars,[117] and that does not count annual certification fees in subsequent years nor the costs associated with recordkeeping.[118] USDA already has a number of programs in place to help farmers access organic certification, including the Organic Certification Cost Share Program (OCCSP), which reimburses farmers for up to 75 percent of the cost of certification, capped at $750.[119] However, there is still more that the next farm bill could do to make organic certification attainable for small-scale producers.

LEGISLATIVE OPPORTUNITY

Increase the Organic Certification Cost Share Program (OCCSP) cost share rate for SDFR and BFR and allow these groups to receive their cost share up front

Congress should add a provision to the next farm bill requiring USDA to raise the cost share to 90 percent for all operators, mirroring the cost share rate for the Environmental Quality Incentives Program (EQIP) for SDFR and BFR,[120] in order to make the program more helpful for producers, especially small-scale and beginning producers for whom certification costs are a significant burden. Congress should also authorize SDFR and BFR to receive their cost share up front, which EQIP also currently does, so that cash-strapped farmers will still be able to participate.[121] These steps will help ensure that the program is accessible for all farmers who need help with organic certification.

RECOMMENDATION

Improve market competitiveness for livestock and poultry growers and broaden access to slaughtering services for small-scale independent livestock producers

Consolidation in animal agriculture has led to a decline in direct sales of animals on the "spot" market, the open, competitive market where buyers bid to purchase an independent producer's animals. Instead, farmers are often forced to raise animals under contract, meaning that large packers, contractors, and dealers (PCD) own the animals and contract with growers to raise them.[122] PCD can then either sell large quantities of animals to processing firms, or, if the business is vertically integrated, process the animals for sale. This system places independent producers who own their animals at a competitive disadvantage and many struggle to keep their businesses solvent as a result. From 2001 to 2010, the share of cattle sales occurring on the spot market fell from 45 percent to 35 percent.[123] For hogs, the portion of total sales occurring on the spot market declined from 62 percent to 8 percent from 1995 to 2010.[124] For chickens, contract growing now accounts for virtually the entire market.[125] This consolidation leads to a variety of practices that hurt market competitiveness, rendering independent producers unable to compete and trapping contracted growers in exploitative contracts that they must accept, given the market power of PCD.[126]

One of the most significant challenges for small-scale, independent meat producers is securing access to processing facilities. Large PCD may be located far from producers and, especially for poultry and hogs, often exclude producers that do not have a production contract with them.[127] At the same time, the number of smaller slaughterhouses has declined significantly in recent years, in part due to the 1998 implementation of Hazard Analysis Critical Control Point (HACCP) requirements in federally and state-inspected slaughterhouses, which dramatically increased costs for smaller plants.[128] Conventional slaughterhouses must be inspected by USDA,[129] or by state agencies following state laws that must be at least as strict as their federal counterparts.[130] Generally, state-inspected meat can be sold only intrastate.[131] The Cooperative Interstate Meat and Poultry Shipment Program, first enacted by the 2008 Farm Bill, established limited exceptions to that rule,[132] allowing some state-inspected facilities that meet certain conditions to sell their products in interstate commerce and internationally.[133] However, only 24 states are eligible to participate in the program,[134] and of those states, only four currently participate.[135]

Regardless of whether facilities are state- or federally-inspected, operation costs under HACCP can be expensive and the new regulatory regime has contributed to the declining number of operations (12 percent of such slaughterhouses closed between 2001 and 2013).[136] "Custom slaughterhouses," a less regulated alternative, allow for periodic rather than continuous inspection and do not have to implement HACCP, reducing operations costs.[137] However, the resulting meat products are restricted for the personal use of the animal's owner and must be marked "not for sale."[138] Primarily used by hunters, custom slaughterhouses may process domestic livestock, but the animals must be sold to potential consumers prior to slaughter, which requires the consumer to be much more involved than they would be in the typical meat supply chain. As a result, custom slaughterhouses and the producers who use them are generally limited to small-scale operations, and to consumers who can afford to purchase an entire animal, or a significant portion of the animal, up front. The next farm bill provides several opportunities to level the playing field for small-scale, independent livestock producers, while maintaining the safety of the food supply.

LEGISLATIVE OPPORTUNITY

Renew the mandate for USDA to publish regulations addressing unfair practices in the meat industry and clarifying the criteria for detecting violations of the Packers and Stockyards Act

The Packers and Stockyards Act (PSA) was enacted in 1921 to regulate market competition in the livestock, meat, and poultry industries.[139] Until late 2017, regulatory responsibility for PSA's administration had resided in the Grain Inspection, Packers and Stockyards Administration (GIPSA), a standalone agency within USDA.[140] The Secretary of Agriculture abolished GIPSA in late 2017 and transferred its regulatory authority to the Fair Trade Practices programs within USDA's Agricultural Marketing Service.[141]

The PSA prohibits unjustified discriminatory practices and anticompetitive behavior in the livestock industry,[142] but leaves several key terms undefined, making its exact stipulations unclear. The 2008 Farm Bill directed GIPSA to develop regulations to address unfair practices, clarifying what types of conduct constitute a violation of the PSA, increasing transparency in contract negotiations between producers and packers, and limiting vertical integration in the meat industry.[143] In 2010, GIPSA proposed a series of rules expanding protections for growers, including one that would have confirmed that anticompetitive or misleading practices can be challenged on the basis that they harm an individual grower.[144] These rules would have further helped growers by increasing price transparency, restricting price deflation, and preventing unforeseen and costly facility requirements.[145] However, these rules, with a few minor exceptions,[146] were not adopted because a 2012 agriculture appropriations rider passed by Congress forbade GIPSA from intervening.[147] The rider limited GIPSA to defining harm at the market rather than the individual level and forbade GIPSA to require PCDs to disclose contracts, modify existing pricing policies, define criteria for undue or unreasonable preference or prejudice, or make any rules projected to cost over $100 million.[148]

Each agriculture appropriations bill from 2012 to 2015 included a similar rider.[149] However, in 2016, the rider was absent and GIPSA renewed work on the rule. The agency issued the Farmer Fair Practices Rules in December 2016, including both an interim final rule and two proposed rules.[150] The interim final rule allows farmers to prove "unfair, unjustly discriminatory, or deceptive" practices without requiring that violations undermine the competitiveness of the market as a whole.[151] The proposed rules update the criteria for determining when industry uses "unfair" practices and preferences, especially with respect to poultry pricing, and reform the poultry growing contact system.[152] On October 18, 2017 USDA withdrew the interim final rule that would have clarified the proof of harm standard needed to bring suit against the meat industry under the PSA.[153] This withdrawal severely limits the ability of farmers to challenge anti-competitive actions in the meat industry.

In the next farm bill, Congress should renew the mandate for GIPSA to issue rules addressing unfair practices in the meat industry and restore market competition.

LEGISLATIVE OPPORTUNITY

Revise the Federal Meat Inspection Act to create a pilot program allowing custom slaughterhouses to sell a limited quantity of meat products commercially within state lines

Allowing states to promulgate food safety regulations tailored to custom slaughterhouses can help increase producers' access to slaughter capacity. Currently, meat processed in custom slaughterhouses is restricted to personal use by the animal's owner and must be marked "not for sale."[154] The Federal Meat Inspection Act (FMIA) governs slaughterhouse oversight; adjusting its restrictions could increase the opportunity for small producers to use custom slaughter services without putting the safety of the food supply at risk.

In the next farm bill, Congress should revise the FMIA to enable USDA to approve a state pilot program promulgating alternative regulations for custom slaughterhouses. The designated state should have authority to establish its own regulations for small-scale livestock producers, allowing meat from custom slaughterhouses to be sold post-slaughter to intrastate customers. Congress should require USDA to place numerical limits on the number of animals processed at any custom facility as part of the pilot program in order to ensure that the program's benefits are focused on small-scale producers and slaughterhouses, while also limiting the scope of any potential public health and food safety concerns. It should further require USDA to evaluate the effectiveness of food safety protocols at participating slaughterhouses, allowing policymakers and the public to make informed decisions about food safety. This would provide states with a pathway to greater flexibility to allow sales from small or custom slaughter facilities, which would in turn expand access to markets for small-scale producers.

RECOMMENDATION

Maintain funding for vital rural development programs

The Rural Development Policy Act of 1980 designated USDA as the lead federal agency for rural development—a role it continues to fulfill today.[155] USDA devotes a higher share of program funds to rural areas, and has more rural development programs, than any other agency.[156] The Rural Development title in recent farm bills included provisions authorizing or amending programs in a number of areas, including telecommunications, energy, water and wastewater infrastructure, business and community development, and regional development.[157] These programs, regardless of whether they directly support farms and agricultural infrastructure, help diversify agricultural markets by keeping people and wealth in rural communities. Marketing opportunities for diversified, small, and mid-sized farms grow along with rural economies. Similarly, SDFR and BFR often rely on rural markets and infrastructure to maintain and expand their operations. Sustaining diversified agricultural economies depends on maintaining funding for rural development programs.

LEGISLATIVE OPPORTUNITY

Maintain funding for business & community development programs

Business and community development programs provide rural communities with essential community facilities, stimulate economic development by creating and growing local businesses, and support regional agricultural activity. The farm bill reauthorizes and adds various loans, grants, and other investment programs, such as Rural Development Business grants, to support rural businesses and foster entrepreneurship.[158] Past farm bills also ensured that rural communities are equipped with "essential community facilities,"[159] and included several loan and grant programs to develop these facilities in rural communities with populations of 20,000 or less.[160] The funds are available for facilities that provide health care, education, and public safety,[161] such as hospitals, healthcare clinics, schools, police and fire stations, food banks, and community centers.[162] Farmers' markets, school or community kitchens, and community gardens may also be eligible for grants.[163]

The 2014 Farm Bill also reauthorized support for a loan program to promote local and regional agriculture through USDA's Rural Development Business and Industry Guaranteed Loan Program.[164] First introduced in the 2008 Farm Bill,[165] the program creates economic opportunities in both rural and urban areas to meet the rapidly growing demand for local food.[166] Despite the popularity of local foods, the lack of distribution systems has prevented local farmers from entering mainstream markets.[167] The program supports food infrastructure projects, such as food hubs,[168] that aggregate, process, store, and distribute local foods, opening up new channels for local farmers.[169]

Congress should authorize funding at comparable amounts to the 2014 Farm Bill, and ensure appropriations meet authorization levels.

GOAL II

Expand whole-farm insurance for diversified farms

Diversified farms historically struggle to access insurance products that protect their livelihoods when bad weather or other mishaps threaten their production or marketability. Unable to use traditional crop insurance policies, many diversified farms are left without the same federally subsidized premiums that large farms growing fewer crops can access through crop-specific policies. This puts diversified farms at a disadvantage. In agriculture, insurance provides more than protection against catastrophic loss; it is often a prerequisite to access credit.[170] Given the vulnerability of agriculture to natural and market phenomena beyond farmers' control, consistent revenue is difficult to achieve in the absence of insurance.[171] Without evidence of consistent income, farms cannot establish their reliability for loans,[172] making it more difficult to plan and invest in future growth.

Whole-farm insurance policies allow farmers to avoid applying for coverage separately for each crop they plant, which can be logistically difficult given the paperwork involved.[173] In some cases, applying for each crop can even be impossible since crop insurance offerings are determined on a county-by-county basis.[174] If coverage for a particular crop is not offered for farmers in a particular county, that portion of the harvest goes uninsured.[175] Under whole-farm policies, farms can purchase subsidized insurance for their total farm revenue regardless of what they produce.[176] Such policies expand access to crop insurance for farms that have traditionally been overlooked, and has important implications for supporting diversification and specialty crop production, and thus increasing the availability of healthy foods.[177]

Earlier farm bills provided whole-farm revenue protection insurance policies to farmers through the Adjusted Gross Revenue (AGR) and Adjusted Gross Revenue-Lite (AGR-Lite) programs, which were implemented as pilot programs in 1999 and 2003, respectively.[178] However, the programs were difficult to administer[179] and broadly underutilized.[180] The Whole Farm Revenue Protection (WFRP) program, a pilot program authorized by the 2014 Farm Bill,[181] builds on AGR and AGR-Lite with key changes, including higher coverage levels and premium discounts, incentives for crop diversity, and availability in all 50 states.[182]

The technical and other improvements of WFRP over its predecessor programs have increased both participation and program viability. WFRP started small, selling 1,125 policies in its first year (2015),[183] but doubled to 2,804 policies for the 2017 crop year, insuring $2.5 billion in production value.[184] Though this is a small figure compared to the $102.4 billion worth of production value insured by the USDA Risk Management Agency (RMA) in 2015,[185] WFRP covers significantly more than AGR and AGR-lite,[186] which suggests that WFRP already appeals to a broader constituency. However, USDA must continue to tailor WFRP to better meet the needs of smaller and diversified operations in order to expand and institutionalize the program. In the next farm bill, Congress can make WFRP more accessible to small and mid-sized producers and increase support for diversified production systems that enhance natural resources. The remainder of this section identifies the ways in which WFRP already supports these objectives, and proposes how WFRP could go further in its next iteration.

RECOMMENDATION

Make Whole Farm Revenue Protection more accessible

Comprehensive and affordable risk management is necessary to preserve small and mid-sized farms, and to attract new farmers, who disproportionately seek opportunities on small and diversified operations.[187] Even in its modest form, WFRP expands support for rural livelihoods simply by making protection more accessible for diversified operations and the small-scale farmers who work on them.[188]

LEGISLATIVE OPPORTUNITY

Create streamlined WFRP for small and mid-sized farms

WFRP offers a vehicle to both insure and ensure the livelihoods of small farms by guaranteeing revenues sufficient to service debt and make a decent living. However, paperwork and recordkeeping prevent broader participation in WFRP.[189] Farmers must produce extensive revenue histories in order to sign up, and then submit multiple interim reports throughout the growing season.[190] For small farms this additional recordkeeping can consume more time than the benefit of carrying insurance. Congress should require RMA to develop a simplified WFRP policy for small and mid-sized farms, which USDA defines as farms with under $1 million in annual revenue.[191] The microloan program, discussed elsewhere in this report, provides an excellent model for a streamlined WFRP program. Specifically, Congress should require that the new policy offer a simplified application process that allows farmers to demonstrate production and revenue histories using more flexible means, and minimize reporting requirements during the busy growing season. The proposed Crop Insurance Modernization Act provides a model for this policy change that Congress should include in the next farm bill.[192]

LEGISLATIVE OPPORTUNITY

Provide additional funding for WFRP outreach and administration

WFRP is a new and unfamiliar program to many farmers and crop insurance agents. A 2015 nationwide survey of diversified, specialty crop producers, for example, found that almost 60 percent of the surveyed farmers were not aware of WFRP.[193] The survey also found that a lack of information or buy-in from insurance agents, who often must conduct additional paperwork for WFRP policies, was a barrier to the program for many farmers.[194] Congress should direct additional funding to RMA's Risk Management Education Partnerships (RMEP) and Risk Management Education in Targeted States (RMETS) programs.[195] This additional funding should be reserved for providing producers and insurance agents with information about WFRP and its advantages for producers with diversified farms.

ADMINISTRATIVE OPPORTUNITY

Improve WFRP access for beginning farmers and ranchers

Currently, BFR who lack three years of revenue history or five years of managing at least 90 percent of another farm cannot access WFRP.[196] Though this is less than the requirement for non-BFR, which require five years of revenue history,[197] it is still a high hurdle for someone just starting out. In traditional insurance programs, a BFR could build a revenue history using county averages for yield for a particular crop, but such averages are based on monoculture systems.[198] The same service is not available for WFRP.[199] In the absence of WFRP coverage, new farmers depend on the default catastrophic coverage offered by the Noninsured Crop Disaster Assistance Program (NAP). Using buy-up options made available through the 2014 Farm Bill, producers can theoretically achieve 65 percent coverage under NAP.[200] Yet, beginning farmers need more than this catastrophic coverage option; as NAP's name suggests, it only covers major disasters, not the price fluctuations and processing costs covered by WFRP.[201]

Ensuring WFRP better supports BFR will require RMA to relax the production and revenue history requirement. In easing the way for beginning farmers, RMA should find better ways to predict new farms' revenues rather than offering benefits exclusively to those with revenue history. For example, coverage could be made contingent on a requirement that producers submit robust crop and livestock plans when they apply for coverage. Farmer organizations widely implore all farmers, both new and experienced, to develop such plans before each season as an obvious and essential business planning best practice. USDA already requires detailed crop plans for access to conservation[202] and credit[203] programs. Thus, there is precedent for using credible production estimates as the basis for coverage under WFRP.

RECOMMENDATION

Increase support for diverse production systems under WFRP

Diversified production systems improve resilience by using a variety of crops to reduce vulnerability to risk.[204] This system also boosts environmental sustainability by using the biology of different crops and livestock to reduce erosion, keep nutrients in the soil, and reduce the need for ecologically damaging inputs like pesticides and fertilizers.[205] To encourage diversification, WFRP reserves its highest coverage levels (80 and 85 percent) for operations that derive substantial income from at least three crop or animal commodities.[206] By making the diversification incentive more robust, WFRP could pilot innovative concepts to better align federal insurance subsidies with more favorable environmental outcomes.

LEGISLATIVE OPPORTUNITY

Expand diversification incentives within WFRP

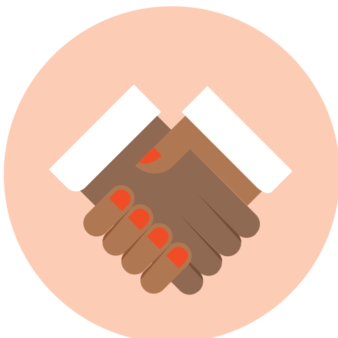
The next farm bill should require that WFRP adopt much more ambitious incentives for diversification. Although this recommendation is aspirational, the current iteration of WFRP provides an ideal platform for paying participants who diversify production and thus reduce vulnerability to risk, and Congress should embrace this incentive structure to further encourage meaningful on-farm diversification and conservation practices. Specifically, Congress should require RMA to recognize finer gradations of diversification in setting coverage and subsidy rates under WFRP. At present, farms with three or more species have access to coverage levels of 80 and 85 percent.[207] Rather than this binary "whole-farm" subsidy rate, a diversification subsidy should be meaningfully stepped up with each additional crop or with the adoption of more beneficial crop rotations. These reforms would recognize and reward true diversification, and incorporate scientific research to understand the interactions of various crop and animal rotations that complement one another, reduce external inputs, and build soil productivity over time. The details should reside with RMA, with consultation from Natural Resources Conservation Service (NRCS) to categorize and rank crop systems.

ADMINISTRATIVE OPPORTUNITY

Revise "good farming practices" standards to include recognized conservation practices

In the absence of congressional action, RMA should take steps towards encouraging conservation practices and diversification. Such practices conserve resources and improve resiliency, a proven risk management strategy. Yet some of these practices do not align with the terms of crop insurance contracts that require farmers to follow "good farming practices."[208] These standards can interfere with a farmer's ability to use conservation and climate-friendly practices like alley-cropping, cover cropping, and integrated crop-livestock systems.[209] As a first step, RMA recently update its Good Farming Practice Determination Standards Handbook to recognize NRCS conservation activities.[210] However, insurance companies retain the power to proscribe certain practices in their policies' terms and conditions.[211] Insurers have a narrow interest in dictating practices that maximize intra-year yields, rather than in practices that offer long term conservation and risk management benefits. Thus, RMA should update the handbook to ensure that any NRCS-approved conservation activity shall qualify as a "good farming practice" and prohibit private insurance companies from undermining this determination.

GOAL III



Improve access to credit for socially disadvantaged and beginning farmers and ranchers

The agricultural sector could not function without credit. Due to high start-up costs, such as the purchase of land and equipment, farm operators must invest heavily in their farms before they produce enough revenue to pay for these investments. As a result, farmers and ranchers often rely on credit to finance their operations. Yet, due to the cyclical and often unpredictable nature of farming, private commercial creditors perceive many agricultural loans as too risky to make.[212] Specialized agricultural lenders have long recognized that farmers have unique credit needs.[213] Insufficient access to credit can make farming financially infeasible, forcing a farmer to quit farming or deterring others from beginning to farm in the first place.

Farmers access credit through a variety of private sector and government institutions. Private commercial banks account for approximately 42 percent of total United States farm debt, while the Farm Credit System (FCS), a cooperative of government-supported private agricultural lenders, supplies 41 percent of farm loans.[214] Finally, through FSA, USDA directly lends approximately 2 percent of all farm loans.[215] Together, these institutions account for the majority of United States agricultural loans, holding 85 percent of all United States farm debt.[216] In addition to direct loans, FSA extends credit to farmers indirectly by guaranteeing payment of 4 to 5 percent of loans made by commercial banks and FCS to farmers, focusing on those who are unable to access credit elsewhere.[217] Generally, farmers can acquire new farmland through direct farm ownership loans or cover operating costs through direct operating loans;[218] FSA provides guarantees for these two categories of loans, as well.

In 1987, Congress created target participation rates for farm ownership loans for socially disadvantaged applicants.[219] Congress expanded on its loan set-asides for SDFR in the 1990 Farm Bill and established new set-asides for BFR in the Agricultural Credit Act of 1992.[220]

Loan set-asides for SDFR are determined by target participation rates, which are tied to the population of the underrepresented group in a particular county. For direct farm ownership loans target participation rates for racial and ethnic minorities are tied to the percentage of the *total population* of the county that belongs to a socially disadvantaged group.[221] For direct operating loans, targets for racial and ethnic minorities are based on the percentage of ***farmers*** in that county who are classified as socially disadvantaged.[222] Target participation rates for women are always based on the percentage of ***farmers*** who are women.[223] Since 2008, SDFR as well as BFR have been eligible for USDA's Down Payment Loans, a set-aside within direct farm ownership loans.[224] For BFR, 50 percent of direct operating loans and 75 percent of direct farm ownership loans are reserved until September 1 of each fiscal year; additionally, 40 percent of guaranteed farm ownership and operating loans are reserved until April 1 of each fiscal year.[225]

In 2016, FSA granted 23 percent of direct and guaranteed loans (13 percent of the total loan value) to SDFR, and 42 percent of direct and guaranteed loans (34 percent of total loan value) to BFR.[226] There is generally a significant gap between direct and guaranteed lending rates to SDFR and BFR. Together, the two groups secured 75 percent of direct loans, but only 32 percent of guaranteed loans.[227] This suggests that SDFR and BFR generally do not do as well securing loans from private commercial banks, even when these loans are guaranteed by FSA. There remains work to be done to ensure that all farmers can successfully benefit from both direct and guaranteed FSA loans.

The 2014 Farm Bill included funding for three programs directed at making credit more accessible to SDFR and BFR: the Outreach and Technical Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program (commonly known as the Section 2501 Program), the Beginning Farmer and Rancher Development Program (BFRDP), and the microloan program. The Section 2501 Program was first authorized in the 1990 Farm Bill to support organizations and nonprofits that provide training, technical assistance, and outreach to SDFR to help them own and operate farms and access USDA programs, such as FSA credit programs, equitably.[228] BFRDP, established in 2008, awards competitive grants for farmer training, train-the-trainers programs, and hosting a national clearinghouse of information for BFR.[229] USDA began making microloans in 2013 under its existing authority and the 2014 Farm Bill created permanent authorization for the program.[230] The microloan program provides a fast-track application process for direct loans of $50,000 or less and is designed to better serve BFR and SDFR, groups that were not able to readily access credit through traditional FSA programs.[231] The majority of microloan program funding is set aside for BFR and SDFR, and microloans have become an increasingly common form of direct operating loan among these groups.[232]

The next farm bill should further reform FSA loan programs to attract SDFR and BFR. As the recommendations in this section make clear, there are additional opportunities to boost funding for loan programs for SDFR and BFR, increase participation by these groups in such programs, and improve data collection and reporting. While USDA has taken steps to remedy inequitable lending practices by creating loan programs specifically targeting SDFR, more progress is needed, as these programs are underfunded and fail to meet demand.[233] While lending inequities between women and male operators have decreased somewhat over the past decade, disparities in lending between minority and white operators have increased during the same time period.[234] In addition, SDFR continue to be underrepresented on FSA county committees, which help make lending decisions.[235] This persistent lack of representation on decision-making bodies makes it difficult for USDA to develop closer relationships with SDFR and denies SDFR a say in the way federal funds are spent. To address these and similar equity concerns, Congress should amend the credit title of the next farm bill in order to create a more equitable and diverse agricultural sector.

RECOMMENDATION

Improve outreach to socially disadvantaged and beginning farmers and ranchers to increase participation rates in USDA programs

USDA's legacy of discrimination has created an environment in which many USDA employees do not have close relationships with the SDFR community, often resulting in a reluctance to reach out to or communicate with them as they might with other operators. This creates significant challenges in establishing and strengthening connections between FSA and minority populations. However, these connections are critical to providing adequate support for SDFR, which is especially important given USDA's history of discriminating against minority and women farmers.

As new entrants to the agriculture sector, BFR may not know about the availability of FSA credit programs. Further, many SDFR and BFR believe the criteria necessary to qualify for credit through FSA programs are more onerous than they are in reality. This issue is compounded because many extension agents—often the sole bridge between USDA and a farmer—harbor the same misconceptions.[236] Although FSA credit officers can be flexible in extending loans to SDFR and BFR so long as they can establish a sufficient revenue stream,[237] these applicants are not always given the tools they need to navigate the credit application process. In response, the next farm bill should provide additional funding to existing programs with a history of successfully reaching SDFR and BFR and helping them to access FSA resources.

LEGISLATIVE OPPORTUNITY

Increase funding, and establish permanent baseline funding for the Section 2501 Program and BFRDP

The Section 2501 Program funds projects that provide technical assistance or conduct outreach to minority and women farmers, while the Beginning Farmer and Rancher Development Program (BFRDP) does the same for beginning operators. Both programs have been successful thus far. The Section 2501 Program has been particularly important in increasing outreach to SDFR and improving access to USDA programs, including FSA credit programs. However, there is room for improvement. In 2014, the Section 2501 Program was expanded to include veterans, even as mandatory funding was cut in half, from $20 million to $10 million annually.[238] The program had already struggled to meet the needs of SDFR, and this funding cut represents a significant barrier to continued progress.

The BFRDP has awarded hundreds of grants, helping to improve the practices and business skills of tens of thousands of beginning farmers since it began in 2009.[239] The BFRDP has received between 18 and 20 million dollars per year in mandatory funding since the 2008 Farm Bill.[240] The 2014 Farm Bill specified that at least 5 percent of the BFRDP funds must be used to support limited resource BFR, SDFR, farm workers, and veterans[241]—a substantial decrease from the previous requirement that 25 percent of the funding support farmworkers and socially disadvantaged and limited resource operators.[242] Since 2014, the BFRDP has funded only one-third of all qualified proposals recommended for funding,[243] demonstrating the need for additional funding to reach more beginning farmers.

It is critical that the Section 2501 Program and the BFRDP receive permanent baseline funding in the next farm bill. Without guaranteed funding, these programs are subjected to an uncertain appropriations process each year. Such uncertainty undermines the robust and continuous outreach efforts necessary to account for equity concerns and to support vulnerable producers. Recognizing the vital importance of proactive outreach to new farming populations and those demographics historically marginalized by USDA, Congress should increase funding for the Section 2501 Program to $30 million annually, and establish permanent baseline funding for the BFRDP at $50 million annually, while restoring the requirement that at least 25 percent of BFRDP funds support projects for farmworkers and socially disadvantaged and limited resource operators.

RECOMMENDATION

Increase the portion of FSA loans, both guaranteed and direct, that reach SDFR and BFR

Target participation rates and set-asides have been successful in increasing the number and dollar amount of loans that reach SDFR and BFR, but are not enough to meet demand. While SDFR and BFR received 75 percent of direct loan dollars in FY2016, they only received 32 percent of guaranteed loan obligations that year.[244] Additionally, the bulk of these loans went to BFR, who make up only a slightly larger percentage of the farming population than SDFR,[245] but nonetheless received 68 percent of all direct loan dollars and 27 percent of all guaranteed loan dollars in FY2016 compared to 21 and 9 percent respectively for SDFR.[246] If SDFR received the same dollar amount per capita as BFR did in FY2016, they would have received an additional $892 million in direct loans and $637 million in guaranteed loans.[247] In other words, BFR received $1.5 billion more than SDFR even after accounting for population size. This suggests that private lenders are not as successful at reaching SDFR and BFR as the government has been with direct loans, and that both private lenders and FSA can improve participation rates among SDFR.

LEGISLATIVE OPPORTUNITY

Adjust target participation rates to match or exceed general state demographics

Congress has established target participation rates for SDFR in accessing USDA loan programs.[248] Target participation rates for racial and ethnic minorities seeking direct farm ownership loans are based on general county demographics, while target participation rates for racial and ethnic minorities seeking direct operating loans are based on the county demographics of farmers. Target participation rates for women are based on the percentage of women farmers in the county for both types of loans.[249] These targets attempt to bring participation in loan programs in line with county demographics, as a way of addressing historic inequities. However, while these target participation rates are an important first step in acknowledging lingering problems with USDA loan programs in reaching minority and women populations, they do not go far enough. The target rates are based on existing rural and farmer demographics, which have historically been shaped by discrimination, including disparities in access to farm support programs. Due in large part to USDA's discriminatory practices,[250] the amount of farmland owned by white farmers increased by almost 10 percent between 1910 and 1997 while the amount of farmland owned by black farmers fell by 90 percent during the same period.[251] Therefore, granting loans based on these demographics will often simply replicate that discrimination.

Effective target participation rates should instead be aspirational, encouraging more SDFR to apply for loan programs and enabling more to successfully make use of them. Target participation rates for USDA loan programs should therefore be based on overall state population or overall county population, whichever is higher. This will encourage rural and farming communities to grow and diversify, and eventually approximate demographics of the general public.

LEGISLATIVE OPPORTUNITY

Adjust the criteria for the Certified and Preferred Lender Programs

Private lenders of FSA guaranteed loans can join the Certified or Preferred Lender Program if they meet a number of criteria, including a satisfactory loss-recovery ratio, minimum loan closures, and proven ability to process FSA guaranteed loans.[252] Certified and preferred lender status comes with several benefits, including a reduction in paperwork and faster loan approvals.[253] There is currently no requirement for lenders to prove a history of nondiscriminatory lending practices in order to achieve either certified or preferred lender status.

To increase SDFR and BFR participation in guaranteed loan programs, Congress should require that lenders prove a satisfactory history of consistently lending to SDFR and BFR at rates matching FSA target participation rates, in order to achieve certified or preferred lender status. In this case "consistently" could be defined as 3 out of 5 years, and any lender not meeting this target would be considered ineligible. This would help to reduce the gap that still persists between direct and guaranteed FSA lending rates to SDFR and BFR.

RECOMMENDATION

Grow mandatory spending on credit programs geared toward socially disadvantaged and beginning farmers and ranchers

In FY 2013, FSA piloted its microloan program, which established a fast-track loan application for loans under $50,000 in value.[254] Widely heralded as a success, particularly for BFR, the 2014 Farm Bill formally adopted FSA's microloan program.[255] In the first three years of the program, SDFR and BFR have utilized microloans at a higher rate than any other USDA loan program;[256] 81 percent of microloans were awarded to BFR, and 35 percent were awarded to SDFR.[257] Further, data suggest that the microloan program has successfully served new borrowers who would not have received traditional direct operation loans.[258] The number of first-time FSA loan participants has substantially increased through the microloan program, compared to first-time participation through microloan-sized awards under FSA's direct operating loan program in the three years before microloans came into existence.[259]

USDA similarly streamlined applications for guaranteed loans in October 2016 through FSA's EZ Guaranteed Loans program.[260] For EZ Guaranteed loans, USDA-approved lenders (rather than farmers) can have loans of up to $100,000 guaranteed by FSA.[261] FSA also authorized "non-traditional lenders" like Community Development Financial Institutions and Rural Rehabilitation Corporations to lend EZ Guaranteed loans of up to $50,000.[262] Producers can apply to either a USDA-approved lender or a non-traditional micro lender through a simplified application process.

Though FSA put these programs in place to meet the needs of SDFR and BFR, they are chronically underfunded. The amount of funding allocated to these programs does not meet the demand of qualified SDFR and BFR applicants. For example, FSA ran out of funding for loans two months before USDA's fiscal year ended on September 30, 2016.[263] Congress authorized FSA to continue financing loans using funds allocated for FY 2017, threatening a shortfall in 2017.[264] In FY 2016, total loans to SDFR decreased for the first time in four years, despite the fact that there was no evidence of a decrease in demand from SDFR for farm loans.[265] This suggests that the shortage of overall FSA funding in 2016 directly resulted in reduced lending to SDFR and BFR. Therefore, Congress must ensure that loan programs are fully funded to ensure that SDFR and BFR have access to the credit they need to start and maintain their operations.

LEGISLATIVE OPPORTUNITY

Establish mandatory funding to the microloan program to meet all qualified demand

The success of the microloan program advances FSA's role in expanding access to credit for SDFR and BFR, and microloans should continue to grow as a share of FSA's loan portfolio. Microloans currently do not have a separate line item, however. FSA allocated $162 million to these "fast-track loans" in FY 2016 through the funds Congress appropriated for direct operating and ownerships loans.[266] Not only should microloans have their own line item, but they should also have permanent baseline funding. The microloan program is an essential program and should not be subject to the vagaries of the annual appropriations process. An increase in microloan program funding would benefit BFR, since more than 80 percent of microloans have gone to BFR, and, to a lesser degree, SDFR, who have received 35 percent of all microloans.[267]

LEGISLATIVE OPPORTUNITY

Expand SDFR microloan participation by exempting microloans from term limits

Term limits regulate the number of years that a farmer may receive direct loans from FSA. The next farm bill should remove SDFR from the general rule that microloan years count towards the seven-year term limit for direct operating loans.[268] Congress codified FSA's microloans as a standalone program within direct operating loans in the 2014 Farm Bill and exempted BFR and veteran farmers and ranchers (VFR) from its general rule that microloan years would count toward overall direct operating loan term limits.[269] It should now do the same for SDFR. The microloan program already treats SDFR, BFR, and VFR similarly when determining general eligibility.[270] The term limit exemption would ensure that SDFR maintain open credit channels in instances where they continue to have difficulty obtaining private sector financing. Exempting microloans from SDFR term limits also expands credit access to formerly term-limited borrowers, and allows farmers approaching their seventh year of borrowing to nonetheless participate in the microloan program.

RECOMMENDATION

Ensure that existing credit programs are reaching socially disadvantaged and beginning farmers and ranchers

For direct loans, Congress has set limits on the maximum loan amount a producer may receive.[271] Loan limits allow the finite available funds to be spread amongst as many producers as possible, instead of providing very large loans to a few producers. Currently, the average direct operating loan is approximately $57,000, while the average direct farm ownership loan is approximately $180,000.[272] The maximum loan amount for both types of loan is $300,000.[273] The maximum loan amounts are therefore too high to meaningfully affect the distribution of funds to loan applicants. This has significant impacts on SDFR and BFR, who are disproportionately likely to receive smaller loans.[274] Thus, FSA can help ensure access to credit for these groups by enacting policies that maintain or increase the number of smaller loans granted. This will also help ensure that smaller producers do not get lost in the mix.

LEGISLATIVE OPPORTUNITY

Maintain individual FSA loan limits for all programs, except direct ownership loans

Loan limits prevent any one borrower from receiving an excessive portion of available loan funds, thereby making it easier for SDFR and BFR to access credit. At a 2017 hearing, representatives from farm credit institutions urged Congress to consider increasing FSA loan limits, citing increasing land and equipment costs.[275] However, increasing all loan limits may disadvantage SDFR and BFR by shifting funds away from smaller loans that disproportionately benefit these groups. This is especially important since there has been excess demand and limited funding for USDA loans in recent years, especially in 2016.[276]

Individual loan limits should be maintained to allow for a diverse pool of loan recipients. The one exception is direct farm ownership loans, the loan limits for which have not been adjusted since 2008, despite the fact that real estate values for cropland have increased by almost 50 percent over that same timeframe.[277] Since FSA has not utilized all of the available funding for these loans in recent years,[278] Congress should increase the maximum loan amount for SDFR and BFR to give these groups more opportunities to procure land and begin farming operations.

RECOMMENDATION

Promote racial and gender diversity on FSA county committees

The FSA operates a county committee system that gives elected, local producers a voice in agricultural policy by involving them in the administration of FSA farm programs.[279] Since the 2008 Farm Bill, county committees are required to be representative of the demographics of the farmers in the county.[280] Counties with a significant population of SDFR are required to have at least one committee member from the SDFR community.[281] If a SDFR member is not elected to the committee through the public election process, the Secretary is required to appoint an additional committee member from the SDFR community.[282]

While these requirements are a good first step, basing the SDFR representation requirement only on those currently farming does not account for the historical racial inequity and discrimination in agriculture that has skewed the demographics of the agricultural community,[283] nor will it change these demographics moving forward. FSA county committee demographics should instead be tied to more ambitious targets, which begin to close the gap between demographics of farmers and the general population.

LEGISLATIVE OPPORTUNITY

Tie required FSA representation to the entire population of each county

The makeup of FSA county committees should be adjusted to better reflect and promote diverse agricultural demographics. Committees help administer FSA programs (including credit and loan programs) and take part in deciding the kind of programs that will be offered in their county.[284] The requirement to include a SDFR representative on the committee should be based on the demographics of the entire population of the county, rather than just the farming population. This will ensure that more local committees include minority and women representatives, allowing a diverse group of producers to take part in decisions that will shape the farming landscapes in their communities.

RECOMMENDATION

Improve access to lending and discrimination data

Several provisions included in the 2008 Farm Bill require USDA to report vital data on program participation rates and discrimination complaints. The ethnic, racial, and gender groups within the SDFR category each have vastly different geographic distributions, farm types, and credit needs. As a result, the 2008 Farm Bill requires USDA to compile program application and participation rate data for each program serving SDFR by race, ethnicity, and gender.[285] The department is then required to publish the data for the entire United States, and every county in the country, in a report made "readily available to the public" online.[286] While USDA reports the number and amount of direct and guaranteed loans it makes to SDFR as a whole,[287] it refuses to release any data on loans made to each individual SDFR group because "applicants can select multiple races [and ethnicities]."[288] This is unacceptable. USDA, policymakers, and the public need FSA loan data for each group in order to understand how their farm credit needs can be better met. Overall trends in loan obligations to SDFR can also obscure trends among individual SDFR groups. The share of loan dollars going to non-minority female farmers increased by more than 50 percent between 2008 and 2016, for example, while the share of loan dollars going to minority farmers actually decreased slightly during the same period.[289] Congress should ensure that USDA reports the number and amount of loans the agency makes to each individual SDFR group at local, state, and national levels.

The 2008 Farm Bill also required USDA to issue annual reports with the number, disposition, and processing time of discrimination complaints made by USDA customers—called program complaints—on the department's website.[290] Congress further required USDA to include the number and type of actions taken by the agency in response to programs complaints.[291] USDA began releasing these reports in 2009,[292] but stopped in 2013 after data in the reports appeared to conflict with claims made by USDA officials elsewhere.[293] In 2017, USDA released its 2016 report, but has yet to release its reports for the previous three years.[294] USDA's refusal to release these reports, despite their legal obligation to do so and despite repeated requests from non-governmental organizations and the American Federation of Government Employees, the union representing USDA employees, is disconcerting.[295] Congress should ensure that this information, which is critical to ensuring that USDA treats all its loan applicants fairly, is available to policymakers and the public.

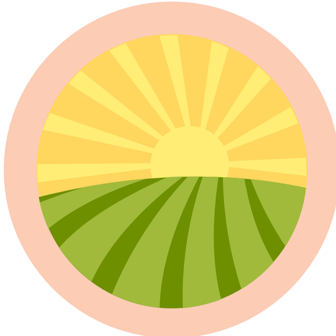
LEGISLATIVE OPPORTUNITY

Give citizens standing and tie the release of discrimination complaint and program reports to appropriations

Reporting additional data on FSA loans to SDFR will allow community-based organizations and other stakeholders to work with USDA to expand access to credit for SDFR. Providing group- and geographic-specific data, as well as data on discrimination complaints, is critical to designing, implementing, and tracking these efforts. This will allow policymakers and the public to design programs better suited to meet the specific needs of different socially disadvantaged groups, while ensuring that USDA is providing vital credit services to SDFR applicants throughout the country.

Congress should give citizens standing to sue USDA to release data on the number, disposition, and processing time of discrimination complaints and on SDFR program participation by group. Additionally, Congress should make funding for essential programs contingent on USDA's timely release of its annual report on SDFR program participation and discrimination complaints. These measures will help USDA gain trust among SDFR and continue to improve its services to SDFR communities.

GOAL IV



Accelerate land ownership for socially disadvantaged and beginning farmers and ranchers

Land is by far the most valuable asset in the United States agricultural sector, accounting for over 80 percent of total asset value.[296] In addition to providing the means to produce crops and livestock, it is also an important form of collateral for borrowers in a capital-intensive sector. For many farmers, land also holds intangible value representing their livelihood, home, and heritage. However, farmland is overwhelmingly concentrated in the hands of farmers at or near retirement age: people over age 65 own 69 percent of United States farmland.[297] For that land to remain in agricultural production beyond the lifetimes of its current owners it must be bequeathed or sold to individuals who wish to farm or rent to farmers.

A new generation of farmers is indeed interested in acquiring farmland.[298] Although many beginning farmers rent the land they farm—and some prefer renting as a chance to build their experience while maintaining the flexibility to respond to changing markets and personal circumstances[299]—many prefer land ownership. Land title can provide the stability to undertake long-term planning and investments in their farms, such as infrastructure, tree planting, and soil conservation.[300] It can also build up farmers' assets to use as collateral, improving their access to credit in a sector with high capital requirements, long production timelines, and thin profit margins.[301]

However, acquiring land is difficult for many beginning farmers. Some come to farming with little savings[302] and many carry student loan debt.[303] Farmland prices are rising,[304] exacerbating affordability concerns. Property developers and other land users, such as energy exploration companies, can pay more for fertile land than beginning farmers can afford,[305] driving up land prices.

Affordability concerns dovetail with another land issue: there is a dearth of farmland available for sale. According to the latest land survey conducted by USDA, only about 10 percent of American farmland was expected to change ownership between 2015 and 2019; of that transferred land, approximately 75 percent will be sold or bequeathed within the owner's family.[306] Some of these heirs are farmers themselves, but many are not. Only the remaining 25 percent of transferred land—2-3 percent of all farmland—was expected to be available for sale to a non-relative over a period of five years.[307] As a standard of comparison, the typical ***annual*** turnover rate for United States real estate as a whole is 7.5 percent.[308] The scarcity of available farmland drives up land prices, establishing a vicious cycle of unaffordability and scarcity. Minority farmers face even greater difficulty in accessing land. Due to discrimination and historical inequities in access to capital, there are few minority landowners from whom they can inherit or buy land in intra-family transfers.

A phenomenon known as heirs' property further complicates issues of land access when it is passed down throughout families, especially black families in the South. Heirs' property results from land passing through multiple generations intestate (*i.e.,* without wills).[309] Heirs' property disproportionately affects black farmers because historically these populations have lacked access to legal services for estate planning.[310] When a landowner dies without a will, their portion of the legal title is split among their respective heirs, and so on through subsequent generations. Distant relatives end up sharing ownership of the land as tenants in common, all of whom have equal rights to use the property, despite having attenuated property interests which become smaller with each passing generation.[311] Common ownership of some tracts is known to reach hundreds of tenants, many of whom do not know one another.[312] Native Americans living on reservations face a similar problem called fractionation. Like heirs' property, fractionation refers to the undivided heirship of property, but presents its own set of challenges stemming from Indian and federal law.[313]

These forced tenancies in common have negative legal and practical consequences for property owners. Most of the resulting co-owners neither inhabit nor work the land, and those who remain on the land lack marketable title to their farms.[314] These heirs are unable to transfer their land at its full value,[315] and may struggle to access credit due to their inability to use their land as collateral.[316] Any co-owner of the land—no matter how small their ownership interest—can petition the court to partition the property, effectively forcing the sale of the entire parcel of land.[317] Sales of heirs' property have historically enabled politically well-connected land speculators to purchase land at a discount at auction.[318] Thus, heirs' property has become a major source of land loss among black farmers in the South.[319]

Native American farmers face similar problems, with some distinct challenges. The prevalence of fractionated title on native lands is even higher than in the South: in the Navajo Nation alone, 691,083 acres of land on 4,504 sites are split into 263,059 pieces owned by 33,910 people.[320] The most recent census recorded 173,667 people living in Navajo Nation overall,[321] meaning that the issue affects almost 20 percent of the population. Furthermore, for Native American farmers on reservations, petitioning the court is impossible due to the separate adjudication systems established for internal matters on Native American reservations. This process prevents the problem of forced sales that black farmers experience, but it means Native Americans often cannot divide parcels of land amongst themselves. Instead, they can only buy a share of a collectively owned, fractionated parcel,[322] making it difficult for Native Americans to farm their own land.[323] As a result, Native Americans received just 16 percent of the $1.6 billion worth of agricultural products produced on reservations in 2007.[324] Just as black farmers have lost significant amounts of farmland as a result of heirs' property, Native Americans have struggled to farm their own land due to fractionated ownership.[325]

The next farm bill provides opportunities to address challenges associated with land transition from aging farmers to beginning farmers, access to farmland for BFR and SDFR, and undivided heirship. Policy interventions can promote a smooth and equitable land transition to a new generation of producers. The upcoming farm bill should take a holistic approach to land access issues.

RECOMMENDATION

Provide funding to train farmers, and the professionals who serve them, in appropriate transition planning and to incentivize aging farmers to prioritize transition planning

Many of the country's aging farmers need assistance to help them plan for the transition of their land. The assistance required varies greatly depending on the segment of agriculture in which the farm is engaged, the individual farmer's economic status and needs, and the needs of family members who may be affected by the transition. The challenges also vary by geographic region. In areas near growing urban centers, farmland is expensive and at risk of being lost to development, even as demand for locally produced farm products is increasing. In more rural areas, there may be challenges finding someone who is willing and able to take over the farm, due in part to declining rural populations.[326]

For farm transitions to succeed, outreach is needed to both existing landowners and new farmers. The past two farm bills provided funding to assist new and beginning farmers and develop training programs for that population, but Congress has paid little attention to the needs of retiring farmers.[327] The next farm bill should correct this imbalance and devote attention and resources to the needs of retiring farmers. These efforts will ultimately benefit both groups.

LEGISLATIVE OPPORTUNITY

Support the expansion of professional services needed to aid farm transition

An estimated 25 percent of farmers and ranchers will retire within the next decade or so; most of these do not have identified successors, and "90 [percent] of farm owners neither [have] an exit strategy nor [know] how to develop one."[328] Many farmers need assistance developing a business succession strategy that is right for their farm and their individual retirement needs. They also need help finding a suitable successor—one who can afford the land and has the skill necessary to keep the farm going.[329] To be successful, farm succession and transfer planning requires a team of experienced professionals—attorneys, accountants, financial planners and real estate agents—working together. However, that help is often hard to find and costly, especially in more isolated rural areas.[330]

To overcome this obstacle, USDA should work with professional associations to develop and offer training in farm transition planning. For lawyers, that need can be met by offering relevant Continuing Legal Education courses (CLE) working in concert with state bar associations' sections on estate planning and real property. Real estate professionals need information about legal and tax issues unique to farm properties, including farm financing options; conservation easements; and state and regional "land link" programs matching aging landowners with aspiring land buyers in their region. In addition to training professionals in estate planning and land transitions, these programs should build awareness about existing farm bill land transition programs as a way of increasing their use.

Congress can implement these education programs by creating a new program within the Research Title, paralleling other similar farm bill outreach and extension programs such as the Beginning Farmer and Rancher Development Program[331] and Nutrition Education Program.[332] These types of programs typically operate as Extension programs under USDA's National Institute of Food and Agriculture and support partnerships between land grant universities and community groups to conduct outreach.[333] A similar structure would be useful in promoting farm transition education for farmers and associated professionals.

LEGISLATIVE OPPORTUNITY

Create incentives within existing farm bill programs for farm transition planning

Some obstacles to farm transition planning, such as the emotional complexity of planning for one's retirement and choosing a successor or a lack of time or organizational skills, cannot be fully resolved through government programs. Nonetheless, the government can offer incentives to encourage planning. For example, within existing grant and assistance programs, Congress could outline a system of administrative "bonus points" in the next farm bill to reward farmers who attend a transition-planning workshop or write a transition plan. Farmers applying for competitive grants and loans like the Environmental Quality Incentives Program, Agricultural Management Assistance Program, Conservation Stewardship Program, and Value Added Producer Grants program could gain a valuable advantage in competitive selection processes by earning these bonus points. Even federally-funded grants distributed on the state level could come with federal requirements that the states recognize bonus points. Administrative bonus points in grant selection processes have been used before to incentivize certain practices. For example, the Solid Waste Management Grant Program in the farm bill's Rural Development title uses points to encourage grant applicants to compost and reduce food waste.[334] A relatively small change could be sufficient to entice reluctant farmers to take action.

RECOMMENDATION

Promote land transfers to beginning and socially disadvantaged farmers

In recognition of the land access challenges BFR and SDFR face, the farm bill has two programs to improve land turnover and financing for BFR and SDFR: the Conservation Reserve Program's Transition Incentive Program (TIP) and the Land Contract Guarantee Program (LCGP). The 2008 Farm Bill created TIP to facilitate transition of farmland in the Conservation Reserve Program (CRP) to BFR and SDFR.[335] CRP makes payments to farmers who temporarily set aside their land for conservation purposes. TIP provides farmers who transition their CRP land at the end of the CRP contract to BFR and SDFR with two years of additional CRP payments as a financial incentive.[336] New landowners or renters must return the land to production using approved conservation practices.[337]

LCGP, administered by FSA, aims to mitigate financial risk for sellers entering into a land contract sale with a BFR or SDFR.[338] A land contract sale is an arrangement in which the buyer makes a down payment but the seller retains title to the property until all subsequent payments have been made.[339] Land contracts are particularly helpful for BFR and SDFR because they do not require the credit approval process of a typical mortgage, but they are risky for sellers, who stand to lose money if the buyer falls short. This differs from a typical mortgage sale in which a bank takes on the risk of the buyer defaulting. To reduce risk to sellers, LCGP offers a ten-year federal loan guarantee to sellers who finance the sale, assuring them that they will not suffer financially in retirement if the buyer is not able to keep up with loan payments.[340] LCGP was first introduced as a pilot program under the credit title of the 2002 Farm Bill in a limited number of states[341] and was then expanded in the 2008 Farm Bill.[342] The details of the expanded LCGP were established administratively by FSA in 2011 and the program now covers all United States lands.[343]

Finally, policies outside the typical scope of the farm bill, including current capital gains tax policy, can have significant effects on farmland availability by discouraging established farmers from selling their land. These policies should also be reshaped to incentivize appropriate transitions.

LEGISLATIVE OPPORTUNITY

Maintain funding for TIP to promote land transfers to BFR and SDFR

The TIP program has been successful thus far. First created in 2008, TIP had enrolled over 1,700 producers and over 275,000 acres of land by 2012.[344] Funding was increased in the 2014 Farm Bill, growing from \$25 million to \$33 million in lump sum mandatory funding.[345] However, the program is still projected to run out of funding before the next farm bill.[346] Congress should create room for the continued success of TIP by increasing funding in the next farm bill.

LEGISLATIVE OPPORTUNITY

Direct USDA to investigate the low level of participation in the Land Contract Guarantee Program and propose improvements or alternatives

Though LCGP seems like a promising tool for promoting land transitions, it has been used by only two farmers in the fifteen years since its inception, once in Oregon and once in Wisconsin.[347] Congress should direct USDA to investigate the program's low participation, and recommend improvements to the program. Low levels of interest may be attributable to a simple failure to introduce the LCGP in a digestible manner, as the program is saturated with technical financial mechanisms and terms of art.[348] If so, educating land transition professionals could be an important piece of the solution.

On the other hand, high land values[349] and the program's cap on the purchase price of a land contract (the sale may not exceed the lesser of $500,000 or the current market value of the property)[350] might discourage farmers from using LCGP.[351] Finally, specific requirements of the program may deter farmers from participating, including the requirements that the landowner pays for an escrow or service agent to oversee the land contract[352] and that the parties cannot contract for balloon payments (which repay all the outstanding principal on a loan, and are typically much larger than standard payments) until after the 10-year term of the guarantee lapses.[353]

If any of these program features are found to prevent farmer participation, the structure of LCGP should be altered to better meet farmers' needs. An examination of LCGP's shortcomings could be authorized with language in the next farm bill calling for a study by FSA in conjunction with the Economic Research Service (ERS). USDA should have one year to carry out the study and one year to finalize new rules. Funding for the LCGP is part of a pool for guaranteed farm ownership loans, so money for the study could be difficult to garner from those existing funds. Therefore, Congress should appropriate specific funding for the study in the Credit Title of the next farm bill.

ADMINISTRATIVE OPPORTUNITY

Independent USDA investigation of the low level of participation in LCGP

Altnernatively, FSA could conduct a study on its own, perhaps in conjunction with the ERS, to determine why LCGP participation has been so low. The purpose and outline of the study would be the same as described above, but it would not require a congressional action. Regardless of whether the study originates with legislative or administrative action, however, FSA should respond by revising the LCGP in accordance with the study's findings as outlined in the previous recommendation.

LEGISLATIVE OPPORTUNITY

Amend capital gains tax policy to incentivize transition

Farmland is subject to capital gains taxation upon sale. Given the long periods that farmers often hold their land and the overall trend in increasing land prices, many farmers may have seen a significant increase between the purchase (or "basis") price and present values of their farmland. The federal tax rates for long-term capital gains[354] range from 0-20 percent based on the farmer's ordinary tax bracket,[355] with most farming households subject to a 15 percent capital gains rate.[356] Deterred by the thought of paying 15 percent of their farm's increased value upon sale, some farmers opt to hold on to their land and transfer it at death, which allows them to avoid the capital gains tax and allows beneficiaries to take possession of the property with stepped-up basis.[357] Stepped-up basis means that the tax value of the land when the inheritor acquires it will not be based on what the original purchaser paid for it, but rather the land's value when it is inherited. Potential capital gains taxes paid by the inheritor are then much lower, because the base value above which gains are measured is much higher than when the purchaser bought the property (assuming that the property value has appreciated).

From a policy perspective, the capital gains tax structure is problematic because it keeps land off the market for beginning farmers looking to build equity, and it drives up the price of farmland generally because available land is scarcer. At higher prices, beginning farmers are less likely to be able to compete with established farmers, who can leverage their existing assets to finance new purchases.

Congress can create a federal capital gains tax reduction for sales of farmland to BFR and SDFR, encouraging aging farmers who do not have farming beneficiaries to sell their land prior to death. This could begin as a pilot program with a 5 percent capital gains tax reduction on sales to TIP-eligible owner-operators (BFR, SDFR, and veteran farmers), meaning that a farmer typically subject to a 15 percent capital gains rate would instead be subject to a 10 percent rate. The reduction should be capped, for example by applying it to the first $500,000 in capital gains, to ensure that it primarily helps those for whom the capital gains tax is a significant financial obstacle to sale. The program's pilot status is important given that the elasticity of supply and demand for farmland will affect whether buyers see land availability rise and prices fall. The pilot stage will also help determine whether the 5 percent reduction is too big or too small to induce desired outcomes, namely increased turnover in farmland and increased sales to BFR and SDFR. The IRS and ERS should closely monitor outcomes from the pilot over the first few years, and adjust the policy as needed. Additionally, the Cooperative Extension System should play an active role in informing farmers of the pilot, educating them about how it works, and encouraging their participation.

Enacting tax policy through the farm bill is unusual but not unprecedented. For example, the 2008 farm bill had an entire title called "Trade and Tax Provisions," whose statutory changes applied primarily to the Internal Revenue Code of 1986.[358] Tax changes enacted in that Farm Bill included: exempting certain Conservation Reserve Program payments from self-employment taxes,[359] amending tax credits for producers of cellulosic biofuels,[360] and enacting a tax credit for expenditures on security measures for producers of agricultural chemicals.[361] Reducing capital gains taxes for land sold to BFR and SDFR would allow the retired farmer to pass to his or her heirs the value of the land instead of the land itself, ensuring that the family is cared for while still passing the land to someone equipped to farm it. Selling during the farmer's lifetime would also give the farmer liquidity in retirement, a time when farmers are often land-rich but cash-poor.

RECOMMENDATION

Mitigate potential for loss of heirs' property

A number of states have taken steps to address heirs' property issues by enacting the Uniform Partition of Heirs Property Act (UPHPA). The UPHPA seeks to provide a variety of protections for heirs' property owners, such as notice of any pending forced partition of their land, appraisal rights, first right of refusal to purchase the land outright, and court-sanctioned fair market value sale of the property.[362] These reforms provide heirs' property owners with the opportunity to either consolidate their land—giving owners better access to credit and eliminating the possibility of forced sale—or sell it at a fair price. These state-level measures can help prevent land loss, and USDA should use its website to make information about UPHPA available to states.

For Native American farmers, two programs help address fractionated land. First, the Highly Fractionated Indian Land Loan program (HFIL), created by the 2014 Farm Bill and administered by FSA,[363] loans money to intermediaries, such as banks, credit unions, or tribes, who then give loans to tribe members or tribes interested in purchasing shares of fractionated land from willing sellers.[364] This program thus allows individuals or tribes to purchase private land by consolidating fractionated interests. In order for an intermediary lender to be eligible, it must demonstrate experience working with Indian Country and the Bureau of Indian Affairs.[365] For a loan recipient to be eligible, the individual must be able to buy enough fractionated interests to own 51 percent of his/her land parcel and must agree to use the land for agriculture after purchase.[366] These requirements are designed to ensure that the loans do not perpetuate fractionation problems.[367] Thus far, HFIL has been utilized only once, through a $10 million loan in December of 2016 to the Native American Community Development Corporation.[368] To help improve the program moving forward, USDA should conduct a review of HFIL to determine whether the lack of participation is the result of a structural issue with the program, a lack of awareness of the program among eligible individuals, or some other barrier.

Another program, run by the Department of the Interior, is the Land Buy-Back Program for Tribal Nations (LBBP).[369] This program came out of the *Cobell v. Salazar* class action lawsuit against the Department of the Interior and Department of the Treasury for mismanaging Indian trusts, specifically the land issues resulting from the Dawes Act of 1887.[370] The Dawes Act distributed collective native land amongst individual tribal members (while also distributing much of it to white settlers),[371] which went against many native property customs and led to the intestate inheritance cycle that caused today's fractionated land problem.[372] The suit was settled for $3.4 billion, $2 billion of which was set aside for purchasing fractionated land through the LBBP.[373] Land purchased under the LBBP will come only from willing individual sellers and will be handed over to tribes for communal use.[374] Thus, LBBP differs from HFIL in that the land being consolidated is for communal rather than private ownership and use. The LBBP began in December 2013[375] and has been highly effective, paying out over $1.1 billion and reducing fractionated land by 23 percent as of April 2017.[376] Over 680,000 fractionated segments have been bought, accounting for almost 2.1 million acres of land, and returned to the hands of tribes.[377]

Congress can take a variety of actions to resolve heirs' property issues for black farmers in the South and fractionated ownership issues for Native American farmers on tribal lands. First, Congress must ensure that minority farmers have equal access to USDA programs and education on consolidating title. Second, programs analogous to existing federal programs for consolidating native lands should be created to help black farmers in the South.

LEGISLATIVE OPPORTUNITY

Allocate resources to FSA and county extension agents to hold public workshops about estate planning and consolidation of title in areas significantly affected by heirs' property

The FSA currently requires farmers to complete coursework in adequate recordkeeping as a condition of participation in some of its programs. A similar training requirement could be instated to target loan applicants farming heirs' property, highlighting the legal risks of heirs' property and presenting information on consolidating land rights. Similarly, county extension offices currently offer workshops to local farmers on topics ranging from organic farming to tax document preparation.[378] With this infrastructure already in place, resources should be allocated to extension offices to offer workshops in estate planning practices for older farmers to avoid further fractionation and for all farmers to learn about consolidating rights.[379]

LEGISLATIVE OPPORTUNITY

Examine HFIL's efficacy and create an analogous program for black farmers in the South

Though LBBP is somewhat unique given that its endowment stemmed from a lawsuit and it works toward purchasing communal rather than private land,[380] HFIL offers a model that could be expanded to help black farmers who struggle with similar fractionation issues. First, however, HFIL must be evaluated. The program has made only one loan thus far, which was given to an intermediary in December 2016.[381] Congress should direct USDA to conduct a study that follows that loan as well as any others made over the duration of the study. From there, the ERS can assess how revisions to HFIL might increase efficacy. Once the program has been examined, Congress can either revise or reaffirm HFIL before expanding it or creating a similar program to cover black farmers in the South.

ADMINISTRATIVE OPPORTUNITY
Independent USDA investigation of HFIL

In the absence of congressional action, FSA should conduct a study on its own, perhaps in conjunction with the ERS, to determine why HFIL has not been more widely used. Regardless of whether the study originates with legislative or administrative action, FSA should revise HFIL and potentially expand it to black farmers in the South in accordance with the study's findings, as outlined in the previous recommendation.

ENDNOTES

1. *Food Security Status of U.S. Households in 2016*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx (last updated Oct. 4, 2017).
2. *See, e.g.*, *Chronic Diseases: the Leading Causes of Death and Disability in the United States*, Ctrs. for Disease Control and Prevention, https://www.cdc.gov/chronicdisease/overview/index.htm (last visited Mar 2, 2018).
3. Although there is no consensus on the definition of "local" or "local food systems" in a geographic sense, it is generally defined in terms of the marketing arrangements, such as regional food hubs or farmers markets. Steve Martinez et al, U.S. Dep't of Agric. Econ. Res. Serv. ERR 97, Local Food Systems: Concepts, Impacts, and Issues 3 (2010), https://www.ers.usda.gov/webdocs/publications/46393/7054_err97_1_.pdf?v=42265.
4. *See, e.g.*, Cowan & Feder, Cong. Research Serv., RS20430, The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers (2013), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf [hereinafter Tadlock Cowan & Jody Feder, The Pigford Cases].
5. We have adopted USDA's definition of small and medium-scale for this report, which includes operations earning less than $1 million. *Distribution of farms and value of production varies by farm type*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58288 (last visited Feb. 16, 2018).
6. The 2002 Farm Bill authorized the Farmers Market Promotion Program, the Organic Agriculture Research and Extension Initiative, and the Organic Certification Cost Share Program, among others. Some programs (*e.g.*, the Farmers Market Promotion Program) were not initially funded; however, the 2002 Farm Bill did make progress toward supporting local food systems and organic and specialty crops. *See* Farm Security and Rural Investment Act of 2002 § 7218 (codified at 7 U.S.C.A § 5925b (West 2017)); Farm Security and Rural Investment Act of 2002 § 10605 (codified at 7 U.S.C.A. § 3005 (West 2017)); Farm Security and Rural Investment Act of 2002 § 10606 (codified at 7 U.S.C.A. § 6523 (West 2017)).
7. *See* Farm Security and Rural Investment Act of 2002 § 10704 (Codified at 7 U.S.C.A. 6918 (West 2017)).
8. *See* U.S. Dep't of Agric. Gov't Accountability Office, GAO-09-62, Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights 2 (2008), https://www.gao.gov/assets/290/282835.pdf.
9. *See* Food, Conservation, and Energy Act of 2008, Title X: Horticulture and Organic Agriculture.
10. *See* Food, Conservation, and Energy Act of 2008 § 2111 (codified at 16 U.S.C.A. § 3835 (West 2017)); Food, Conservation, and Energy Act of 2008 § 6202 (codified at 7 U.S.C.A.1621 note (West 2017)); Food, Conservation, and Energy Act of 2008 §§ 14001–14013.
11. Food, Agriculture, Conservation, and Trade Act of 1990 § 2501 (codified at 7 U.S.C.A. § 2279 (West 2018)).
12. Gerard D'Souza & John Ikerd, *Small Farms and Sustainable Development: Is Small More Sustainable?*, 28 J. of Agric. & Applied Econ. 1 73, 82 (July 1996).
13. *See* Union of Concerned Scientists, Growing Economies: Connecting Local Farmers and Large-Scale Food Buyers to Create Jobs and Revitalize America's Heartland 1-2 (2016), http://www.ucsusa.org/sites/default/files/attach/2016/01/ucs-growing-economies-2016.pdf (citing Linda Lobao, Locality and inequality: Farm and industry structure and socioeconomic condition (1990)); Thomas A. Lyson et al., *Scale of Agricultural Production, Civic Engagement, and Community Welfare*, 80 Soc. Forces 1, 311 (Sept. 2010).
14. James M. McDonald, Penni Korb & Robert A. Hoppe, U.S. Dep't of Agric., Econ. Res. Serv., ERR-152, Farm Size and the Organization of U.S. Crop Farming 6 (2013), https://www.ers.usda.gov/webdocs/publications/45108/39359_err152.pdf. The number of very small farms reported in the Census of Agriculture has increased from about 536,000 in 1982 to 788,000 in 2012. U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Market Value of Agricultural Products Sold: 1982, 1978, and 1974 (1982), http://usda.mannlib.cornell.edu/usda/AgCensusImages/1982/01/51/121/Table-11.pdf; U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Market Value of Agricultural Products Sold Including Landlord's Share and Direct Sales: 2012 and 2007 (2012), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/st99_1_002_002.pdf.
15. Of the 788,310 very small farms reported in the 2012 Census of Agriculture, 223,689 were added due to adjustments that were not used when calculating the results of the 1982 Census of Agriculture. U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Summary of U.S. Coverage, Nonresponse, and Misclassification Adjustments: 2012 (2012), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/usappxa.pdf, A-20, tbl. A. USDA has also made a concerted effort to count more small and very small farmers since it began administering the Census of Agriculture in 1997. *See* Nathan Rosenberg, *Farmers Who Don't Farm: the Curious Rise of the Zero-Sales Farmer*, J. Agric., Food Systems, & Community Development, Fall 2017, at 4, 7, https://www.foodsystemsjournal.org/index.php/fsj/article/view/541/519 (discussing recent changes to the Census of Agriculture and the outsized impact of those changes on the reported number of small farms).

[16] Calculated by the authors. *See* U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Table 1: Census Highlights: 2012 and Earlier Census Years 1, https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/st99_1_001_001.pdf.

[17] *Half of all cropland now on farms with 1,200 acres or more*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=78001 (last visited Mar. 2, 2018).

[18] Carolyn Dimitri, Anne Effland & Neilson Conklin, U.S. Dep't of Agric., Econ. Res. Serv., The 20th Century Transformation of U.S. Agriculture and Farm Policy 5 (2005), http://ageconsearch.umn.edu/bitstream/59390/2/eib3.pdf.

[19] U.S. Dep't of Agric., Econ. Res. Serv., Major Uses of Land in the United States 24 (2012), https://www.ers.usda.gov/webdocs/publications/84880/eib-178.pdf?v=42972.

[20] Specialization can facilitate the use of labor-saving equipment and technology. *See, e.g.*, McDonald, Korb & Hoppe, *supra* note 14, at 31–32.

[21] Ponisio, et al., *Diversification Practices Reduce Organic to Conventional Yield Gap*, Proc. Royal Soc'y B, Dec. 10, 2014, at 1, 4 (finding that diversified organic systems were much closer to conventional yields than organic monocultures).

[22] P. A. Matson et al., *Agricultural Intensification and Ecosystem Properties*, 277 Science 504, 505 (1997); Lauren Ponisio & Paul Ehrlich, *Diversification, Yield and a New Agricultural Revolution: Problems and Prospects*, 8 Sustainability 1118, 9 (2016); Brenda Lin*, Resilience in Agriculture through Crop Diversification: Adaptive Management for Environmental Change*, 61 BioScience 183, 184–88 (2011).

[23] Ponisio & Ehrlich, *supra* note 22, at 1119.

[24] Matson, et al., *supra* note 22, at 506–07*; see* Lin, *supra* note 22, at 184–88; Olivier De Schutter, Rep. Submitted By The Special Rapporteur On The Right To Food, U.N. Human Rights Council, U.N. Doc A/HRC/16/49 at 1, 6 (2010), http://www2.ohchr.org/english/issues/food/docs/A-HRC-16-49.pdf.

[25] Defined as "fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops." *See* U.S. Dep't of Agric., USDA Definition of Specialty Crop 1, https://www.ams.usda.gov/sites/default/files/media/USDASpecialtyCropDefinition.pdf (last visited Mar 2, 2018). Specialty crop production makes up only 3 percent of U.S. harvested acres and receives far less support under the farm bill. When Congress passed the 2014 Farm Bill, CBO projected that total mandatory spending on specialty crops and organics would total $773 million annually, while mandatory spending for the major commodity crops would total about $4.7 billion annually, mainly in direct price and income supports, and another $8.28 billion annually on the commodity-heavy crop insurance program. *See* Renée Johnson, Cong. Research Serv., R43632, Specialty Crop Provisions in the 2014 Farm Bill (P.L. 113-79) 1 (2014) http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43632.pdf.

[26] *The National Organic Program*, U.S. Dep't of Agric., Agric. Marketing Serv., https://www.ams.usda.gov/publications/content/about-national-organic-program (last visited Mar. 2, 2018); *See* 7 U.S.C.A § 6504 (West 2018) (establishing national standards for organic production).

[27] *The National Organic Program*, *supra* note 26.

[28] *Organic Industry Survey*, Organic Trade Assn, https://ota.com/resources/organic-industry-survey (last visited Mar. 2, 2018).

[29] U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program 2016 Report 4 (2017), https://www.ams.usda.gov/sites/default/files/media/FMPP2016Report.pdf.

[30] *Id.* at 4. There are over 8,700 farmers markets registered in the USDA Farmers Market Directory, a four-fold increase since 1994. *What is a Farmers Market?*, Farmers Market Coal., https://farmersmarketcoalition.org/education/qanda/ (last visited Feb. 22, 2018).

[31] *See generally*, Federal Reserve Bank of St. Louis, Harvesting Opportunity: The Power of Regional Food System Investments to Transform Communities (Andrew Dumont et al. eds.) (2017), https://www.stlouisfed.org/community-development/publications/harvesting-opportunity.

[32] The effects can be startling. One economic analysis concluded that converting enough corn and soybean acreage to meet local fruit and vegetable demand in six Midwestern states would create over 6,700 jobs, add nearly a billion dollars to gross output, and generate $1.71 in local economic activity for each dollar spent. Jeffrey K. O'Hara, Union of Concerned Scientists, Market Forces: Creating Jobs Through Public Investment in Local and Regional Food Systems 20 (2011), http://www.ucsusa.org/sites/default/files/legacy/assets/documents/food_and_agriculture/market-forces-report.pdf; *See also* David Swenson, Leopold Ctr. for Sustainable Agric., Selected measures of the economic values of increased fruit and vegetable production and consumption in the upper Midwest, (2010), https://www.leopold.iastate.edu/files/pubs-and-papers/2010-03-selected-measures-economic-values-increased-fruit-and-vegetable-production-and-consumption-upper-mid.pdf.

[33] Union of Concerned Scientists, Growing Economies: Connecting Local Farmers and Large-Scale Food Buyers to Create Jobs and Revitalize America's Heartland, *supra* note 13, at 2.

[34] Michelle Nowlin et al., *(M)eat Local®: Market and Distribution Challenges in the Local Meat System*, 25 Duke Envtl. Law & Pol'y Forum 339 358-62 (Spring 2015).

[35] Nathan A. Rosenberg & Bryce Wilson Stucki, *The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural History*, 13 J. Food L. & Pol'y 12 (2017).

[36] Emanuel Melichar & Raymond J. Doll, Fed. Reserve Bank of St. Louis, Capital and Credit Requirements of Agriculture, and Proposals to Increase Availability of Bank Credit, 10-11 (1969), https://fraser.stlouisfed.org/files/docs/historical/federal%20reserve%20history/discountmech/capcred_meli.pdf; *See also* Nathan A. Rosenberg & Bryce Wilson Stucki, *supra* note 37, at 12, 15-17.

[37] U.S. Dep't. of Agric., Civil Rights Action Team, Civil rights at the United States Department of Agriculture: A report of the Civil Rights Action Team 30 (1997), http://www.federationsoutherncoop.com/pigford/research/CRAT%20Report%201997.pdf; *See generally* Pete Daniel, Dispossession: Discrimination against African American Farmers in the Age of Civil Rights (2013); Rosenberg & Stucki, *supra* note 35, at 12, 13-14.

[38] U.S. Dep't of Agric. Nat'l Agric. Statistics Serv., 2012 Census of Agriculture: Race/Ethnicity/Gender Profile 1, https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/cpd99000.pdf (last visited Mar. 2, 2018).

[39] Jess Gilbert et al., Who Owns the Land? Agricultural Land Ownership by Race/Ethnicity, 17 Rural America 55, 56 tbl.1 (2002), http://www-personal.k-state.edu/~sdwood/Who_Owns_the_Land_Final_Published_Version.pdf.

[40] U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Selected Farm Characteristics by Race of Principal Operator: 2012 and 2007 (2012), https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_US/st99_1_060_060.pdf.

[41] "The farm operator is the person who runs the farm, making the day-to-day management decisions. The operator could be an owner, hired manager, cash tenant, share tenant, and/or a partner. If land is rented or worked on shares, the tenant or renter is the operator. In the recent Census of Agriculture and in the Agricultural Resource Management Survey (ARMS), information is collected for up to three operators per farm. In the case of multiple operators, the respondent for the farm identifies who the principal farm operator is during the data collection process." *See Glossary of Farm Household Wellbeing*, U.S. Dep't. of Agric., Econ. Res. Serv., https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary/ (last visited Mar. 2, 2018); U.S. Dep't of Agric. Nat'l Agric. Statistics Serv., 2012 Census of Agriculture: Race/Ethnicity/Gender Profile 1, https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/cpd99000.pdf (last visited Mar. 2, 2018) (noting that 288,264 of 2.1 million principal farm operators were women).

[42] U.S. Dep't. of Agric., Civil Rights Action Team, *supra* note 37, at 30.

[43] The 1997 Census of Agriculture reported 491,221,799 acres owned by white farmers, an increase of over 42 million acres (42,259,99-0 from 1910. Compare 1997 Census of Agriculture tbls. 10 and 17 with 1920 Census of Agriculture, p.189 tbl.1. In contrast, the 1997 Census of Agriculture reported 1,499,083 owned by black farmers, a decline of more than 14 million acres. Compare 1997 Census of Agriculture tbl.17 with 1920 Census of Agriculture p.189 tbl.1. These totals are approximate due to changes in the survey's implementation, methodology, and racial and ethnic classifications. The decline in black-owned acreage is likely much larger than the decline reported in the Census of Agriculture, since black-owned farmland was substantially undercounted until recently. Nathan Rosenberg, *Farmers Who Don't Farm: the Curious Rise of the Zero-Sales Farmer*, *supra* note 17, at 2-3.

[44] Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999).

[45] *Id.* at 86-89.

[46] *Id.* at 95-98.

[47] *Id.* at 97.

[48] Food, Conservation, and Energy Act of 2008 §§ 14011-14012. Appropriations were eventually made to pay the remainder of the *Pigford II* settlements through the Claims Resolution Act of 2010, Pub. L. No. 111–291, 124 STAT. 3064.

[49] *See* Cowan & Feder, The Pigford Cases, *supra* note 4.

[50] Keepseagle v. Veneman, No. 99-03119, 2001 U.S. Dist. LEXIS 25220, at *47 (D.C. Dist. 2001); Order Granting Final Approval of Settlement Agreement, No. 99-03119, 2001 U.S. Dist. LEXIS 25220 (D.C. DIST. 2011).

[51] Tadlock Cowan & Jody Feder, Cong. Research Serv., RS40988, Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case 6-7, 11 (2013), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40988.pdf, [hereinafter Tadlock Cowan & Jody Feder, Garcia v. Vilsack].

[52] Telephone interview with Lloyd E. Wright, former director of the U.S. Dep't of Agric. Office of Civil Rights, (Sept. 30, 2017).

[53] *Id.* The government estimated that the average African American farmer held approximately $100,000 in government debt prior to the first *Pigford* settlement; Pigford v. Glickman, 185 F.R.D. 82, 108.

[54] Letter from Nicole F.J. Hamann, claims administrator (Aug. 12, 2013) (on file with authors).

[55] *Id.*

[56] J. Michael Harris et al., U.S. Dep't of Agric. Econ. Res. Serv., AIS-87, The Debt Finance Landscape for U.S. Farming and Farm Businesses 23 (2009) https://www.ers.usda.gov/webdocs/publications/35814/9193_ais87.pdf?v=41055.

[57] 177,877 commercial farms had $196,953,174,000 in operating expenses or $1,107,244 per farm. U.S. farm sector financial indicators, 2011-2017F, https://www.ers.usda.gov/media/9468/farmsectorindicatorsaugust2017.xlsx.

[58] 7 U.S.C.A. § 6918(c) (West 2017); Lisa Shames, U.S. Gov't Accountability Office, Testimony Before the Subcommittee on Department Operations, Oversight, Nutrition and Forestry, Committee on Agriculture, House of Representatives, U.S. Department of Agriculture: Recommendations and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues, 1 (2009), https://www.gao.gov/assets/130/122370.pdf.

[59] U.S. Dep't of Agric. Nat'l Agric. Statistics Serv., 2012 Census of Agriculture: Race/Ethnicity/Gender Profile 1, https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/cpd99000.pdf (last visited Mar. 2, 2018); *See 2012 Census Highlights: Farm Demographics*, U.S. Dep't of Agric. Census of Agriculture, https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/ (last visited Feb. 22, 2018). ("Average Age Rising").

[60] *See 2012 Census Highlights: Farm Demographics*, U.S. Dep't of Agric. Census of Agriculture, https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/ (last visited Feb. 22, 2018). ("Average Age Rising" and "Fewer New Farmers").

[61] "The farm operator is the person who runs the farm, making the day-to-day management decisions. The operator could be an owner, hired manager, cash tenant, share tenant, and/or a partner. If land is rented or worked on shares, the tenant or renter is the operator. In the recent Census of Agriculture and in the Agricultural Resource Management Survey (ARMS), information is collected for up to three operators per farm. In the case of multiple operators, the respondent for the farm identifies who the principal farm operator is during the data collection process." *See Glossary,* U.S. Dep't of Agric., Econ. Res. Serv. https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary/#farmoperator (last visited Feb. 15, 2018).

[62] U.S. Dep't of Agric. Nat'l Agric. Statistics Serv., 2012 Census of Agriculture Highlights: Farm Demographics 4 (2014) https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/Farm_Demographics/Highlights_Farm_Demographics.pdf.

[63] *See* U.S. Dep't of Agric., Nat. Agric. Statistics Serv., Executive Briefing: 2015 Local Food Marketing Practices Survey 19 (2016) https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Local_Food/pdf/LocalFoodsBriefingPresentation_FINAL.pdf (noting that 44% of direct-to-consumer sales value occurs at on farm stores and that more operations engage in on farm sales and farmers markets than other types of direct-to-consumer marketing).

[64] *See* U.S. Dep't of Agric., Nat. Agric. Statistics Serv., Executive Briefing: 2015 Local Food Marketing Practices Survey, *supra* note 63, at 36 (showing on chart titled "Distance To The Largest Grossing Marketplace by Practice, 2015" that more than half of largest grossing sales in all categories except sales to supermarkets occur within 20 miles of farms and that very low percentages of largest grossing sales occur more than 100 miles from farms).

[65] James Matson et al., U.S. Dep't of Agric., Rural Dev., The Role of Food Hubs in Local Food Marketing 24 (2013), http://www.rd.usda.gov/files/sr73.pdf.

[66] "Short supply chains" indicate short geographic distances between producer and consumer, as well as limited intermediary actors. Ariel Pinchot, Univ. of Minn. Extension Ctr. For Cmty. Vitality, The Economics of Local Food Systems: A Literature Review of the Production, Distribution, and Consumption of Local Food 1 (2014), https://www.extension.umn.edu/community/research/reports/docs/2014-Economics-of-Local-Food-Systems.pdf.

[67] Pinchot, *supra* note 66, at 2.

[68] Sarah A. Low & Stephen Vogel, U.S. Dep't of Agric., Econ. Res. Serv., ERR-128, Direct and Intermediated Marketing of Local Foods in the United States 4-5 (2011), http://wallace.webfactional.com/mount_ngfn/ngfn/resources/ngfn-database/knowledge/ERR128.pdf; *See* O'Hara, *supra* note 32, at 7-8.

[69] U.S. Dep't of Agric., Nat. Agric. Statistics Serv., Executive Briefing: 2015 Local Food Marketing Practices Survey, *supra* note 63, at 36 (showing that more than half of largest grossing sales in all categories except sales to supermarkets occur within 20 miles of farms and that very low percentages of largest grossing sales occur more than 100 miles from farms).

[70] *See* U.S. Dep't of Agric., Econ. Res. Serv., Access to Affordable and Nutritious Food: Measuring and Understanding Food Deserts and Their Consequences (2009), https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf?v=41055.

[71] Agricultural Act of 2014 §10003 (codified at 7 U.S.C.A. § 3005 (West 2017)).

[72] 7 U.S.C.A. § 3005 (West 2017); *Farmers Market Promotion Program*, U.S. Dep't of Agric., Agric. Marketing Serv., https://www.ams.usda.gov/services/grants/fmpp (last visited Mar. 8, 2018).

[73] 7 U.S.C.A. § 3005 (West 2017); *Farmers Market Promotion Program*, *supra* note 74.

[74] 7 U.S.C.A. § 3005 (g) (West 2017); U.S. Dep't of Agric., FY 2017 Budget Summary 81, https://www.obpa.usda.gov/budsum/fy17budsum.pdf.

[75] *See* U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program FY 2017 Request for Applications 8

(2017), https://www.ams.usda.gov/sites/default/files/media/2017FMPPRFA.pdf; U.S. Dep't of Agric., Agric. Marketing Serv., Local Food Promotion Program FY 2017 Request for Applications 8 (2017), https://www.ams.usda.gov/sites/default/files/media/2017_LFPP_RFA_Final_12142016.pdf.

76 7 U.S.C.A. § 3005 (g) (West 2017); U.S. Dep't of Agric., Agric. Marketing Serv., U.S. Dep't of Agric., Agric. Marketing Serv., Local Food Promotion Program FY 2017 Request for Applications, *supra* note 75, at 2.

77 U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program FY 2017 Request for Applications, *supra* note 75, at 2.

78 Farmers Market Coal., Farmers Market Promotion Program: Summary of Analysis & Recommendations 3-4 (2013), https://farmersmarketcoalition.org/wp-content/uploads/2013/12/FMC_FMPP_GreenPaper.pdf.

79 U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program 2016 Report, *supra* note 29, at 3.

80 *Id.* at 8-9.

81 *Id.* at 8.

82 *Id.* at 10-11.

83 *Id.* at 11.

84 *Id.*

85 FMPP was created by the 2002 Farm Bill, while LFPP was created by the 2014 Farm Bill. *See* Farm Security and Rural Investment Act of 2002 §10605 (codified at 7 U.S.C.A. § 3004 (West 2017)); Agricultural Act of 2014 §10003 (codified at 7 U.S.C.A. § 3005 (West 2017)).

86 U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program 2016 Report, *supra* note 29, at 2; *LFPP Awarded Grants*, U.S. Dep't of Agric., Agric. Marketing Serv., https://www.ams.usda.gov/services/grants/lfpp/awards (last visited Feb. 16, 2018); *FMPP Awarded Grants,* U.S. Dep't of Agric., Agric. Marketing Serv., https://www.ams.usda.gov/services/grants/fmpp/awards (last visited Feb. 16, 2018).

87 Jeffrey K. O'Hara & Carlos Coleman, The impacts of the Farmers Market and Local Food Promotion programs, Community Development 6 (2017), http://sci-hub.tw/http://www.tandfonline.com/doi/abs/10.1080/15575330.2017.1350729?src=recsys&journalCode=rcod20.

88 *Welcome to Blue Sky Produce*, Blue Sky Produce, http://www.blueskyproduce.net/ (last visited Feb. 16, 2018).

89 *See* Blue Sky Produce, Local Food Promotion Program (LFPP) Final Performance Report 4-5, https://www.ams.usda.gov/sites/default/files/media/15-LFPP-ME-0135%20%2451%2C630.pdf (last visited Feb. 16, 2018).

90 Union Kitchen DC, https://unionkitchendc.com/ (last visited Feb. 16, 2018).

91 *See* Union Kitchen, Local Food Promotion Program (LFPP) Final Performance Report 6, https://www.ams.usda.gov/sites/default/files/media/15-DC-0104_Final%20Performance%20Report.pdf (last visited Feb. 16, 2018).

92 *See* Seal the Seasons, Local Food Promotion Program (LFPP) Final Performance Report 3, 5, https://www.ams.usda.gov/sites/default/files/media/NC0123SealtheSeasons100000.pdf (last visited Feb. 16, 2018).

93 U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program 2016 Report, *supra* note 29, at 3, 5.

94 Jim Monke, Cong. Research Serv., R44758, Farm Bill Programs Without a Budget Baseline Beyond FY2018 1-2 (2017), https://fas.org/sgp/crs/misc/R44758.pdf.

95 *Specialty Crop Block Grant Program*, U.S. Dep't of Agric., Agric. Marketing Service, https://www.ams.usda.gov/services/grants/scbgp (last visited Feb. 16, 2018).

96 U.S. Dep't of Agric., Agric. Marketing Serv., Specialty Crop Block Grant Program Fiscal Year 2016 Request for Applications 6 (2016), https://www.ams.usda.gov/sites/default/files/media/2016SCBGPRequestforApplications.pdf.

97 *Specialty Crop Block Grant Program*, *supra* note 95.

98 *See* U.S. Dep't of Agric., Agric. Marketing Serv., Fiscal Year 2017 Description of Funded Projects (2017), https://www.ams.usda.gov/sites/default/files/media/2017SCBGPDescriptionOfFundedProjects.pdf.

99 *See* U.S. Dep't of Agric., Agric. Marketing Serv., Fiscal Year 2017 Description of Funded Projects, *supra* note 98.

100 U.S. Dep't of Agric., Agric. Marketing Serv., Fiscal Year 2015 Description of Funded Projects 36 (2015), https://www.ams.usda.gov/sites/default/files/media/2015%20SCBGP-FB%20Awards.pdf.

101 U.S. Dep't of Agric., Agric. Marketing Serv., Fiscal Year 2017 Description of Funded Projects, *supra* note 98, at 22.

102 U.S. Dep't of Agric., Agric. Marketing Serv., Specialty Crop Block Grant Program Fiscal Year 2016 Evaluation Plan 2 (2015), https://www.ams.usda.gov/sites/default/files/media/SCBGP%20FY15%20PerformanceFINAL_10272015.pdf.

103 Food, Conservation, and Energy Act of 2008 § 10109 (codified at 7 U.S.C.A. § 1621 (West 2017)); Agricultural Act of 2014 §10010 (codified at 7 U.S.C.A. § 1621 (West 2017)).

104 Compare the amount of funds awarded in 2017 to the annual appropriation of $72.5 million. *See* U.S. Dep't of Agric., Agric. Marketing Serv., Fiscal Year 2017 Description of Funded Projects *supra* note 98, at 1.

105 *Distribution of farms and value of production varies by farm type*, *supra* note 7.

[106] *See, e.g.*, U.S. Dep't of Agric., Agric. Marketing Serv., Farmers Market Promotion Program FY 2017 Request for Applications, *supra* note 75.

[107] *See, e.g.*, Julia Shewchuck, *Applying for a USDA Grant: An Unforgettable Experience*, Mother Earth News (Mar. 3, 2014), http://www.motherearthnews.com/homesteading-and-livestock/applying-for-a-usda-grant-zbcz1403 (describing the author's experience applying for a USDA Value-Added Producer Grant); *cf., e.g.*, *WERC Grant Writing*, Winkelman's Environmentally Responsible Construction, http://www.ecowerc.com/products/grant109.html (last visited Feb. 18, 2018) (offering grant writing services and noting that grant writing for USDA Rural Energy for America Program grants "typically requires between 30 and 40 hours").

[108] *The Young Farmer Agenda: Farm Bill Platform,* Nat'l Young Farmers Coal., http://www.youngfarmers.org/policy/platform/ (last visited Mar. 8, 2018).

[109] *Id.*

[110] Sarah Tulman et al., U.S. Dep't of Agric., Econ. Res. Serv., ERR-222, USDA Microloans for Farmers: Participation Patterns and Effects of Outreach: Report Summary 1 (2016), https://www.ers.usda.gov/webdocs/publications/81871/err222_summary.pdf?v=42761 [hereinafter Sarah Tulman et al., USDA Microloans for Farmers: Report Summary].

[111] *See* Press Release No. 0015.16, U.S. Dep't. of Agric., USDA Expands Microloans to Help Farmers Purchase Farmland and Improve Property (Jan. 19, 2016), https://www.usda.gov/media/press-releases/2016/01/19/usda-expands-microloans-help-farmers-purchase-farmland-and-improve.

[112] Tulman et al., USDA Microloans for Farmers: Report Summary, *supra* note 110, at 1.

[113] *Id.*

[114] *Id.* at 2.

[115] 44 U.S.C.A. § 3506(c)(1)(B)(iii)(III) (West 2018) (requiring a burden statement be provided for most types of federal government paperwork collecting information from the public).

[116] *See* Andrea Carlson, *Investigating Retail Price Premiums for Organic Eggs*, U.S. Dep't of Agric., Econ. Res. Serv., Amber Waves (May 24, 2016), https://www.ers.usda.gov/amber-waves/2016/may/investigating-retail-price-premiums-for-organic-foods/.

[117] *Becoming A Certified Operation*, U.S. Dep't of Agric., Agric. Marketing Serv., https://www.ams.usda.gov/services/organic-certification/becoming-certified (last visited Feb. 19, 2018).

[118] *See General Requirements for Certification*, N.C. State Ext., https://growingsmallfarms.ces.ncsu.edu/growingsmallfarms-orgcertsteps/ (last visited Feb. 19, 2018).

[119] 7 U.S.C.A. § 6523(b) (West 2017); *Organic Certification Cost Share Program*, U.S. Dep't of Agric., Agric. Marketing Serv., https://www.ams.usda.gov/services/grants/occsp (last visited Feb. 19, 2018).

[120] 16 U.S.C.A. § 3839aa-2(d)(4)(a) (West 2018).

[121] EQIP allows for "Not more than 50 percent" of the allotted payments to be provided in advance "for the purpose of purchasing materials or contracting." 16 U.S.C.A. § 3839aa-2(d)(4)(b) (West 2018).

[122] This is the case for some animal agriculture, including broiler chickens, turkey, and swine. National Research Council of the National Academies, Air Emissions From Animal Feeding Operations: Current Knowledge, Future Needs 29 (2003), https://www.nap.edu/read/10586/chapter/4#29.

[123] *How Corporate Control Squeezes Out Small Farms*, The Pew Charitable Trusts, http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2012/07/18/how-corporate-control-squeezes-out-small-farms (last visited Mar. 8, 2018).

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] Pew Commission on Industrial Farm Animal Production, Putting Meat on the Table: Industrial Farm Animal Production in America 5-6, 41-42, 49, 93 http://www.pewtrusts.org/~/media/legacy/uploadedfiles/phg/content_level_pages/reports/pcifapfinalpdf.pdf (last visited Feb. 22, 2018).

[128] *See* Michael Ollinger and Danna Moore, *The Direct and Indirect Costs of Food-Safety Regulation*, 31 Rev. of Agric. Econ. 245, 261-2 (2016).

[129] 21 U.S.C.A. § 603 (West 2017); 21 U.S.C.A. §§ 452, 455 (West 2017).

[130] 21 U.S.C.A. § 661 (West 2017); 21 U.S.C.A. § 454 (West 2017).

[131] Kara Slaughter et al., *Potential Impacts of State Meat and Poultry Inspection for the State of Nebraska*, Univ. of Neb. Pub. Policy Ctr. 1 (2001), http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1096&context=publicpolicypublications.

[132] Food, Conservation, and Energy Act of 2008 § 501 (codified at 21 U.S.C.A. § 683(b) (West 2017)); *Cooperative Interstate Meat and Poultry Shipment Program*, Nat'l Sustainable Agric. Coal., http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/interstate-shipment-of-state-inspected-meat/ (last visited Mar. 8, 2018).

[133] 21 U.S.C.A. § 683(b) (West 2017); To be considered for the program, state-inspected establishments must employ fewer than 25

employees, have an adequate food safety system, and meet appropriate facilities standards. Once an establishment's application is accepted, it must comply with all requirements under the Federal Acts. *See State-Inspected Establishments Interested in Applying*, U.S. Dep't of Agric., Food Safety Inspection Serv., https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/cis/state-establishments-participation (last visited Mar. 8, 2018).

134 *Backgrounder*, U.S. Dep't of Agric., Food Safety Inspection Serv., https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/cis/backgrounder (last visited Mar. 8, 2018).

135 The states are Indiana, North Dakota, Ohio, and Wisconsin. *See Currently Participating States*, U.S. Dep't of Agric., Food Safety Inspection Serv., https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/state-inspection-programs/cis/states-participating (last visited Mar. 8, 2018).

136 Food & Water Watch, Where's the Local Beef? Rebuilding Small-Scale Meat Processing Infrastructure 3, 6-8 (2009), https://www.foodandwaterwatch.org/sites/default/files/wheres_the_local_beef_report_june_2009_0.pdf; *See* U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Livestock Slaughter: 2013 Summary 60 (2014), http://usda.mannlib.cornell.edu/usda/nass/LiveSlauSu//2010s/2014/LiveSlauSu-04-21-2014.pdf (comparing the number of small operations (under 10,000 head) in 2001 and 2013); U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Livestock Slaughter: 2001 Summary 86 (2002), http://usda.mannlib.cornell.edu/usda/nass/LiveSlauSu//2000s/2002/LiveSlauSu-03-01-2002.pdf.

137 21 U.S.C.A. § 623(a) (West 2017).

138 *Id.*

139 *Id.* at §§ 181-231; *See History and Mission Statement,* U.S. Dep't of Agric., Agric. Marketing Service, https://www.gipsa.usda.gov/about/mission.aspx (last visited Feb. 22, 2018).

140 Prior to GIPSA's creation in 1994, the Packers and Stockyards Administration administered PSA. *History and Mission Statement,* U.S. Dep't of Agric., Agric. Marketing Service, https://www.gipsa.usda.gov/about/mission.aspx (last visited Feb. 22, 2018).

141 U.S. Dep't of Agric., Office of the Secretary, Secretary's Memorandum November 14, 2017: Improving Customer Service and Efficiency (2017), https://www.agri-pulse.com/ext/resources/pdfs/s/e/c/Secretary-Memorandum-111517.pdf.

142 Per § 202, "[i]t shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry" to engage in certain, enumerated practices. Specifically, § 202(a) prohibits "any unfair, unjustly discriminatory, or deceptive practice or device," while § 202(b) prohibits "any undue or unreasonable preference or advantage" or "any undue or unreasonable prejudice or disadvantage." 7 U.S.C.A. § 192 (West 2017).

143 *See* Food, Conservation, and Energy Act of 2008 §§ 11005-11006.

144 Proposed Rules, U.S. Dep't of Agric. Grain Inspection, Packers and Stockyards Administration, 9 C.F.R. Part 201, Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, 75 Fed. Reg. 35,338-35,354 (Jun. 22, 2010), https://www.gpo.gov/fdsys/pkg/FR-2010-06-22/pdf/2010-14875.pdf.

145 *Id*; *See also* Michael K. Adjemian et al., U.S. Dep't of Agric., Econ. Res. Serv., EIB-148, Thinning Markets in U.S. Agriculture 5-6 (2016), https://www.ers.usda.gov/webdocs/publications/44034/56926_eib148.pdf?v=42445.

146 Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Suspension of Delivery of Birds, Additional Capital Investment Criteria, Breach of Contract, and Arbitration, 76 Fed. Reg. 76,874 (Dec. 9, 2011) (to be codified at 9 C.F.R. pt. 201), https://www.gpo.gov/fdsys/pkg/FR-2011-12-09/pdf/2011-31618.pdf.

147 Consolidated and Further Continuing Appropriations Act, 2012 § 721; Joel L. Greene, Cong. Research Serv., USDA's "GIPSA Rule" on Livestock and Poultry Marketing Practices 1 (2016), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41673.pdf.

148 Consolidated and Further Continuing Appropriations Act, 2012 § 721; *See also* 7 U.S.C.A. § 192(b) (West 2017).

149 Greene, Cong. Research Serv., *supra* note 147, at *summary*.

150 *See Farmer Fair Practice Rules,* U.S. Dep't of Agric., https://www.gipsa.usda.gov/psp/farmerfairpractices.aspx (last visited Mar. 16, 2018); *see also* Poultry Grower Ranking Systems, 81 Fed. Reg. 92,723 (proposed Dec. 20, 2016) (to be codified at 9 C.F.R. pt. 201), https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30429.pdf; *see also* Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act, 81 Fed. Reg. 92,703 (proposed Dec. 20, 2016) (to be codified at 9 C.F.R. pt. 201).

151 Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92,566 (Dec. 20, 2016) (to be codified at 9 C.F.R. pt. 201), https://www.federalregister.gov/documents/2016/12/20/2016-30424/scope-of-sections-202a-and-b-of-the-packers-and-stockyards-act.

152 Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act, 81 Fed. Reg. at 92,703; Poultry Grower Ranking Systems, 81 Fed. Reg. at 92,723.

153 Poultry Grower Ranking Systems, 81 Fed. Reg. at 92,723.

154 21 U.S.C.A. § 623(a) (West 2017).

155 7 U.S.C.A. § 2204(b) (West 2017).

[156] Tadlock Cowan, U.S. Dep't of Agric., Cong. Research Serv., RL31837, An Overview of USDA Rural Development Programs *summary* (2016) http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL31837.pdf (summary) [hereinafter Cowan, An Overview of USDA Rural Development].

[157] *See, e.g.,* Agricultural Act of 2014, §§ 6001-6210.

[158] Business programs also includes grants supporting formation of rural cooperatives (Section 6013) and investments in small rural firms through venture capitals (Section 6028). Agricultural Act of 2014 § 6013, (codified at 7 U.S.C.A. 1932(e) (West 2017)); Agricultural Act of 2014 § 6028 (codified at 7 U.S.C.A. 2009cc-18 (West 2017)); 7 U.S.C.A. § 1926(a)(24) – (26) (West 2017).

[159] *See, e.g.,* Agricultural Act of 2014 §§ 6004-6006 (codified at 7 U.S.C.A. § 1926(a)(24) – (26) (West 2017).

[160] Tadlock Cowan, An Overview of USDA Rural Development, *supra* note 156, at 16-18, 29.

[161] *Community Facilities Programs*, U.S. Dep't of Agric., http://www.rd.usda.gov/programs-services/all-programs/community-facilities-programs (last visited Mar. 8, 2018).

[162] U.S. Dep't of Agric., Rural Dev., USDA Rural Development 2015 Progress Report 9 (2016), http://www.rd.usda.gov/files/USDARDProgressReport2015.pdf.

[163] Renée Johnson & Tadlock Cowan, Cong. Research Serv., R43950, Local Food Systems: Selected Farm Bill and Other Federal Programs 16 (2016), https://fas.org/sgp/crs/misc/R43950.pdf.

[164] Agricultural Act of 2014 § 6014 (codified at 7 U.S.C.A. § 1932 (g)(9) (West 2017)).

[165] Food, Conservation, and Energy Act of 2008 § 6013 (codified at 7 U.S.C.A. 1932 (g)(9) (West 2017)).

[166] Press Release No. 0084.14, U.S. Dep't of Agric., USDA Announces $78 Million Available for Local Food Enterprises (May 8, 2014), http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2014/05/0084.xml&printable=true&contentidonly=true.

[167] Matson et al., *supra* note 65, at 5.

[168] *See* Matson et al., supra note 65, at 5. USDA defines food hubs as "…a business or organization that actively manages the aggregation, distribution and marketing of source-identified food products, primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail and institutional demand." James Barham et al., U.S. Dep't of Agric., Agric. Marketing Serv., Regional Food Hub Resource Guide 4 (2012), https://www.ams.usda.gov/sites/default/files/media/Regional%20Food%20Hub%20Resource%20Guide.pdf.

[169] Agricultural Act of 2014 § 6014, (codified at 7 U.S.C.A. § 1932(g)(9) (West 2017)).

[170] *See, e.g.,* Formulation of the 2012 Farm Bill: Hearings Before the Subcommittees on: Rural Development, Research, Biotechnology, and Foreign Agriculture; Conservation, Energy, and Forestry; Livestock, Dairy, and Poultry; Nutrition and Horticulture; Department Operations, Oversight, and Credit; and General Farm Commodities and Risk Management of the Comm. on Agric., 112th Cong. 2047, 2052, 2064 (2012) https://archives-agriculture.house.gov/sites/republicans.agriculture.house.gov/files/transcripts/112/112-30Pt2.pdf.

[171] *Id.* at 2047, 2052, 2064.

[172] *Id.* at 2047, 2052, 2064.

[173] Dennis A. Shields, Cong. Research Serv., Federal Crop Insurance: Background 10 (2015), http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40532.pdf.

[174] *Whole Farm Revenue Protection for Diversified Farms,* Nat'l Sustainable Agric. Coal., http://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/whole-farm-revenue-protection-for-diversified-farms/ (last visited Mar. 8, 2018).

[175] *Id.*

[176] Shields, *supra* note 173, at 10.

[177] Press Release No. 0100.14, U.S. Dep't of Agric., New Pilot Program Offers Coverage for Fruits and Vegetables, Organic and Diversified Farms (May 21, 2014), http://www.usda.gov/wps/portal/usda/usdahome?contentid=2014/05/0100.xml.

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[179] Robert Dismukes & Keith H. Coble, *Managing Risk with Revenue Insurance*, U.S. Dep't of Agric., Econ. Res. Serv., Amber Waves (May 1, 2007), https://www.ers.usda.gov/amber-waves/2007/may-special-issue/managing-risk-with-revenue-insurance/.

[180] *USDA Rolls Out New Whole-Farm Revenue Protection Insurance Policy*, Nat'l Sustainable Agric. Coal., NSAC's Blog (Nov. 6, 2014), http://sustainableagriculture.net/blog/wfrp-roll-out-blog/.

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[182] *USDA Rolls Out New Whole-Farm Revenue Protection Insurance Policy, supra* note 180; *Frequently Asked Questions Whole-Farm Revenue Protection (WFRP) Plan* U.S. Dep't of Agric., https://www.rma.usda.gov/help/faq/wfrp2018.html (last visited Mar. 8, 2018).

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189 *See, e.g.*, Anna Johnson & Glen Ready, Ctr. For Rural Affairs, New Option for Risk Management: Whole Farm Revenue Protection Usage in Nebraska 10 (2017), https://www.cfra.org/sites/www.cfra.org/files/publications/WFRP%20Report.pdf.

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192 Crop Insurance Modernization Act of 2018 § 2(e) (2018).

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194 *Id.*

195 *See* 7 U.S.C.A § 1522 (West 2017); *See also, Risk Management Education Partnership Program*, U.S. Dep't of Agric., Risk Mgmt. Agency, https://www.rma.usda.gov/aboutrma/agreements/awards/2017/2017partnerships.html (last visited Mar. 8, 2018).

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205 Matson, et al., *supra* note 22 at 504, 506–07; *see* Lin, *supra* note 22 at 183, 184-88; De Schutter, supra note 24, at 1, 6.

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217 *Farm Loan Programs*, U.S. Dep't of Agric., Farm Serv. Agency, https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/index (last visited Mar. 8, 2018).

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220 Food, Agriculture, Conservation, and Trade Act of 1990 § 1817 (codified at 7 U.S.C.A. § 2003 (West 2017)); Food, Agriculture, Conservation, and Trade Act of 1990 § 2501(f) (codified at 7 U.S.C.A. § 2279 (West 2017)); Agricultural Credit Improvement Act of 1992 § 21(a), (b) (codified at 7 U.S.C.A. §§ 2003 (a), (e)(1) (West 2017)); 7 U.S.C.A. §§ 1935–36 (West 2017); 7 U.S.C.A. § 1994(b)(2) (West 2017).

221 7 C.F.R. § 761.208(b) (2010). There are also state target participation levels, which are tied to the total population of the state that is socially disadvantaged.

222 7 C.F.R. § 761.208(c)(1) (2010).There are also state target participation levels, which are tied to the percentage of farmers in the state who are socially disadvantaged.

223 7 C.F.R. § 761.208(d) (2010). State target participation rates for women are based on the percentage of farmers in the state who are female.

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225 *Id*. § 1994(b)(2).

226 *See Program Data*, U.S. Dep't of Agric., Farm Serv. Agency, https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/program-data/index (last visited Mar. 8, 2018).

227 *Id.*

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233 *FSA Loans to Socially Disadvantaged Farmers and Ranchers Drop in 2016*, Nat'l Sustainable Agric. Coal., NSAC's Blog (Feb. 9, 2017) http://sustainableagriculture.net/blog/fsa-loan-analysis-fy2016-sda.

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Agriculture tbl.17 with 1920 Census of Agriculture p.189 tbl.1. These totals are approximate due to changes in the survey's implementation, methodology, and racial and ethnic classifications. The decline in black-owned acreage is likely much larger than the decline reported in the Census of Agriculture, since black-owned farmland was substantially undercounted until recently. Nathan Rosenberg, *Farmers Who Don't Farm: the Curious Rise of the Zero-Sales Farmer*, *supra* note 17, at 2-3.

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269 Agricultural Act of 2014 § 5106 (codified at 7 U.S.C.A. § 1943(a) (West 2017)).

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274 *Compare* U.S. Dep't of Agric., Farm Serv. Agency, Executive Summary Farm Loan Programs FY 2017, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/program-data/FY_2017_Executive_Summary_FLPLM.pdf; U.S. Dep't of Agric., Farm Serv. Agency, Farm Loan Programs Socially Disadvantaged Obligations Report FY 2017, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/program-data/FY_2017_SDA_Obligation_Report_By_State.pdf; U.S. Dep't of Agric., Farm Serv. Agency, Farm Loan Programs Beginning Farmer Obligations Report FY 2017, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/program-data/FY_2017_Beginning_Farmer_Obligation_Report_By_State.pdf.

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[278] Rural Advancement Found. Int'l-USA, Statement of Mr. Scott Marlow Before the U.S. House of Representatives Committee on Agriculture 4 (2017), https://agriculture.house.gov/uploadedfiles/marlow_testimony.pdf.

[279] *County Committee Elections*, U.S. Dep't of Agric., Farm Serv. Agency, https://www.fsa.usda.gov/news-room/county-committee-elections/ (last visited Mar. 8, 2018).

[280] 7 C.F.R. § 7.12(b) (2012).

[281] Selection and Function of Farm Service Agency State and County Committees, 78 Fed. Reg. 13,771 (Mar. 1, 2013) (to be codified at 7 C.F.R. pt. 7), https://www.fsa.usda.gov/Internet/FSA_Federal_Notices/selectioncomm_3_01_2013.pdf.

[282] *Id.*

[283] U.S. Dep't. of Agric., Civil Rights Action Team, *supra* note 37, at 30; *See generally,* Daniel, *supra* note 37; Rosenberg & Stucki, *supra* note 37 at 12, 13–14; Ayazi & Elsheikh, *supra* note 187, at 56–57.

[284] Ayazi & Elsheikh, *supra* note 187, at 56–57.

[285] Food, Conservation, and Energy Act of 2008 § 14003 (codified at 7 U.S.C.A. § 2279-1 (West 2017)).

[286] Food, Conservation, and Energy Act of 2008 § 14003 (codified at 7 U.S.C.A. § 2279-1 (c)(4) (West 2017)).

[287] *See Program Data*, U.S. Dep't of Agric., Farm Serv. Agency, *supra* note 226.

[288] Email from Gwen Sparks, Deputy Director Office of External Affairs, U.S. Dep't of Agric., Farm Serv. Agency (Oct. 11, 2017) (on file with author). The federal government and USDA regularly collect and report gender, racial, and ethnic data on individuals that belong to multiple categories. FSA also reports data on SDFR and BFR loan obligations despite the fact that individuals can, and often are, members of both categories. Rather than not meeting its reporting obligations, USDA's data should indicate how many applicants select multiple races or ethnicities, and how this affects the final results.

[289] Email from Gwen Sparks, Deputy Director Office of External Affairs, U.S. Dep't of Agric., Farm Serv. Agency (March 29, 2017) (on file with author).

[290] Food, Conservation, and Energy Act of 2008 § 14010 (codified at 7 U.S.C.A. §2279-2 (West 2017).

[291] Food, Conservation, and Energy Act of 2008 § 14010 (codified at 7 U.S.C.A. §2279-2(1)(d) (West 2017)).

[292] *See* U.S. Dep't of Agric., Report of Civil Rights Complaints, Resolutions, and Actions Fiscal Year 2010 (2011), https://www.ascr.usda.gov/sites/default/files/FY2010-Farm-Bill-Report%20w_o%20exhibits2.pdf.

[293] See, e.g., letter from Claudette Joyner, President, AFGE Local 3147, to AFGE Local 3147 members, (June 18, 2015); Interview with Lawrence Lucas, President Emeritus, USDA Coalition of Minority Employees (Feb. 23, 2018).

[294] *See Reports of Civil Rights Complaints, Resolutions, and Actions,* U.S. Dep't of Agric., Office of the Assistant Secretary for Civil Rights, https://www.ascr.usda.gov/reports (last visited Mar. 8, 2018).

[295] See, e.g., letter from Claudette Joyner, President, AFGE Local 3147, to AFGE Local 3147 members, (June 18, 2015); Interview with Lawrence Lucas, *supra* note 293.

[296] Allison Borchers, *Tenure, Ownership and Transition of Agricultural Land (TOTAL) Survey 2014: A New USDA, Economic Research Service/National Agricultural Statistics Service Data Produce,* U.S. Dep't of Agric., Econ. Res. Serv., Amber Waves (Nov. 2, 2015), https://www.ers.usda.gov/amber-waves/2015/november/tenure-ownership-and-transition-of-agricultural-land-total-survey-2014-a-new-usda-economic-research-servicenational-agricultural-statistics-service-data-product/.

[297] Daniel Bigelow et al., U.S. Dep't of Agric., Econ. Res. Serv., EIB-161, U.S. Farmland Ownership, Tenure, and Transfer 36 (2016) https://www.ers.usda.gov/webdocs/publications/74672/60298_eib161.pdf?v=42607 (including farmland only in the 48 contiguous states).

[298] *See* Lindsey Lusher Shute et al., Nat'l Young Farmers' Coalition, Building a Future with Farmers: Challenges Faced by Young, American Farmers and a National Strategy to Help Them Succeed 20 (2011), http://www.youngfarmers.org/reports/Building_A_Future_With_Farmers.pdf (reporting results of a 34-state survey of young and beginning farmers in which respondents identify access to land as one of the top obstacles facing them).

[299] *See* Shute et al., *supra* note 298, at 25.

[300] *Owning and Leasing Agricultural Real Estate*, Agricultural Alternatives, Penn State Extension, (2014), http://extension.psu.edu/business/ag-alternatives/farm-management/owning-and-leasing-agricultural-real-estate (last visited Mar. 8, 2018).

[301] *Id.*

[302] *See* Shute et al., *supra* note 298, at 33.

[303] *Id.*, at 34.

[304] Juli Obudzinski, *Beginning Farmer Policy Options for the Next Farm Bill,* Choices (4th Quarter 2016) at 2. Trends in farmland rent and purchase prices are published by state by the American Society of Farm Managers and Rural Appraisers (ASFMRA); *See Land Trends,* Am. Soc. of Farm Managers and Rural Appraisers, http://community.asfmra.org/resources/land-trends (last visited Mar. 8, 2018).

[305] Christopher Doering, *Wall Street investors buying up farmland,* Des Moines Register (Sept 13, 2015), http://www.desmoinesregister.com/story/money/agriculture/2015/09/14/farmland-investment/72066736/.
[306] *Farmland Ownership and Tenure*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-ownership-and-tenure/ (last visited Mar. 8, 2018).
[307] *Id.*
[308] Brenda Swanson, *This MBA chart shows existing home turnover*, Housingwire, (Jun 26, 2015), https://www.housingwire.com/articles/34324-this-mba-chart-shows-existing-home-turnover.
[309] Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community Through Partition Sales of Tenancy in Common Property*, 95 Northwestern University Law Review 505, 511-523 (2001) [hereinafter Mitchell, *From Reconstruction to Deconstruction*]; Leah Douglas, *African Americans Have Lost Untold Acres of Land Over the Last Century*, The Nation, (June 26,2017), https://www.thenation.com/article/african-americans-have-lost-acres/.
[310] *Id*. at 505-512.
[311] *Id*. at 512.
[312] Jessica Gordon Nembhard & Charlotte Otabor, Center on Race and Wealth, Howard University, The Great Recession and Land and Housing Loss in African American Communities: Case Studies from Alabama, Florida, Louisiana, and Mississippi Part 2: Heir Property 8 (2012), http://coas.howard.edu/centeronraceandwealth/reports&publications/0712-great-recession-and-land-housing-loss-in-african-american-communities-part2.pdf; *What is Heirs Property?*, Heirs' Property Retention coalition, http://southerncoalition.org/hprc/?q=node/5 (last visited Mar. 4, 2018).
[313] *See* Jessica A. Shoemaker, *Emulsified Property*, 43 Pepp. L. Rev. 960-961, 729-732, (2015); Stacy L. Leeds, *By Eminent Domain or Some Other Name: A Tribal Perspective on Taking Land*, 41 Tulsa L. Rev. (2005).
[314] Thomas W. Mitchell, *From Reconstruction to Deconstruction, supra* note 311, at 508; U.S. Dep't of Agric., Office of the Assistant Secretary for Civil Rights, What You Need to Know about Heir property 1 https://www.fsa.usda.gov/Internet/FSA_File/whatyouneedtoknowheirproperty.pdf (last visited Mar. 4, 2018).
[315] Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Alabama Law Review 18-28 (2014); U.S. Dep't of Agric., Office of the Assistant Secretary for Civil Rights, What You Need to Know about Heir property, *supra* note 314, at 1.
[316] Cassandra Johnson Gaither, U.S. Dep't of Agric., Forest Serv., "Have Not Our Weary Feet Come to the Place for Which Our Fathers Sighed?" Heirs Property in the Southern United States 1 (2016), https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs216.pdf.
[317] Mitchell, *From Reconstruction to Deconstruction, supra* note 309, at 508.
[318] Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, Wis. L. Rev. 557 (2005).
[319] Conner Bailey & Janice Dyer, *Study: Heir Property Cause of Poverty, Land Loss in Black Belt*, Auburn University College of Agriculture (2011), http://www.ag.auburn.edu/comm/news/2011/Heirproperty.php (last visited Mar. 4, 2018)*; See also* U.S. Dep't of Agric., Office of the Assistant Secretary for Civil Rights, What You Need to Know about Heir property, *supra* note 316, at 1. (listing the states most affected by heirs' property as Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia).
[320] Rebekah Martin, *Defending the Cobell Buy-Back Program*, 41 American Indian Law Review 91, 99 (2016).
[321] Navajo Div. of Health, Navajo Epidemiology Ctr., Navajo Population Profile 2010 U.S. Census 13 (December 2013), http://www.nec.navajo-nsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf.
[322] Martin, *supra* note 320, at 99.
[323] Jessica A. Shoemaker, *No Sticks in My Bundle: Rethinking the Indian Land Tenure Problem*, 63 U. of Kan. L. Rev., 101, 114-117, (2014).
[324] *Id.* at 115.
[325] Martin, *supra* note 320 at 99; Shoemaker, *No Sticks in My Bundle: Rethinking the Indian Land Tenure Problem*, *supra* note 320, at 114-117.
[326] *Population & Migration, Overview*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/topics/rural-economy-population/population-migration/ (last visited Mar. 8, 2018).
[327] Obudzinski, *supra* note 304, at 1.
[328] Robert Parsons, et al., The FarmLASTS Project, Research Report and Recommendations from the FarmLASTS Project 3 (2010), http://www.uvm.edu/farmlasts/FarmLASTSResearchReport.pdf.
[329] Lisa Luciani, *Most exiting farmers in New England may have no one to take over the farm, new study shows*, Land for Good (April 25, 2016), http://landforgood.org/no-one-to-take-over-farm/; *See also* Lisa Luciani, *Attorneys and professionals prepare to serve exiting farmers*, Land for Good (April 13, 2017), http://landforgood.org/professionals-training-farm-succession-advisors/.
[330] Parsons, et al., The FarmLASTS Project, Research Report and Recommendations from the FarmLASTS Project, *supra* note

328, at 3; *See also* Luciani, *Attorneys and professionals prepare to serve exiting farmers*, *supra* note 329; *See also* Luciani, *Most exiting farmers in New England may have no one to take over the farm, new study shows*, *supra* note 329.

331 Agricultural Act of 2014 § 7409 (codified at 7 U.S.C.A. § 3319(f) (West 2017)).

332 *Id.* § 7110 (codified at 7 U.S.C.A. § 3175(f) (West 2017)).

333 *Expanded Food and Nutrition Education Program (EFNEP),* U.S. Dep't of Agric., Nat'l Inst. of Food and Agric., https://nifa.usda.gov/program/expanded-food-and-nutrition-education-program-efnep (last visited Mar. 8, 2018); *See also Beginning Farmer and Rancher Development Program, supra* note 229.

334 U.S. Dep't of Agric., Rural Dev., Rural Utilities Serv., Application Guide for Technical Assistance Training and Solid Waste Management Grant Programs Fiscal Year 2017 27 (2017), https://www.rd.usda.gov/files/RD-WEP-AppGuideTAT_SWM_FY2017.pdf.

335 Food, Conservation, and Energy Act of 2008 § 2111 (codified at 16 U.S.C.A. § 3835(c)(1)(B) (West 2017)). The program defines BFR as "a person or entity who has not been a farm or ranch operator for more than 10 years" and SDFR as "a farmer or rancher who is a member of a group whose members have historically been subjected to racial or ethnic prejudice because of their identity as a member of that group. For this program, gender is not included." *See Transition Incentives Program,* U.S. Dep't of Agric., Farm Serv. Agency, https://www.fsa.usda.gov/programs-and-services/conservation-programs/transition-incentives/ (last visited Mar. 8, 2018).

336 Per recommendations from USDA's Advisory Committee on Beginning Farmers and Ranchers (ACBFR), in December 2016 USDA expanded TIP eligibility to include intra-familial land transfers. Press Release No. 0216.16, U.S. Dep't of Agric., Farm Serv. Agency, USDA Makes it Easier to Transfer Land to the Next Generation of Farmers and Ranchers (Dec. 29, 2016), https://www.fsa.usda.gov/news-room/news-releases/2016/nr_20161229_rel_216.

337 Food, Conservation, and Energy Act of 2008 § 2111(a)(3) (codified at 16 U.S.C.A. § 3835(c)(1)(B)) (West 2017)); *Transition Incentives Program, supra* note 335.

338 7 C.F.R. § 763.1(a) (2018). The buyer, in addition to being a beginning or socially disadvantaged farmer, must have participated in the business operations of a farm or ranch for at least three out of the ten years prior to the date the application is submitted, and must also satisfy a number of other requirements relating to immigration status, criminal record, and creditworthiness. 7 C.F.R. § 763.5 (2018).

339 Edward Cox., *Helping Landowners Help New Farmers: Incentive Programs and Other Legal Tools for Transitioning Land to the Next Generation of Farmers*, 17 Drake J. Agric. L. 37, 50-51 (2012).

340 Farm Loan Programs Loan Making Activities, 76 Fed. Reg. 75,427 (Dec. 2, 2011) (to be codified at 7 C.F.R. pts. 761, 763, 764), https://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-31046.pdf.

341 Farm Security and Rural Investment Act of 2002 § 5006 (codified at 7 U.S.C.A. § 1922 et seq.) (West 2017)).

342 Food, Conservation, and Energy Act of 2008 § 5005 (codified at 7 U.S.C.A. § 1936) (West 2017)).

343 7 C.F.R. § 763 (2018).

344 *CRP Transition Incentives Program*, Nat'l Sustainable Agric. Coal., http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/crp-transition-option/ (last visited Mar. 8, 2018).

345 Agricultural Act of 2014 § 2601(a) (codified at 16 U.S.C.A. § 3841) (West 2017)).

346 *CRP Transition Incentives Program*, *supra* note 344.

347 The Farm Service Agency responded to direct inquiry with these numbers*; See Land Contract Guarantee Program*, Nat'l Sustainable Agric. Coal., http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/contract-land-sales/ (last visited March 8, 2018).

348 *See* U.S. Dep't of Agric., Farm Serv. Agency, Land Contract Guarantee Program, https://www.fsa.usda.gov/Internet/FSA_File/land_contracts.pdf (last visited Mar. 8, 2018).

349 Since the early 2000s, land values have seen a sharp and generally steady increase; *Farmland Value*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value/ (last visited Mar. 8, 2018) (Figure: Average U.S. Farm Real Estate Value, presenting data from the National Agricultural Statistics Service). However, the past several years have seen land values declining in the Midwest and Great Plains. Monke, Agricultural Credit: Institutions and Issues, *supra* note 214, at 3.

350 *See* 7 C.F.R. § 763.6 (2016).

351 When land value per acre is disproportionately higher than the value of rent installments (or, similarly, land contract payments), it takes longer for the returns from those installments to reach the value of a sale and the incentive will be for landowners to sell outright. Cynthia Nickerson et al., U.S. Dep't of Agric., Econ. Res. Serv., EIB-92, Trends in U.S. Farmland Values and Ownership 5 (2012) https://www.ers.usda.gov/webdocs/publications/44656/16748_eib92_2_.pdf?v=41055.

352 7 C.F.R. § 763.15 (2016).

353 *Id.* at § 763.12.

[354] Applicable to assets owned for longer than twelve months*; See Topic 409: Capital Gains and Losses*, Internal Revenue Serv. (2017), https://www.irs.gov/taxtopics/tc409.html (last visited Mar. 8, 2018).

[355] The rate depends on the farmer's ordinary income tax bracket (which includes off-farm income). Those in the 10% and 15% ordinary income tax brackets pay 0% in capital gains taxes; those in the 25%, 28%, 33% and 35% brackets pay a 15% capital gains tax rate; and those in the 39.6% income tax bracket pay a 20% capital gains tax rate. 26 U.S.C.A. § 1(h) (West 2017); *2015 Federal Tax Rates, Personal Exemptions, and Standard Deductions*, Internal Revenue Serv., https://www.irs.com/articles/2015-federal-tax-rates-personal-exemptions-and-standard-deductions (last visited Mar. 8, 2018).

[356] Ron Durst & James Williamson, *Federal Income Tax Reform and the Potential Effects on Farm Households*, U.S. Dep't of Agric., Econ. Res. Serv. Amber Waves (Feb 21, 2013), https://www.ers.usda.gov/amber-waves/2013/february/federal-income-tax-reform-and-the-potential-effects-on-farm-households/; *See also* Ron Durst & James Monke, U.S. Dep't of Agric., Econ. Res. Serv., Effects of Federal Tax Policy on Agriculture 6 (2001) https://www.ers.usda.gov/webdocs/publications/41302/19671_aer800_1_.pdf?v=41063; *See also Historical Data on Mean and Median Farm Operator Household Income and Ratio of Farm Household to U.S. Household Income, 1960-2015*, U.S. Dep't of Agric., Econ. Res. Serv., https://www.ers.usda.gov/data-products/farm-household-income-and-characteristics (last visited Mar. 8, 2018).

[357] Some inherited farms would be subject to the federal *estate* tax, which might cause some farmers to prefer incurring the capital gains tax instead. However, the federal estate tax applies only to estates valued over $5.49 million and twice that for married couples (for decedents dying in 2017), so many smaller farms would be exempt. Furthermore, the federal estate tax allows qualifying family farms to reduce the applicable farm value by up to $1.12 million (in 2017)*; See Frequently Asked Questions on Estate Taxes*, Internal Revenue Serv., https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-estate-taxes#3 (last visited Mar. 8, 2018). Of course, state-level tax burdens must also be taken into account on an individual basis.

[358] Food, Conservation, and Energy Act of 2008 § 15001(b) (codified at 26 U.S.C.A. § 1 (West 2017)).

[359] *Id.* at § 15301 (codified at 26 U.S.C.A. § 1402 (West 2017)).

[360] *Id.* at § 1532 (codified at 26 U.S.C.A. § 40 (West 2017)).

[361] *Id.* at § 15343 (codified at 26 U.S.C.A. § 450 (West 2017)).

[362] *See* Nat'l Conf. of Commissioners on Uniform State Law, Uniform Partition of Heirs Property Act, (2010), http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/uphpa_final_10.pdf.

[363] *See* Food, Conservation, and Energy Act of 2008 § 5501 (codified at 25 U.S.C.A. § 488 (West 2017)).

[364] *See* 7 C.F.R. § 769.103 (2018).

[365] 7 C.F.R. § 769.103(b)(2) (2018).

[366] 7 C.F.R. 769.104 (West 2018); U.S. Dep't of Agric., Farm Serv. Agency, Farm Loans Fact Sheet: Highly Fractionated Indian Land Loan Program (HFIL) 1 (2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/hfil_fact_sheet_dec2016.pdf [hereinafter, Farm Loans Fact Sheet: Highly Fractionated Indian Land Loan Program (HFIL)].

[367] Farm Loans Fact Sheet: Highly Fractionated Indian Land Loan Program (HFIL), *supra* note 366, at 1.

[368] Press Release No. 0255.16, U.S. Dep't of Agric., USDA Expands Farm Loans for Native Americans Farming and Ranching on Tribal Land (Dec. 6, 2016), https://www.usda.gov/media/press-releases/2016/12/06/usda-expands-farm-loans-native-americans-farming-and-ranching [hereinafter Press Release No. 0255.16, Farm Loans for Native Americans Farming and Ranching on Tribal Land].

[369] Land Buy-Back Program for Tribal Nations Under Cobell Settlement, 82 Fed. Reg. 17,681 (April 12, 2017), https://www.federalregister.gov/documents/2017/04/12/2017-07417/land-buy-back-program-for-tribal-nations-under-cobell-settlement.

[370] Class Action Settlement Agreement, *Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009) (No. 96-1285), available at http://cobellsettlement.com/docs/sa_1_19_11.pdf.

[371] Armen H. Merjian, *An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar*, 46 Gonz. L. Rev., 609, 613-618 (2010).

[372] Jessica A. Shoemaker, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 Wis. L. Rev., 729, 737-742 (2003).

[373] Class Action Settlement Agreement, *Cobell v. Salazar supra* note 370.

[374] *Land Buy-Back Program for Tribal Nations, Frequently Asked Questions*, U.S. Dep't of the interior, https://www.doi.gov/buybackprogram/faq (last visited Mar. 8, 2018).

[375] *Land Buy-Back Program for Tribal Nations Under Cobell Settlement, supra* note 369.

[376] *Id.*

[377] *Id.*

[378] Debie Roos, *Register Now for Extension's Postharvest Handling Workshop for Farmers [April 6, 2017],* N.C. State Extension Chatham County (Mar. 21, 2017), https://growingsmallfarms.ces.ncsu.edu/2017/03/register-now-for-extensions-postharvest-

handling-workshop-for-farmers/; Debie Roos*, Register Now for Cooperative Extension's Tax Workshop for Farmers [February 2, 2017],* N.C. State Extension Chatham County (Jan. 7, 2017), https://growingsmallfarms.ces.ncsu.edu/2017/01/register-now-for-cooperative-extensions-tax-workshops-for-farmers/.

379 See, e.g., the work of the Land Loss Prevention Project. Land Loss Prevention Project, https://www.landloss.org/ (last visited Mar. 22, 2018).

380 Class Action Settlement Agreement, *Cobell v. Salazar supra* note 370.

381 Press Release No. 0255.16, Farm Loans for Native Americans Farming and Ranching on Tribal Land, *supra* note 368.

i USDA defines a beginning farmer or rancher as an individual or entity who, "Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years" and "Will materially and substantially participate in the operation of the farm or ranch." *Socially Disadvantaged, Limited Resource, Beginning Farmers, Veteran Farmers—Definitions*, U.S. Dep't of Agric., Nat. Res. Conservation Serv., https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/people/outreach/slbfr/ (last visited Feb. 12, 2018).

ii "Socially Disadvantaged Farmer" is defined in 7 U.S.C. 2003 as any farmer from a socially disadvantaged group "whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities." These groups consist of the following: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics. Note: Women are not covered under the Natural Resources Conservation Service (NRCS) definition of SDFR, but they are included in the FSA definition of socially disadvantaged applicant and are eligible for loan set-asides. *See* 7 U.S.C.A. 2003(e) (West 2017); *Disadvantaged, Limited Resource, Beginning Farmers, Veteran Farmers—Definitions*, *supra* note 1.

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