

Farmworkers



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Farm Bill on the Horizon

Two years in, the COVID-19 pandemic has shown just how critical it is for the United States to invest in a robust, diverse, and well-integrated food system. The country faced a formidable challenge in striving to help people meet their nutritional needs, connecting agricultural producers to markets, creating safe environments for our food system's essential workforce to continue feeding the country, and providing local options for securing food. In many cases, Congressional action to increase funding for farm bill programs and authorize new initiatives and flexibilities staved off some of the most devastating potential impacts, proving that increased investment in the country's agricultural and food system reverberates through the economy and strengthens our country's resilience to crises. The next farm bill, anticipated in 2023, offers the opportunity to solidify these lessons through legislation.

The pandemic and other events—increasingly destructive natural disasters, trade disputes—that have transpired since the last farm bill passed in 2018 have also underscored the need to regard the food and agriculture sector as a public good. Doing so means aligning federal investments through the farm bill with sound public policy that considers the long-term needs of society. The climate crisis at our doorstep requires that public dollars support programs and policies designed to mitigate and adapt to this reality rather than exacerbate the food system's contribution to the problem. Advancing racial justice requires centering equity in farm bill programs and agricultural governance and regarding food system workers as a core constituency in food system policy. And, strengthening our nation's food system requires supporting the growth of local and regional food systems equipped to meet the nutritional needs of the community, while providing economically stable, decentralized business opportunities for existing and new producers. Public funds that flow through farm bill programs should be dedicated to creating and reinforcing a food system that upholds and furthers these collective goals.

The Recommendations contained in this Report are an early attempt to infuse policy ideas into the next farm bill conversation. Although we discussed and vetted these ideas among our Farm Bill Law Enterprise members and many other stakeholders in order to write the Reports in this series, we know that many more organizations, stakeholders, and communities will have thoughts, constructive critique, and perspectives to offer that should ultimately shape the policies enacted in the farm bill. We offer these ideas as a starting point to generate further discussion and are eager to collaborate with other stakeholders to further develop and refine these ideas and set priorities for the coming farm bill cycle.



The Farm Bill Law Enterprise

FBLE is a national partnership of law school programs working toward a farm bill that reflects the long-term needs of our society, including economic opportunity and stability; public health and nutrition; climate change mitigation and adaptation; public resources stewardship; and racial and socioeconomic justice. We strive to advance justice and equity in accomplishing each of these goals.

- **Economic Opportunity and Stability**, including equitable access to capital, scale-appropriate risk management, market stability, a viable livelihood for diverse production systems and diverse producers, expanded worker-ownership, and a vibrant agricultural sector.
- **Public Health and Nutrition**, including a robust and secure food supply that meets the present and future nutritional needs of all communities, improves population-level health, reduces inequalities, and prioritizes production of healthful foods.
- **Climate Change Mitigation and Adaptation**, including the transformation of agriculture into a net sink through reduced emissions and the use of soil and biomass as a carbon sink, as well as support for farmers adapting to climate impacts such as drought, extreme weather events, and changing growing seasons.
- **Public Resources Stewardship**, including agricultural practices that increase biodiversity and soil stability and fertility, while promoting public health and environmental justice by preserving community resources such as safe drinking water and clean air.
- **Racial and Socioeconomic Justice**, including labor rights, diverse and equitable opportunities in agriculture, robust competition that creates space for small and mid-size, new, and innovative participants and checks concentrated power, equitable distribution of agriculture's costs and benefits, and fair contracts and labor practices.

We accomplish our mission through joint research, analysis, and advocacy and by drawing on the experience of our members, collaboratively building deeper knowledge, and equipping the next generation of legal practitioners to engage with the farm bill.

This Report belongs to a collection of Reports based on the collaborative research of FBLE members conducted in anticipation of the 2023 Farm Bill. The subjects of these reports include **Climate & Conservation, Equity in Agricultural Production & Governance, Farm Viability, Farmworkers,** and **Food Access & Nutrition**. Each report will be available on our website, FarmBillLaw.org, along with background materials, an active blog, and timely resources for tracking the 2023 Farm Bill's progress through Congress.

FBLE is comprised of members from the following law school programs: Drake University Law School, Agricultural Law Center; 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; Pace University Elisabeth Haub School of Law, Food Law Initiative and Food and Beverage Law Clinic; UCLA School of Law, Resnick Center for Food Law and Policy; University of Maryland Francis King Carey School of Law Environmental Law Program; and Vermont Law School, Center for Agriculture and Food Systems. The Recommendations in this Report series do not necessarily reflect the views of each individual member or their institutions.



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EXECUTIVE SUMMARY

The agricultural workforce is the backbone of the U.S. food industry and a core constituency in agricultural policy. Yet, the country's primary legislative package targeting the agricultural sector—the farm bill—principally serves farm owners and operators. These essential workers face precarious economic circumstances and inhumane working conditions that federal and state laws frequently fail to address. The farm bill is an opportunity for Congress to end exploitative work arrangements in the agricultural sector and shape a system that reflects the interests of both workers and producers. Furthermore, investment in farmworkers and other food system workers will contribute to economic growth and revitalization of rural communities, another key farm bill constituency.

Farmworkers not only face the same disruptions as producers (such as fluctuating market prices

and natural disasters) with little to no safety net, but also engage in challenging and dangerous work for low compensation and with few worker protections. Addressing these disparities is a critical part of advancing equity in the agricultural sector, given the United States' long history of extracting labor from immigrants and people of color to support a profitable agricultural economy.

Programs and services administered by the U.S. Department of Agriculture (USDA) can and should be revamped to support farmworkers as they do farmers and to invest in workers' wellbeing and advancement. This Report outlines Goals and Recommendations, including specific Legislative and Administrative Opportunities, designed to advance these objectives in the 2023 Farm Bill.



Goal I



Provide Workers a Pathway to Authorized Work & Residency Status

U.S. agriculture is unquestionably reliant on the labor of immigrants and their descendants. Of an estimated 3.4 million farmworkers in this country, at least 70% were born in Mexico, and 83% identify as Latinx. Although most immigrant farmworkers are here through legally sanctioned immigration channels, some parts of the agricultural sector rely heavily on undocumented farm labor. Additionally, more than 300,000 workers are employed through the H-2A visa program for temporary agricultural workers, a

number that has grown exponentially in recent years. This program has increasingly disserved farmworkers and provided a legitimating shelter for deeply exploitative labor practices. Although not a traditional, or jurisdictional, subject of the farm bill, comprehensive immigration reform is critical to providing a stable agricultural labor force and for ensuring that farmworkers are empowered to enforce their rights and advance their careers in the agricultural sector.

► Priorities for the Next Farm Bill

- Develop a clear timeline and process for farmworkers who are interested in immigrating for an indefinite period to gain permanent residency and citizenship
- Establish an immediate legal status for undocumented farmworkers
- Limit expansion of the H-2A visa program; while immigration reform may require some modernization of the program, Congress should limit expansion and focus on genuine reforms that enhance guest-worker welfare and update technologically outdated systems

Goal II



Open the Farm Bill Process to Address Policies Affecting Farmworkers

While the farm bill historically excludes farmworkers, it is past time for Congress to recognize this essential component of our food system as it drafts legislation with the greatest impact on the agricultural sector. The farm bill traditionally falls in the exclusive province of the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry, while bills affecting workers (appropriately) fall under the authority of other committees. To bring workers into the fold, House and Senate policymakers could use parliamentary procedure to reach an accord that permits insertion of extra-jurisdictional provisions into the final bill. Alternatively, to avoid jurisdictional pitfalls, Congress could consider and separately enact



parallel legislation modifying employment, labor, and immigration laws alongside the farm bill.

► Priority for the Next Farm Bill

Eliminate Agricultural Exemptions from Worker Protection Laws

Many statutes that establish workers' rights and protections expressly exempt farmworkers. These exclusions are rooted in a history of racism and xenophobia that it is past time for Congress to formally disavow. The Fair Labor Standards Act (FLSA), in particular, sets the federal floor for wage and hour laws, and is the only such protection available in many states. Congress should eliminate the agricultural exemptions from FLSA, extending overtime wages to farmworkers and minimum wages to workers on all farms, irrespective of size. Additionally, Congress should reinstate the Occupational Safety and Health

Administration's authority to enforce worker safety and health protections on all farms; the current enforcement restriction for small farms leaves more than 1 million workers unprotected.

Additional Recommendations

- If a heat illness standard has not yet been finalized, enact the Asunción Valdivia Heat Illness and Fatality Prevention Act
- Secure farmworkers' rights to bargain collectively
- Increase funding, personnel, and strategic enforcement to support Department of Labor enforcement activities; pilot public-private partnerships for additional support
- Establish a temporary, forgivable loan fund for low-income farmers transitioning to better employment practices

Goal III



Retool USDA to Serve Farmworkers

USDA has historically served the interests of producers through its initiatives and programs—farmers know that they can rely on support from USDA on multiple fronts, such as guidance, training, research, education, and financial support. USDA provides producers with various safety nets to help them weather challenges,

and as a core constituency in the agricultural industry, farmworkers should also be able to turn to USDA for help when they similarly face difficulties or require support in related capacities. In order to accomplish this shift, it is important that farmworkers are able to anticipate that their interests will be accounted for in USDA decision making and priorities.

► Priority for the Next Farm Bill

Enhance Role and Impact of USDA's Farmworker Coordinator

In creating the Coordinator position, Congress recognized the need for worker representation at USDA. However, the role requires more resources and an expanded mandate to effectively advocate for farmworkers and respond to farmworkers' needs. Congress should expand the position into a fully staffed office with a political appointee at the helm. The Farmworker Coordinator would serve



as USDA's primary point of contact on farmworker issues, coordinate and advise on farmworker-serving programs across the Department and federal agencies, and support farmworkers and farmworker-oriented community-based organizations in seeking USDA grants or access to other programs. Congress should require USDA to issue a strategic plan for addressing identified gaps in services and outcomes for farmworkers and fulfilling the Coordinator's mandate.

Additional Recommendations

- Expand USDA's emergency & disaster relief

authorities to support farmworkers

- Support advancement opportunities for farmworkers, particularly through capacity building on farmworker identified priorities
- Specifically support farmworker access to mental health services
- Increase USDA's role in pesticide oversight
- Increase USDA's farmworker-focused research
- Commit to and coordinate collection and publication of key data

Goal IV



Leverage Federal Support for Producers to Curb Worker Exploitation and Incentivize Best Practices

Farms that hire farmworkers (direct or contracted) often rely on USDA resources to support their businesses. Through various farm safety net programs, USDA effectively insures producers against losses. Additionally, as a major food purchaser, USDA's procurement activities help shape the market. Since public dollars fund these activities, USDA should only financially support businesses that, at a minimum, abide by the

nation's labor laws. Of agricultural employers investigated by federal authorities for labor violations, just 5% accounted for more than half of all violations found. Although the Department of Labor should remain the agency charged with enforcing employment laws, USDA should also ensure that public dollars do not flow to bad actors in the sector.

▶ Priority for the Next Farm Bill

Restrict Payments and Subsidies for Producers that Repeatedly Violate Worker Protection Laws

Producers rely on financial support from a variety of USDA programs, such as revenue-stabilizing commodity programs, subsidized crop insurance, natural disaster relief, and cost-share agreements for implementation of conservation practices. Congress already restricts USDA's investments by limiting eligibility to producers who certify compliance with baseline conservation standards. Congress should similarly condition receipt of USDA support on certification that producers are in compliance with all relevant employment laws. Congress should further direct USDA and the Department of Labor to collaborate on identifying



employers with repeat violations of federal labor laws to cross-check applications. Re-certification of eligibility could be streamlined for employers who join a worker-driven social responsibility program or enter into a genuine collective bargaining agreement with their workforce.

Additional Recommendation

- Use USDA's procurement authority to promote fair labor practices

Goal V



Support Growth of Worker Cooperatives in the Agricultural Sector

While much has been made of the aging farmer population and loss of farmland to development, a key group of highly-skilled, committed and ambitious future farm owners has been overlooked in designing incentives for aspiring farmers: farmworkers. Although many farmworkers are unlikely to have the resources necessary to purchase farms and farm businesses on their own, cooperative businesses run by farmworkers could provide a model for farmworker ownership. Congress should support mechanisms for expanding worker cooperative business opportunities in the agricultural sector, with a focus on opportunities for farmworkers.

► Priority for the Next Farm Bill

Revamp USDA Rural Development Grants to Support Worker Cooperatives

USDA-RD administers a suite of cooperative services programming and business development grants that could be deployed to encourage the growth of worker cooperatives. In particular, the Rural Cooperative Development Grant, Socially Disadvantaged Group Grant, and Rural Business Development Grant programs are all designed to encourage economic growth and support small business development in rural communities. Congress should offer additional funding and direction to expand support and technical assistance for worker cooperatives, with a focus on Latinx farmworkers.

Additional Recommendations

- Establish worker cooperative transition opportunities in Farm Service Agency programs
- Amplify worker cooperatives in other federal initiatives, such as the Interagency Working Group on Cooperative Development, USDA's new Office of Urban Agriculture and Innovative Production, and the Economic Census and the Census of Agriculture



Introduction



The agricultural workforce is the backbone of the U.S. food industry and a core constituency in agricultural production. Despite the significant number of workers in the sector, the farm bill's programs, funding, and other support systems principally assist farm owners and operators and offer little benefit to workers. Furthermore, these (federally-declared)¹ essential workers face precarious economic circumstances and inhumane working conditions that federal and state laws frequently fail to address. The farm bill can and should be an opportunity for Congress to put an end to exploitative work arrangements in the agricultural sector and shape a system that supports workers and producers alike, reflecting the critical role of each in creating a strong U.S. food system.

Farmworkers and other food system workers (e.g., meatpacking and poultry processing

workers), many of whom are immigrants,² also play an important part in revitalizing rural communities. Immigrants comprised 37% of overall population growth in rural communities across the United States between 2000 and 2016.³ These new workers and their families offset urbanization with a much-needed work force and an expanded consumer base that revives local economies.⁴ One study found that “[i]n two out of every five rural western counties, population decrease was slowed or reversed because of growth in [people of color, immigrants, and Latinx] populations,” including both recent immigrants and descendants of those who arrived previously.⁵ This link continues a familiar trend in the United States; higher levels of historical immigration led to higher incomes, less poverty, less unemployment, and greater educational attainment in the communities immigrants



made home.⁶ Supporting and protecting workers contributes to the economic stability and well-being of their families, which, in turn, fosters vibrant rural communities, another key farm bill constituency.

Given their critical role in agricultural production, revitalizing rural communities, and supporting a robust domestic food system, this Report advocates for including and centering workers in the farm bill process and legislation. It also contemplates a greater focus on workers at the U.S. Department of Agriculture (USDA), the primary administrator of farm bill programs. USDA currently has few programs and services designed to support workers; existing resources include a Farmworker Coordinator, loans and grants to producers for construction of farm labor housing,⁷ and small grant programs that fund projects that *could* (but do not necessarily) support farmworker-focused projects.⁸ Many of the opportunities described in this Report urge Congress to expand USDA's programs to expressly serve farmworkers alongside producers.

Importantly, however, USDA's longstanding alliance with agricultural producers properly raises concerns over how increased support for workers will be administered. Farmworkers and their advocates may be justifiably wary of USDA services geared toward them, and to the presence of USDA representatives in the field and in their communities.⁹ As producers and workers are frequently pitted against one another in conversations about bettering wages and working conditions, USDA's allegiance to producers may cause real or perceived conflict that could compromise its ability to adequately serve farmworkers.

Because of these legitimate concerns, the Recommendations in this Report focus on opportunities for USDA to support farmworkers and their communities in partnership with trusted organizations and, where appropriate,

other agencies that keep farmworker interests central to their mission. They also contemplate a greater role for the USDA Farmworker Coordinator to facilitate and increase relationships with trusted farmworker groups. Only through thoughtful and careful consultation with farmworkers and their allies will USDA be able to build systems that support members of the agricultural workforce.

Additionally, labor law enforcement should remain the purview of the Department of Labor (DOL), which has the necessary expertise and core mission to uphold workers' rights and protections. While this Report identifies opportunities for USDA to better support workers' advancement and well-being overall, primary oversight and enforcement jurisdiction related to farmworker labor protections must remain with DOL.

Before turning to the Recommendations for the 2023 Farm Bill, the remaining parts of this Introduction provide additional context and background information that support the calls for change. It first provides a snapshot of farmworkers in the United States, describing their economic circumstances and working conditions in greater detail. It next discusses the history of exploitative working arrangements in agriculture, followed by an overview of the sector's growing reliance on temporary foreign workers in the H-2A visa program. It then turns to worker-driven social responsibility as a mechanism for improving wages and working conditions as well as supporting the economic



viability of farms adopting high-road practices. Finally, it describes the web of federal agencies and their jurisdictions over various farmworker programs and policies.

DEFINING FARMWORKERS

For purposes of this report, we intend farmworkers to mean those hired to work on a farm who are not the farm owner, operator, or their family members. While much of the data cited in this report focuses on crop workers—those who plant, tend to, and harvest field crops—farmworkers also include those employed in nursery settings and those who tend to livestock, including dairy workers.

Farmworkers in the United States

An estimated 2.2 million, and as many as 3.4 million, farmworkers (crop and livestock) keep the nation fed.¹⁰ While a comparable number of individuals identify as agricultural producers—approximately 3.4 million—only 1.4 million of those individuals farm as a principal occupation.¹¹ Agricultural policy and the economic stresses affecting farmers and the agricultural sector thus also impact an even greater number of workers. Fluctuating market prices, variable trade policy, natural disasters, and reliance on financing (debt) to operate from year to year challenge the solvency of many farm operations. These variables also create uncertainty for workers seeking and planning employment, as it is unclear whether, when, and where work will be available. And, unlike producers that can benefit from the farm bill's many support programs, farmworkers face these disruptions with little to no safety net.

This stress is compounded further by the

economic insecurity farmworkers face. Farmworkers in the United States earn an average of \$17,500 to \$19,000 individually each year, with total family incomes between \$20,000 and \$24,999 and 21% of farmworker families (documented and undocumented) living below the poverty line.¹² Wage theft is a common occurrence; between 2000 and 2019, DOL's Wage and Hour Division (WHD) ordered payment of \$76 million in back wages for this unscrupulous practice,¹³ which likely reflects just a sliver of the problem given the structural barriers to reporting and investigation of such instances. Federal law also exempts agricultural workers from many of the protections afforded other workers, such as overtime pay under the Fair Labor Standards Act (and even minimum wage for workers on certain small farms) and protections under the National Labor Relations Act (rights to organize and bargain collectively).

Despite the relatively low compensation, farm labor is challenging and dangerous work. The agricultural industry regularly ranks among the most dangerous for work-related injuries and fatalities.¹⁴ Studies suggest that government counts may even be missing an estimated 77.6% of actual injuries and illnesses.¹⁵ Farmworkers work long hours, engaging in repetitive motions and overexertion that can lead to musculoskeletal injuries.¹⁶ They also face the danger of heat stress—which has led to numerous deaths¹⁷—and the number of unsafe working days, by some estimates, is expected to double by mid-century.¹⁸ These impacts will be felt most strongly in the warm-climate states that provide much of the United States' food, such as California, Florida, and Arizona. Many lack access to water and shade, and productivity benchmarks (e.g., piece-rate pay), as well as supervisors, can discourage them from taking breaks.¹⁹ In one study of farmworkers in Florida, 72% of workers showed signs of dehydration by the end of day, and 80% exhibited dangerous body temperatures at least once.²⁰ Wildfires, which are becoming



increasingly severe and common, create dangerously smoky working conditions if they do not simply displace workers.²¹ According to DOL’s National Agricultural Workers Survey (NAWS), approximately 44% of workers lack health insurance and of the 56% insured, just 30% receive insurance through their employer.²² Although the Occupational Safety and Health Administration (OSHA) has general and specific standards that apply to the agricultural industry, OSHA’s jurisdiction extends only to farms with 11 or more employees.²³ Further, as of spring 2022, OSHA does not have a specific standard to protect workers from developing heat-related illness in hot work environments or from smoke exposure during wildfires.²⁴

Pesticide exposure also poses significant health risks to farmworkers, including dangerous acute illness and an increased risk of severe long-term health issues. The primary routes of pesticide exposure are inhalation and direct skin contact.²⁵ Farmworkers encounter pesticide residue when they touch crops and soil and when pesticide particles drift through the air, a phenomenon that affects neighboring communities as well.²⁶ Because pesticides are highly volatile—and less effective—in high temperatures, producers often apply greater quantities in summer months.²⁷ The increased applications create more risk to workers because much of the exposure occurs in the fields, and volatilized pesticides are more prone to drift.²⁸ Additionally, when pesticides get on farmworkers’ clothes, they can carry residues into their home, putting their families at risk.²⁹ Physicians diagnose between 10,000 and 20,000 acute pesticide poisonings in agricultural workers annually.³⁰ However, because symptoms often resemble the flu,³¹ they can go unreported or misdiagnosed making the rate of incidence likely much higher.³² Furthermore, cumulative pesticide exposure can lead to chronic health impacts—such as cancer, neurological disorders, hormone disruption, and fertility issues—that may not

manifest until several months or years after exposure.³³

Farmworker housing and community support systems can also be precarious. Most farmworkers (87%) are “settled” in one location, but 13% are migrant workers who travel from a “home base” to “one or more destination locations where work was available.”³⁴ Typically, this movement follows the harvest seasons of different crops; for instance, a farmworker harvesting strawberries in the spring in Florida may next migrate to Michigan to harvest apples or blueberries.³⁵ Migrant farmworkers are much more likely than settled workers to live in employer-provided housing.³⁶ While the NAWS reported that approximately one-quarter of farmworkers live in crowded housing,³⁷ that number rises to 45% for migrant farmworkers, and targeted studies have found rates as high as 78% in farm labor camps.³⁸ Despite regulations establishing baseline standards for farmworker housing, research has uncovered that many facilities have structural damage and lack basic plumbing, sanitation, and/or kitchen facilities; a study of farm labor camps in North Carolina found an average of 11.4 housing violations per camp.³⁹ Housing provided to H-2A workers—a requirement to participate in the program—also frequently fails to meet the minimum standards, with advocates citing dangerous conditions; inadequate sanitation, cooking, and laundry facilities; and overcrowding.⁴⁰ Poor conditions in farmworker housing have been found to exacerbate or correlate with other issues, such as increased instances of pesticide exposure and contamination, elevated levels of anxiety and depression, and transmission of communicable diseases and viruses.⁴¹

Many of these challenges are even worse for workers employed through intermediaries known as farm labor contractors (FLCs). FLCs are the “fastest-growing segment of farm employment;”⁴² approximately two-thirds of farm laborers in California are hired through



FLCs.⁴³ Producers pay FLCs to bring in workers to harvest their crops or fill other short-term labor needs. The FLC’s role can include recruiting, hiring, managing payroll for, and supervising workers in the field, and can extend to providing transportation, housing, and/or meals.⁴⁴ FLCs take much of the burden of assembling and managing large crews of workers off the producer-employer, making FLCs an attractive, and cheaper, option for many.⁴⁵

The FLC model diminishes employer accountability for wages and working conditions, thereby exacerbating inequities in the fields. Contracted workers usually earn far less than direct hires—a 2017 study of California farmworker earnings found that directly hired workers earned an average \$32,500 annually while contracted workers made an average of \$27,500.⁴⁶ FLCs are also the worst violators of employment laws in agriculture, comprising more than their proportionate share of cited labor law violations relative to their prevalence in the industry.⁴⁷ Similarly, the farmworker housing challenges noted above frequently plague FLC-provided housing, with investigations revealing “inhumane” and “deplorable” living conditions.⁴⁸ During the early months of the pandemic, workers employed by FLCs were less likely to receive employer-provided PPE.⁴⁹ The FLC arrangement obscures farmworkers’ relationship to the producer for whom they are performing labor, making it difficult to hold these producers accountable for violations as joint employers—both because it can, in some circumstances, provide a shield against liability and because workers may not know the name of the producer for whom they worked—and enabling producers to ignore their FLC’s bad practices.⁵⁰

The poor conditions detailed in the preceding

paragraphs exist out of sight for many voters and policy makers, persisting despite the periodic headlines that spotlight particularly egregious cases and despite some monumental wins by farmworkers and farmworker advocates at the state, local, and private level. The renewed attention on essential workers in the food system prompted by the COVID-19 pandemic should be carried through to enacting positive changes in the next farm bill.

NATIONAL AGRICULTURAL WORKERS SURVEY

Many of the data points in this report come from the NAWS, a critical tool in understanding farmworkers’ living and working conditions in the United States. Overseen by DOL and conducted by JBS International, NAWS data is collected through face-to-face interviews with U.S. crop workers (excluding livestock workers and seasonal workers on H-2A visas) where they are employed.⁵¹ The NAWS is conducted annually and 1,500–3,600 workers are interviewed each year,⁵² though this may vary depending on the information needs of the federal agencies using NAWS data.⁵³ The direct interaction with hired workers means it is seen as the go-to source for high-quality data on farmworkers. However, interviewers rely on obtaining permission from the employer to gain access to the worksite and employees; the voluntary nature of participation may introduce bias in the data obtained and miss worksites where bad practices are prevalent. To overcome this bias, Congress should require that all producers receiving any type of federal funding make their farm worksites available for the purpose of collecting NAWS data.



Worker Exploitation and Equity in Agriculture

The United States has long relied on the labor of immigrants and people of color to support a profitable agricultural economy. From the enslavement of Africans and Native Americans, to sharecropping and tenant farming systems, to Chinese and Filipino immigrant workers, to the Bracero Program and immigration from Mexico and Central America, the United States' sordid past with farm labor shapes the injustices we see today.⁵⁴ Many of the disparities in wages and working conditions—and, in turn, economic security, health, and living conditions—between farmworkers and workers more generally stem from deliberate exclusion of agricultural workers from the New Deal legislation Congress enacted in the 1930s to provide standard rights and protections for most U.S. workers.⁵⁵ Drawing from contemporaneous statements from political leaders, including floor statements in Congress, historians have shown that exempting agricultural and domestic service workers from federal employment and labor laws was a racially-motivated decision designed to appease Southern growers—and their representatives—who continued to rely on Black workers whom they paid indefensibly low wages to work on their plantations.⁵⁶

These exclusions paved the way for the agricultural industry to exploit other groups of marginalized workers, especially as Black workers migrated from the South and began working in other industries. The United States' policy of allowing contract labor from Mexico during World War I set the stage for the subsequent Bracero program and later migration of workers from Central America seeking employment in U.S. agriculture. Low wages and substandard working conditions made immigrant workers an attractive labor pool, as many were willing to accept these jobs despite the conditions in order to earn an

income. Language barriers and immigration status—approximately a third of farmworkers lack work authorization, while about a third are citizens, and an increasing proportion of the workforce is comprised of H-2A workers⁵⁷—on an individual level and lack of political capital on a broader level frustrate attempts to increase worker power and improve conditions.

Today, an estimated 83% of hired farmworkers are Latinx, with 70% born in Mexico.⁵⁸ In contrast, 95.4% of producers identify as white and just 3% of all producers identify as Hispanic.⁵⁹ In light of this asymmetry (there are approximately 10 times the number of farmworkers as farmers of color), it will be critical to center farmworkers as Congress and USDA seek to advance equity in agriculture, as each have expressed commitment to doing.

The Influx of H-2A Workers

U.S. producers have become increasingly reliant on the H-2A visa program to supplement, or, in some cases, supplant, the available agricultural workforce. The program is a successor to shorter-lived guest worker programs created in response to past labor shortages. Most notable among these is the Bracero program, which began in 1942 after the United States entered World War II and endured into the 1960s.⁶⁰ The H-2A program, initially launched as part of the Immigration Reform and Control Act (IRCA) of 1986, permits agricultural employers to hire temporary foreign workers if the DOL can certify that the petitioning employer is facing a labor shortage—insufficient local workers who are “able, willing, qualified, and available” to perform the desired work at the required time and place—and the employment of such temporary foreign workers will not adversely affect the wages and working conditions of U.S. farmworkers.⁶¹ In order to qualify for certification, the employer must demonstrate that they have attempted to recruit U.S. workers





by offering the highest applicable wage rate for reasonable working conditions and job qualifications before resorting to foreign workers.⁶² In practice, employers may conduct merely perfunctory U.S. worker recruiting, offer no more than the statutorily required wage, and employ other tactics to make the position less attractive to local workers.⁶³ Further, the overwhelming number of applications impairs DOL's due diligence on H-2A petitions, resulting in near-universal certification.⁶⁴

Accordingly, the H-2A program has grown exponentially in recent years. The Office of Foreign Labor Certification certified 317,619 H-2A positions in FY2021, more than six times the number certified in 2005.⁶⁵ The program's administrative infrastructure has not expanded at a comparable rate, eliciting frustration from participating employers. Additionally, U.S. farmworkers and worker advocates are concerned that the program has expanded far beyond its narrow purpose and threatens the safety, bargaining power, and livelihood of the domestic workforce.

More saliently, however, conditions within the program threaten the health and safety of foreign workers, who are reliant on their employer for housing, transportation, and access to sustenance—all of which is frequently substandard—and who are routinely brought to this country by unscrupulous foreign labor recruiters. Due to their utter dependence on employer goodwill, combined with the rural, often isolated nature of most agricultural labor, H-2A employees are uniquely vulnerable to egregious labor abuses, including wage theft, sexual harassment and assault, and outright forced labor. Further, the sponsorship structure of the program dictates that H-2A employees cannot leave their sponsor-employers to search for better working conditions elsewhere in the United States,⁶⁶ and all but ensures that workers are hesitant to make formal complaints for fear of employer retaliation, which may lead to consequences as severe as blacklisting and deportation.⁶⁷

Employer abuses can be quite extreme. In a recent high-profile bust on onion farms in Georgia, more than 100 workers, admitted to



the United States on H-2A visas, were allegedly forced to harvest onions for as little as 20 cents per bucket, sometimes at gunpoint. At least one worker was allegedly repeatedly raped, and at least two workers died under the harsh conditions.⁶⁸ Although there is no reason to believe that every H-2A worker is subjected to such conditions, this Georgia onion operation is just one of many labor trafficking operations uncovered in connection with the H-2A program and represents an extreme—but not the only—example of horrific employer abuses inflicted on H-2A workers. One worker organization’s approach to curbing program abuses has been to require producers enrolled in its Fair Food Program (developed by the Coalition of Immokalee Workers, described in the next section) to only hire H-2A workers through a “clean channel” recruitment process administered by the Mexican government.⁶⁹ This requirement circumvents unscrupulous private foreign labor recruiters, who often bring H-2A workers into the United States under de facto indentured servitude conditions, due to extortionary “recruitment fees.”⁷⁰

Despite the U.S. agriculture sector’s growing reliance on the H-2A visa program, USDA is in no way responsible for its implementation.⁷¹ However, the Department does provide resources for producers seeking to leverage the program,⁷² generates critical data for the program, including wage data through the Farm Labor Survey, and monitors program trends.⁷³ Former Secretary Perdue also voiced support for proposed changes to the H-2A program regulations introduced by DOL under the Trump Administration, which were designed to reduce certification requirements for U.S. employers, reduce safety requirements for farmworker housing, and suppress H-2A worker wages.⁷⁴ In the face of these threats to worker welfare, farmworker advocates pushed back, ultimately winning a preliminary injunction against the final rule, before the Biden Administration rolled it back upon taking

office.⁷⁵ The rules Perdue supported, however, were no Trump-era anomaly, but part of a larger trend of lowering barriers to hiring through the H-2A program.⁷⁶ Should this trend continue without significant Congressional intervention, protections for guest workers are likely to erode even further.

Congress has also turned to the H-2A program as a response to producers’ concerns regarding labor demands. One proposed update, the bipartisan Farm Workforce Modernization Act (discussed in greater detail below), would reform aspects of the H-2A program and create a new visa program that provides a pathway to legal residency through agricultural employment. However, the bill would also troublingly expand the program’s scope and applicability to encompass year-round workers, including those in the dairy industry.⁷⁷ Whether or not Congress opts to reform the program through separate legislation, producers will continue to rely on it in the coming years and the impacts will be felt throughout the farmworker community. With the 2023 Farm Bill, Congress has an opportunity to call for real reforms to the H-2A program that would improve the lives of hundreds of thousands of workers, who make up the essential bedrock of the U.S. food system and deserve guarantees of fair treatment and a safe workplace.

Worker-Driven Social Responsibility and Farm Viability

Worker-driven Social Responsibility (WSR) offers an alternative paradigm for ensuring worker-protection and empowerment in the agricultural industry. Developed and spearheaded by the Coalition of Immokalee Workers (CIW), which began in 1993 as a community organization of tomato pickers in southwest Florida, the WSR model leverages the



purchasing power of major corporate buyers (e.g., Walmart, Whole Foods, and Subway) to eliminate forced farm labor and require the implementation of humane working conditions on farms enrolled in CIW's Fair Food Program (FFP).⁷⁸ Since it launched in 2001, the FFP has achieved significantly higher worker wages through a pay bonus paid by those buyers; powerful, worker-driven investigation and enforcement of labor violations; and the implementation of best-in-class worker health and safety programs.⁷⁹ The program has received accolades from leaders in the federal government and United Nations for its success in wiping out labor trafficking in participating farms.⁸⁰ In addition to the FFP, the WSR model has been successfully deployed to empower Northeast dairy workers through the Milk with Dignity Program created by the Vermont-based Migrant Justice, which like the CIW is a farmworker human rights organization.⁸¹

At its core, the WSR approach ensures that “worker organizations [are] the driving force in the creation, monitoring, and enforcement of programs designed to improve their wages and working conditions” via supply chain agreements with brands and retailers that leverage corporate purchasing power to require the following: financial support to raise farmworker pay and/or help suppliers (as in the case of Northeast dairy farms in the Milk with

Dignity Program) to meet the labor standards established by the program; a binding-and-enforceable commitment by the buyers “to stop doing business with suppliers who violate those standards;” and the creation of “monitoring and enforcement mechanisms designed to provide workers an effective voice in the protection of their own rights.”⁸² Tools employed in the FFP and Milk with Dignity to put these principles into practice include a code of conduct designed by farmworkers themselves (e.g., the Fair Food Code of Conduct); worker-to-worker education on workers’ rights under the Code of Conduct; a 24-hour complaint line, with a full complaint investigation and resolution process; and annual audits of all participating farms during which a majority of workers present are interviewed personally.⁸³ This approach provides an effective alternative to the failed model of corporate social responsibility commitments, which are typically voluntary and non-binding, without a clear enforcement mechanism,⁸⁴ and have been declared “not fit for purpose” to protect human rights.⁸⁵ It also helps fill the significant deficit in state and federal enforcement of labor laws—discussed elsewhere in this Report—that derives, in part, from disinvestment in agencies’ investigation resources and personnel.

WSR also offers viable mechanisms for helping producers make the transition to paying higher wages and improving working conditions. A key facet of WSR is recognizing that individual producers often face financial roadblocks to changing their wage and employment practices due to narrow profit margins and downward pressure on prices exerted by corporate buyers. WSR’s response puts the onus on those corporate buyers to offer price premiums or other financial contributions to support producers in taking the higher road.⁸⁶

The downward pressure on prices and balance of power in supply chains are dynamics that Congress should account for in the design



of policies to advance farmworkers' wages and working conditions. Farm bill programs can support producers with the narrowest margins in taking the higher road by shifting investments away from subsidizing large-scale industrial agriculture and instead supporting the viability of small and mid-sized producers (see FBLE's **Farm Viability** Report). Additionally, by incentivizing the growth of WSR initiatives and focusing attention at the "top" of the supply chain—specifically, by preferentially providing the many forms of financial support government provides to those farms that join WSR programs—Congress can advance the twin aims of ending working exploitation and supporting the diversity and vibrancy of the farming sector.

Federal Agency Jurisdiction Over Farmworker-Related Polices and Programs

One reason USDA's interaction with worker communities has been limited is due to the jurisdictional division between USDA and DOL. DOL's Wage and Hour Division (WHD) has the primary authority to enforce federal laws governing the workplace, including the Fair Labor Standards Act (e.g., minimum wage), the Migrant and Seasonal Agricultural Worker Protection Act (e.g., farm labor contractor registration), the H-2A program regulations (e.g., recruitment), and the Field Sanitation and Temporary Labor Camp provisions under the Occupational Safety and Health Act (OSH Act).⁸⁷ OSH Act general and specific standards apply to agricultural operations with 11 or more employees and, apart from the two delegated to WHD, are enforced by the DOL's Occupational Health and Safety Administration (OSHA), except in states administering their own OSHA-approved State Plans (which must be at least as effective as federal OSHA standards and enforcement). DOL's Employment and

Training Administration (ETA) administers the National Farmworker Jobs Program, which "provides grants to community-based organizations and public agencies that assist migrants and seasonal farmworkers and their families attain greater economic stability."⁸⁸ ETA also helps administer the Agricultural Recruitment System, which employers use to recruit temporary or seasonal workers, though much of the system's operations are carried out by State Workforce Agencies (SWA).⁸⁹ The NAWS also falls under DOL's umbrella, though the Department contracts with JBS International to conduct the survey.⁹⁰ Finally, DOL oversees the Monitor Advocate System, comprised of State, Regional, and (one) National Monitor Advocates and outreach workers, to ensure that "migrant and seasonal farmworkers have equitable access to career services, skill development, and workforce protections[.]"⁹¹

Several agencies outside of DOL also implement programs geared toward farmworkers. The Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH) has an agricultural safety and health program that includes support for relevant extramural (external) research and surveillance activities, including surveys, to track injuries in the agricultural sector.⁹² In this endeavor, NIOSH has collaborated with DOL to incorporate an occupational injury module into the NAWS in some years⁹³ and with USDA's National Agricultural Statistics Service (USDA-NASS) to conduct a Farm Safety Survey.⁹⁴ The Department of Health and Human Services (HHS) also oversees some farmworker focused programs, including funding for the Migrant and Seasonal Head Start programs and the Health Center Program, which (via the Bureau of Primary Health Care) funds migrant and community health centers.⁹⁵ Finally, the Environmental Protection Agency (EPA) implements the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including enforcement of the Worker Protection Standard



(WPS) that contemplates risks associated with pesticide use among farmworkers (displacing OSHA’s authority over this occupational health and safety concern).⁹⁶

These existing authorities and activities set the stage for USDA’s increased role in serving farmworkers and their communities. As noted in the Introduction, this Report does not argue that USDA can or should assume these existing responsibilities. USDA should, however, treat farmworkers as core stakeholders in its policies, and, ideally, promote an agricultural system and rural economy that supports the well-being of its workers as much as its owners and operators. Further, USDA should actively coordinate with the other federal agencies to ensure they are collectively working toward the same goal of supporting workers, which will, necessarily, help USDA fulfill its core mission of supporting the agricultural sector.

Looking to the 2023 Farm Bill as an opportunity to enact this vision and address the disparities described above, this Report makes a series of Recommendations for Congress to consider and that fall under five separate goals. Goal I foregrounds the need for comprehensive immigration reform to support the sector’s workers. Goal II then recommends a series of employment and labor law reforms that are similarly vital for meaningful change to occur although they fall outside the scope of the typical farm bill. Goal III recommends various ways Congress could improve USDA’s programs to serve farmworkers. Goal IV recommends conditioning USDA’s spending of public dollars through farm-support programs and food purchases on an employer’s compliance with base-level employment and labor laws. Finally, Goal V recommends ways Congress and USDA could support worker cooperatives in the agricultural sector.

Titles of the Agriculture Improvement Act of 2018 (2018 Farm Bill)

- I. Commodities
- II. Conservation
- III. Trade
- IV. Nutrition
- V. Credit
- VI. Rural Development
- VII. Research, Extension, & Related Matters
- VIII. Forestry
- IX. Energy
- X. Horticulture
- XI. Crop Insurance
- XII. Miscellaneous

Farm Bill Titles Implicated in This Report:

- Rural Development (VI)
- Research, Extension, & Related Matters (VII)
- Miscellaneous (XII)
- *To a lesser extent*, Commodities (I), Crop Insurance (XI)



GOAL I



Provide Workers a Pathway to Authorized Work and Residency Status

Immigration policy is integral to the farming sector. The industry is completely dependent on immigrant workers: approximately 68% of domestic (non-H-2A) farmworkers were born outside of the United States.⁹⁷ Immigration status—whether workers are in the United States permanently or temporarily, with or without the requisite legal documentation—can, and often does, put these workers in a vulnerable position relative to their employers. Workers participating in visa programs are dependent on continued employment to remain in the country, and workers who lack work authorization have limited leverage to advocate for their rights.⁹⁸

A significant proportion of the farming workforce lacks legal work authorization, with conservative estimates suggesting that approximately one-third to half of all crop farmworkers in the United States are undocumented.⁹⁹ Precarious immigration status may exacerbate the already high rates of harassment, wage theft, workplace injury, and other abuses that farmworkers face.¹⁰⁰ Fear of retaliatory action that could lead to deportation of themselves, their families, or their colleagues discourages undocumented farmworkers from asserting their rights or seeking medical care.¹⁰¹

Furthermore, the challenges presented by high numbers of undocumented farmworkers reverberate through the broader U.S. economy. The lack of access to legal work or residency

status has a destabilizing effect on the economy and food system at large.¹⁰² In particular, the USDA Economic Research Service has found that “a large reduction in the number of unauthorized workers . . . would lead to a long-run reduction in output and exports in both agriculture and the broader economy.”¹⁰³ The agriculture industry is in a double bind: attempting to crack down on hiring of unauthorized workers could disrupt supply chains and harm the economy, but permitting farms to continue employing unauthorized workers may tacitly encourage abusive workplace environments.

At the same time, farms across the country are experiencing labor shortages.¹⁰⁴ Farmers report losing prospective workers to industries that offer better pay and benefits;¹⁰⁵ improvements in pay and worksite practices could help reverse this trend.¹⁰⁶ These disparities, combined with the unfortunate reality that agricultural workers are excluded from many labor protections extended to workers in other industries,¹⁰⁷ makes farming comparatively unappealing to workers with multiple options.

Increasingly, producers are turning to the H-2A visa program to fill the gap.¹⁰⁸ In theory, work visa programs like H-2A help connect laborers seeking agricultural positions with producers looking to grow their workforces but without a labor pool to draw from.¹⁰⁹ As noted above, however, the H-2A program has



been riddled with exploitative and abusive practices.¹¹⁰ The resulting dynamic impacts resident workers by reducing their bargaining power, enabling exploitative practices, and depressing wages that would, in a market without artificial constraints like those imposed by the H-2A program and the exploitation of undocumented labor, otherwise increase to meet the labor demand.¹¹¹

The remainder of this Report offers recommendations to improve the well-being, working conditions, and economic advancement of farmworkers. However, these changes will minimally impact farmworkers' livelihoods and real experience if not accompanied by genuine immigration reform. Farmworkers need secure status to allow them to use legal and policy tools to enforce their rights and care for themselves and their families without fear of reprisal. This security is just as critical to the agricultural sector and food system that relies on these workers as it is to the communities building up and seeing new growth due to their residence. Unfortunately, current immigration policies limit opportunities for undocumented farmworkers to gain work authorization status, legal residency, or citizenship.

Recognizing the need, Congress has recently advanced three separate bills to address these concerns. The first of these, the U.S. Citizenship Act,¹¹² would, among other changes, make noncitizen farmworkers who have worked a certain amount of time in agriculture immediately eligible for lawful permanent resident status and provide a pathway to citizenship.¹¹³ The second bill, the Citizenship for Essential Workers Act, would grant permanent resident status to any essential worker who worked during the COVID-19 public health emergency, including agricultural workers.¹¹⁴

The third bill, the Farm Workforce Modernization Act of 2021 (FWMA)¹¹⁵—which

passed the House in March 2021—would create a new “Certified Agricultural Worker” status that would protect farmworkers from deportation. The pathway to citizenship under the FWMA would be more arduous than that under the U.S. Citizenship Act, requiring four or eight years of agricultural work before an immigrant farmworker could apply for a green card.¹¹⁶ As part of a bipartisan compromise achieved in negotiating the bill in 2019, FWMA would also include changes to the H-2A program. Among other changes, the Act would cap wage increases for the next ten years, establish a Portable Agricultural Worker pilot program for up to 10,000 workers, create a mechanism for H-2A workers to petition for lawful permanent residence status after 10 years of service, strengthen some worker protections, and streamline the application and recruitment process.¹¹⁷ Troublingly, it would also expand the program by issuing 20,000 new visas per year for year-round agricultural occupations (particularly those in the dairy industry), with the potential for cap increases over the next decade until the cap could be removed altogether.¹¹⁸ Finally, the bill would establish and make mandatory an E-verify system (electronic



verification of employment eligibility) in agriculture.¹¹⁹

Despite traction in Congress, support for the FWMA among the farmworker community is divided. While some groups support the bill, others oppose enactment due to the bill's long pathway to citizenship, establishment of E-verify, and provisions expanding the H-2A program to year-round workers.¹²⁰ Preliminary analysis also suggests that the Act would suppress wages even further for H-2A workers.¹²¹ Some groups have called for revisiting the compromise struck in 2019 in light of the changed social and political landscape since that time.

Given the significant dependence of the agricultural industry on an immigrant workforce, Congress should take up immigration reform ahead of, alongside, or as part of the next farm bill. Without endorsing any particular bill from those proposed, we offer the following principles as cornerstones of any approach adopted:

- **Develop a clear timeline and process for farmworkers who are interested in immigrating for an indefinite period to gain permanent residency and citizenship.**

Immigrant farmworkers are not a uniform cohort. While some may be interested in immigrating to the United States permanently, such as undocumented workers with U.S. citizen children, others—including many workers on H-2A visas—are interested in residing in the United States only temporarily or seasonally. Congress should revise immigration policies with these varied goals in mind. For immigrant farmworkers who are interested in becoming permanent residents or citizens, Congress should establish a clear path to citizenship with a reasonable timeline. Such a policy would align with

public opinion: in a recent survey, 71% of respondents supported citizenship for undocumented farmworkers.¹²² Likewise, the 2017 National Young Farmer Survey found that over half of the respondents thought that comprehensive immigration reform was important, with one third ranking it as “extremely important.”¹²³ More importantly, this policy change would formally recognize the critical role that immigrant farmworkers play in the U.S. food system and create clarity and security for many farmworkers and their families.

- **Establish an immediate legal status for undocumented farmworkers.**

Undocumented farmworkers and their families face tremendous insecurity, despite being a critical component of our food system.¹²⁴ To improve farmworker protections and ensure economic and industry stability, Congress must promptly create a legal work status that covers all farmworkers. This status should be integrated with expanded and fortified labor protections for agricultural workers, who are excluded from many of the basic workers' rights afforded to the rest of the U.S. labor force.¹²⁵ Similarly, the status should protect farmworkers' abilities to travel freely in and out of the country.

- **Limit expansion of the H-2A visa program.**

Any updates to the H-2A program should focus on genuine reforms rather than expansion. Congress should prioritize key reforms like “clean channel” foreign labor recruitment, worker-centered investigation and enforcement of labor violations, and effective workplace health and safety programs, rather than rushing to include more types of agricultural workers in a program that upholds a vast power differential between employer and employee, opening the door to worker exploitation. Efforts to streamline filing processes, without accompanying expansion, are also appropriate.



GOAL II



Open the Farm Bill Process to Address Policies Affecting Farmworkers

The farm bill process is a period when policymakers look at the nation’s agricultural sector to determine what is working well and what needs to be revisited. Though not traditionally a focal point of these negotiations, the working conditions of our agricultural labor force are beyond due for revisiting. Farmworkers remain exempt from protections afforded to nearly all other workers in this country and are overlooked even when their unsafe and inadequate work circumstances saturate the media.¹²⁶ Since the workforce is primarily comprised of Latinx-identifying individuals and immigrants, the fight for their rights is a pressing issue of racial and ethnic justice and equity; neglecting the calls to action extends this country’s shameful history of discrimination against the predominately marginalized labor force behind the food and agricultural sector.¹²⁷

The majority of the Recommendations in this Report focus on opportunities to increase USDA’s role in supporting farmworkers and cross-agency collaboration, but many of the policies shaping agricultural workers’ livelihoods fall outside of USDA’s jurisdiction. Farm bills are primarily drafted by and proceed through the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry (together, the “agriculture committees”).¹²⁸ Bills affecting workers fall under the jurisdictions of the House Education and Labor Committee and the Senate Health,

Education, Labor and Pensions Committee,¹²⁹ and should remain under their authority. Despite the jurisdictional challenges, advocates and policymakers should treat farm bill negotiations as an opportunity to reexamine these policies given their profound influence on the farming workforce and the agricultural sector as a whole. Farm labor shortages will not be meaningfully mitigated without intentional reform. To bridge this gap, House and Senate policymakers could reach an accord between the committees of relevant jurisdiction that permits insertion of extra-jurisdictional provisions into the final bill; this would, however, take a considerable degree of political will and collaboration to achieve under House and Senate rules.¹³⁰ Alternatively, legislation modifying employment, labor, and immigration laws could be introduced and considered alongside the farm bill, but remain separate legislation to avoid jurisdictional pitfalls.

RECOMMENDATION



Eliminate Agricultural Exemptions from Worker Protection Laws and Enact Needed Protections

There are many ways employment, labor, and worker health and safety laws could better



serve agricultural workers. Congress should begin by closing gaps in laws and policies that exempt farmworkers from their protection; these exemptions, detailed below, have racist and xenophobic origins that have no place in today's society. Further, Congress should heed calls to raise the bar on worker health and safety by enacting and supporting much needed changes to protect the lives of members of our essential workforce. Although employment law protections and rights apply to workers regardless of immigration status,¹³¹ the changes recommended here will be most impactful if coupled with immigration reform in line with the principles articulated above, in Goal I.

The following recommendations reflect a non-exhaustive list of policies that Congress should take up:

LEGISLATIVE OPPORTUNITY

Eliminate agriculture exemptions from the Fair Labor Standards Act (FLSA)

FLSA exempts farmworkers from its overtime rule, which requires employees be paid at a higher rate for work hours exceeding forty in a week.¹³² This exclusion codifies a two-tiered workweek structure, allowing agricultural employers to require farmworkers to work extraordinarily long days despite the dangerous and taxing nature of the work. Recognizing this inequity, several states have enacted legislation that brings the agricultural sector in

line with the overtime laws applicable to other industries. Most of these laws phased in the requirement, lowering the overtime threshold for farmworkers gradually over a period of several years to allow employers to adjust.¹³³

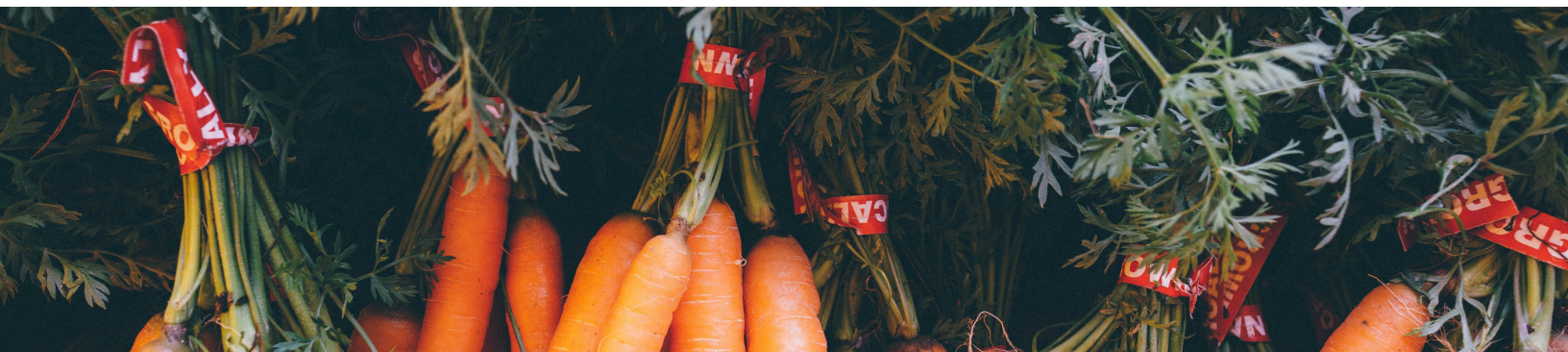
FLSA also excludes workers on certain small farms (those that did not use more than 500 “man-days” of agricultural labor in any quarter of the preceding year, or “fewer than roughly seven workers in a calendar quarter”¹³⁴) from the minimum wage law.¹³⁵ Some states extend their minimum wage law protections to all farmworkers, but many continue to exclude some or all farmworkers from the state minimum wage and several states have no minimum wage law apart from the federal baseline.¹³⁶

Because of state law exclusions, the federal floor of FLSA provides the only wage and hour protection for many farmworkers across the country. Congress should remove these exemptions so that all farmworkers receive overtime compensation and a minimum wage for their work.

LEGISLATIVE OPPORTUNITY

Eliminate the jurisdictional limitation on OSHA with respect to small farms

OSHA's Appropriations Act “exempts small farming operations from enforcement of all rules, regulations, standards or orders under the



Occupational Safety and Health Act.”¹³⁷ Exempt operations include those that employ 10 or fewer employees, not including family members (and did so at all times during the last 12 months), and have not had an active temporary labor camp during the preceding 12 months.¹³⁸ This exemption means that federal OSHA enforcement (or funding, in the case of states operating their own plans) does not extend to approximately 93% of farms employing hired workers.¹³⁹ Taking state OSHA plans and enforcement practices into account,¹⁴⁰ this means an estimated 1.04 million hired workers, nearly 50% based on data from the Census of Agriculture, are unprotected.¹⁴¹ Congress should remove this exemption and guarantee all workers the right to work in an environment free from threats to their health and safety.

LEGISLATIVE & ADMINISTRATIVE OPPORTUNITY

Enact the Asunción Valdivia Heat Illness and Fatality Prevention Act and Wildfire Safety Requirements

Farmworker deaths and heat-related illnesses are on the rise and expected to grow as climate change increases temperatures across the country; this phenomenon will have an outsized impact in the warm-climate states that produce much of our food, like California, Florida, and Arizona. The Asunción Valdivia Heat Illness and Fatality Prevention Act—named for a farmworker who died of heat stroke after working a 10-hour day in 105-degree heat—would direct OSHA to promulgate “a proposed standard on prevention of occupational exposure to excessive heat.”¹⁴² OSHA issued an Advanced Notice of Proposed Rulemaking for “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings” in October 2021.¹⁴³ Should OSHA fail to finalize this rule in advance of the next farm bill, Congress should enact the Heat Illness and Fatality Prevention Act and protect workers from this growing, but addressable, health threat. In addition to the provisions

currently included in the Act, Congress should direct OSHA to establish streamlined and effective complaint, investigation, and enforcement processes to ensure a swift and meaningful response to violations, as well as a targeted enforcement strategy. Further, in developing the rule, OSHA should look not only to heat illness prevention standards enacted in states operating their own OSHA-approved plan (e.g., California’s Heat Illness Prevention in Outdoor Places of Employment rule,¹⁴⁴ Washington’s Outdoor Heat Exposure rule¹⁴⁵), but also to standards established by worker-driven programs, like the heat stress protocols included in the Fair Food Program.¹⁴⁶

OSHA should similarly promulgate a standard concerning worker exposure to harmful air contaminants in wildfire smoke. While some western states currently have or are enacting safety standards to protect workers from wildfire smoke,¹⁴⁷ a baseline federal standard is needed to protect workers across the United States as changing climate conditions and weather events cause wildfires to increase in other regions as well.

LEGISLATIVE OPPORTUNITY

Secure farmworkers’ rights to bargain collectively

Farmworkers have long been excluded from federal labor protections. The primary federal law governing labor relations, the National Labor Relations Act (NLRA), protects employees’ rights to organize, engage in collective bargaining, and to go on strike,¹⁴⁸ but specifically excludes “agricultural laborer” from its definition of employee.¹⁴⁹ Despite the federal exclusion, farmworkers have won labor protections in a few states, including California (the Agricultural Labor Relations Act, 1975) and, more recently, New York (Farm Laborers Fair Labor Practices Act, 2019). Yet, in most parts of the country, farmworkers lack protection for organizing and collective bargaining. Congress should



establish a federal floor of labor protections of those activities for farmworkers—allowing state law to go further—to ensure all workers enjoy baseline protections and that does not preclude entry into or enforcement of supply chain agreements (another worker-driven mechanism that has helped fill this gap).

In addition to closing these statutory and regulatory gaps, Congress should take affirmative steps to ensure laws are enforced and workers are safe at their jobs. Congress should:

LEGISLATIVE & ADMINISTRATIVE OPPORTUNITY

Increase funding, personnel, and strategic enforcement to support WHD and OSHA enforcement activities

WHD has approximately 1 investigator per 175,000 workers and the Division’s investigations of agricultural operations have dropped by half since the year 2000.¹⁵⁰ OSHA (between federal and state plans) employs just 1 inspector per 77,908 workers—in most states it would take 150 years or more for each workplace to be inspected just once.¹⁵¹ The current staffing levels and resources of these DOL enforcement agencies mean that employers face a very low probability of inspection or enforcement action, providing many with the business incentive to skirt regulations, and mistreat workers, for the sake of maximizing profit. Congress should allocate additional resources to these agencies so they can more effectively enforce worker protection standards by:

- Increasing the number of staff available to conduct inspection and enforcement activities. These staff should be multilingual in order to effectively communicate with workers during inspections and investigations.

- Designing and implementing strategic enforcement policies that focus agency resources on employers, sectors, and/or regions in which violations have previously been found or are more likely to occur.¹⁵²

LEGISLATIVE OPPORTUNITY

Pilot public-private partnerships to support DOL enforcement activities

Worker centers, community-based organizations, and other worker-oriented nonprofits have established relationships and built trust with worker communities; these organizations are well-positioned to lend insight into poor working conditions that may otherwise go unreported or uninvestigated. In light of government resource constraints, Congress should support DOL in piloting partnerships with these trusted organizations to facilitate additional monitoring and reporting of workplace violations. This type of relationship arose from litigation in California, resulting in a Memorandum of Understanding (MOU) among California’s Division of Occupational Safety and Health, United Farm Workers (UFW), and the UFW Foundation. This MOU allows UFW to facilitate reporting of and responses to potential Heat Illness Prevention Regulation violations, and provides for joint trainings to implement the standard and MOU.¹⁵³ Similarly, support for proven worker-driven enforcement mechanisms, like the complaint hotline and investigation and enforcement process established in CIW’s Fair Food Program, could reduce the need for DOL scrutiny among producers participating in such WSR programs and thus extend DOL’s capacity to strategically target its investigations. Congress should establish and fund a pilot program to test partnership models and other innovative approaches and direct DOL to develop the program in consultation with USDA and NIOSH.



Line Speeds in the Meatpacking Sector

USDA jurisdictional authority extends to food system worksites besides farms and ranches, namely, meatpacking and poultry processing facilities. USDA's Food Safety and Inspection Service (FSIS) enforces federal laws related to the safety of meat, poultry, and egg products, which includes providing inspection services at slaughter facilities.³⁴³ As part of this authority, FSIS issues line-speed caps based on the number of carcasses its inspectors can effectively inspect for defects or contamination. In establishing these caps, FSIS has historically considered the down-the-line impact on work speed for employees. Line speeds contribute to musculoskeletal disorders (MSDs)—the cumulative trauma injuries that occur over time from repetitive tasks—among workers, thus making line speeds an important focus of worker health and safety measures. Despite this precedent, the last Administration, in 2019, attempted to eschew responsibility for considering such effects, claiming that it falls outside of the agency's jurisdiction.³⁴⁴ A federal court subsequently invalidated the 2019 line-speed rule due to FSIS's failure to consider the effect on worker safety,³⁴⁵ thereby signaling that such ramifications are indeed an appropriate factor to weigh in future rulemaking. FSIS should include worker safety in its analysis of line speed caps moving forward.

OSHA is, however, the more appropriate agency for fully addressing the impact of line speeds on workers. Meatpacking and poultry processing workers and their advocates have asked OSHA to enact line- and work-speed standards to mitigate work speeds that exacerbate MSDs among workers. OSHA has denied these requests. While admitting that the incidence rate of occupational illness, including MSDs, is significantly higher for meatpacking and poultry industry workers than workers in other U.S. industries, OSHA has declined to address the issue because "the Agency's limited resources" would not allow for the type of comprehensive analysis and rulemaking effort needed to address the myriad factors contributing to these health effects.³⁴⁶ The agency did issue a much broader, related rule over 20 years ago: a general industry ergonomics standard to address risk factors leading to MSDs.³⁴⁷ However, the subsequent Congress repealed the standard under the Congressional Review Act (CRA), which prohibits the agency from issuing a substantially similar standard without further authorization from Congress. Although a line-speed rule would be narrower and not necessarily precluded by Congress's repeal of the Ergonomic Program Rule, the CRA repeal complicates more comprehensive action in this area. To address both the resource and authority concerns, Congress should specifically authorize, fund, and direct OSHA to develop and issue a general industry ergonomics standard as well as a specific standard for the meat and poultry industries that incorporates line- and work-speed limitations.



RECOMMENDATION

Support Low-Income Farmers Implementing Heightened Standards

Raising the bar for agricultural employers—which is long overdue—will almost certainly raise costs, at least in the near term. Smaller and lower-income farms may see significant strains on profit margins as they come into compliance with rules from which they were exempt previously. These cost concerns will likely lead to pushback from farmers and ranchers who already see labor as one of their greatest operational costs. Further, without concurrent pressure on buyers to provide financial support to producers in meeting these standards, the prices set for farm products may not reflect these increased costs.

LEGISLATIVE OPPORTUNITY

Establish a temporary, forgivable loan fund for low-income farmers transitioning to better employment practices

To assuage the financial challenge of bringing

farms into compliance with the updated laws, Congress should establish a temporary forgivable loan fund for low-income and beginning farmers and ranchers. Congress could model the fund after the Paycheck Protection Program (PPP), a program enacted in 2020 in response to the pandemic's impact on small businesses.¹⁵⁴ Through PPP, farmers could take out loans to help mitigate payroll cost increases and have those loans forgiven with proof of appropriate spending. Congress could establish a similar fund to mitigate costs for certain eligible producers for increased wages, equipment purchases tied to new safety standards, and other spending increases connected to the change in laws. To ensure funds support sustained improvements, Congress should further limit loan forgiveness to producers who participate in a worker-driven social responsibility program, enter into a collective bargaining agreement with their workers, or can otherwise demonstrate the producer's commitment to workers' rights, verified by farmworkers employed by that producer. This type of federal support could ease the transition to implementing a more just and equitable agricultural industry without pitting producers and workers against one another.



GOAL III



Retool USDA to Serve Farmworkers

USDA has centered producers in its mission, services, and programs. Farmers turn to USDA for guidance, training, resources, financing, and research. As key stakeholders in the agricultural industry, farmworkers, too, should be able to turn to USDA for these services and expect their interests to play a role in USDA decision making and priorities. While USDA has some existing programs and resources that can support farmworkers, many of these opportunities are underutilized—often because they are not promoted—or underdeveloped. Congress can retool USDA to serve its worker constituency, particularly through the Farmworker Coordinator position, various USDA grant programs and authorities, and USDA’s research agenda.

RECOMMENDATION



Enhance Role and Impact of USDA’s Farmworker Coordinator

In 2008, Congress created the role of Farmworker Coordinator at USDA, which now sits in the Office of Partnerships and Public Engagement (OPPE), under the Office of Advocacy and Outreach.¹⁵⁵ The Coordinator is tasked with administering the low-income migrant and seasonal farmworkers

emergency grant program; serving as a liaison to community-based nonprofit organizations; coordinating with other Federal agencies, and state and local governments to meet farmworker needs during emergencies; integrating farmworkers’ concerns and voices into USDA’s programming; consulting with relevant institutions on agricultural education opportunities that assist low-income and migrant seasonal farmworkers; and supporting farmworkers in becoming producers or landowners.¹⁵⁶

Congress clearly recognized the need for worker representation at USDA as evidenced by the creation of the Coordinator position, but it is not clear that the role meets its stated purpose or that the mandate has been executed effectively. The role seems to have been deprioritized during the Trump Administration and OPPE’s public account of implementing the Coordinator’s mandate has been vague.¹⁵⁷ Additionally, USDA includes only a high-level description of the Coordinator’s role on its website and has not publicly provided insight regarding the current work of the Coordinator, priorities and goals, or reporting on accomplishments.¹⁵⁸ There also do not appear to be any mechanisms to address concerns or ensure accountability, thus jeopardizing the position’s efficacy and public spending.



LEGISLATIVE OPPORTUNITY

Expand Farmworker Coordinator role and mandate

To ensure USDA regards and prioritizes agricultural workers as a core constituency in its mission, the Farmworker Coordinator position should be elevated to a fully staffed office with an expanded mandate and reporting requirements. Ideally, the role would be politically appointed, since appointees typically benefit from increased policymaking resources and visibility.¹⁵⁹ This office could be loosely modeled on the Office of Tribal Relations (OTR). OTR, whose Director now reports directly to the Secretary of Agriculture,¹⁶⁰ “serves as a single point of contact for Tribal issues and works to ensure that relevant programs and policies are efficient, easy to understand, accessible, and developed in consultation with the American Indian and Alaska Native constituents they impact.”¹⁶¹ Like the Director of OTR, the Farmworker Coordinator—as Director of this new office—would be USDA’s primary point of contact on farmworker issues, advise on relevant policies, coordinate USDA’s programs designed to serve farmworkers, enter into agreements with DOL to coordinate worker-support services and related activities, and carry forward the Coordinator’s current responsibilities.

In expanding the Coordinator’s role, Congress should expressly mandate several new responsibilities. These should include:

- Working with the Environmental Protection Agency and relevant state enforcement agencies on the implementation, enforcement, education regarding, and modification of the Worker Protection Standard.
- Consulting with USDA’s research agencies on developing priorities for intramural and extramural farmworker-focused research activities.

- Coordinating USDA job-training and career service support with the National Farmworker Jobs Program.
- Providing support for farmworkers and farmworker-oriented community-based organizations seeking USDA grants in navigating, applying for, and managing those grant opportunities.

LEGISLATIVE OPPORTUNITY

Require USDA to issue a strategic plan and annual reports concerning the Farmworker Coordinator and USDA’s role in serving farmworkers

Irrespective of expanding the Farmworker Coordinator’s role, Congress should direct USDA to develop and make publicly available, in writing, the Farmworker Coordinator’s priorities, strategic plan for addressing identified gaps in services and outcomes for farmworkers and fulfilling the Coordinator’s mandate, anticipated activities, processes for engaging farmworker communities, and contact information for feedback and inquiries. To increase accountability and guide future policy, the Farmworker Coordinator should issue an annual report with updates on its activities, engagement with farmworker communities, and progress in closing service and outcome gaps previously identified.

RECOMMENDATION

Expand USDA’s Emergency & Disaster Relief Authorities to Support Farmworkers

The agricultural industry has experienced an unprecedented degree of disruption and damage owing to the increasing frequency and intensity of weather-related disasters. Natural disasters cause agricultural operations to suffer from production loss of crops and animals,



physical loss of production infrastructure and waste management structures, and financial loss of income and revenue.¹⁶² Congress provides producers with various avenues for financial support to weather such events, including through crop insurance policies, the Noninsured Crop Disaster Assistance Program (which issues payments for loss of crops ineligible for crop insurance), direct payments for certain losses (e.g., livestock and trees), emergency loans and loan deferment, and emergency cost-share programs to restore damaged land and mitigate hazards.¹⁶³ These permanent programs offer a standing safety net to producers in the event of natural disasters.

Ad hoc relief programs have also played a critical role, with Congress and USDA stepping in to mitigate the impact of other emergencies on the U.S. farming sector. For instance, trade disputes with China led USDA to establish the Market Facilitation Program (2018 & 2019), offering producers of certain

commodities payments in an attempt to make up for a shrinking export market.¹⁶⁴ Using existing authority and newly authorized funds, USDA then administered the Coronavirus Food Assistance Program to provide eligible producers with financial relief due to the pandemic.¹⁶⁵

USDA's disaster assistance programs generally fail to contemplate the needs of farmworkers, who may lose not only their source of livelihood, but also their access to housing, food, and healthcare in the wake of disaster.¹⁶⁶ Instead, these programs are "intended to assist *producers* recovering from production, financial, and physical loss related to or caused by the disaster."¹⁶⁷ Producers are extended a helping hand and provided with opportunities to rebuild after a disaster, while farmworkers are left without resources to recuperate the substantial losses they have suffered as a result of the same catastrophes.

One recent exception to this trend is the Farm and Food Worker Relief Grant Program. Through this grant program, USDA plans to award grants to entities (state agencies, Tribal entities, and nonprofit organizations) to issue \$600 flat-rate payments to eligible workers (farmworkers, meatpacking workers, and, to a limited extent, grocery store workers) for safety-related expenses incurred due to the pandemic.¹⁶⁸ To aid organizations in applying for the program, USDA contracted with UFW Foundation and Corazón Latino as technical assistance providers. Awards will be announced in summer of 2022, totaling up to \$665 million.¹⁶⁹ Despite some strong elements of the program—such as partnering with technical assistance providers—payments will reach workers long after expenses were incurred, thus frustrating the program's efficacy.

USDA also already has some existing authority to provide emergency grants to farmworkers. Section 5177a of Title 42 of the U.S. Code



establishes USDA's authority to make grants to support farmworkers when the Secretary determines that a local, State or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be unable to work, or to stay home or return home in anticipation of work shortages.¹⁷⁰

These grants are awarded to public agencies or nonprofits to provide emergency services to low-income migrant and seasonal farmworkers in such situations. The type of assistance is left to the discretion of the Secretary of Agriculture—and is currently delegated to OPPE—who has the power to determine what is necessary and appropriate given the emergency circumstances. The Farmworker Coordinator is charged with assisting in the administration of this program.¹⁷¹

Despite the number of emergencies affecting farmworkers in recent years, including the COVID-19 pandemic, wildfires, and other significant weather events, this grant-making authority appears to be underutilized. USDA's public website does not provide guidance for when OPPE has or will make such grants available, how organizations may apply to receive these grants, or what kinds of activities may be covered by these grants. Nor do any announcements or guidance appear in the Federal Register. In light of the comparatively robust assistance provided to producers and the long-delayed rollout of farmworker assistance related to COVID-19, Congress and USDA should strengthen and expand the Department's authority to support farmworkers in the wake of an emergency.

LEGISLATIVE & ADMINISTRATIVE OPPORTUNITY

Issue implementing regulations or guidance for farmworker emergency grants

With the increasing frequency of climate-related natural disasters, trade disputes, and the potential for future public health crises, USDA

must provide clear policies and procedures for quickly distributing the emergency grants the Department is already authorized to administer. USDA should develop and issue guidance on the administration of these grants, including the application process and scope of eligible grant activities. The Farmworker Coordinator should spearhead this effort, given their statutory mandate and relationship with farmworker advocacy organizations. Congress should direct USDA to do so within a specified time frame so that policies are in place and publicly available before additional disasters strike. Continuing the partnership with technical assistance providers like UFW Foundation and Corazón Latino should also facilitate a swift response and support smaller organizations in navigating a notoriously challenging federal grant application process.

LEGISLATIVE OPPORTUNITY

Expand USDA's emergency grant-making authority to respond to a more diverse range of needs

Congress should revise USDA's statutory authority over the emergency grants to clearly permit grant-making during disasters that do not necessarily cause income loss, such as during fires or pandemics when workers may continue to work but require additional services (e.g., provision of and training on using respiratory equipment) to ensure their health and well-being. This expanded authority would empower USDA to swiftly distribute funds in response to disasters impacting the agricultural sector without waiting, and losing precious days, for Congress to act or the Federal Emergency Management Agency to mobilize. This expanded authority should complement enhanced requirements for employers to provide workers with a safe work environment. The Farmworker Coordinator can play a role in facilitating these opportunities for farmworkers to secure their own health without solely relying on their employer to provide safety equipment.



LEGISLATIVE OPPORTUNITY

Account for farmworkers in permanent disaster relief programs

The range of USDA's permanent disaster assistance programs reflects the necessity of baseline support for the agricultural industry to withstand the unpredictable nature and catastrophic effects of weather-related disasters. These programs could be expanded to authorize support for workers' lost wages and other benefits connected to an employer's crop or revenue loss. While farmworker aid should ideally flow to workers through trusted farmworker groups and organizations through the emergency grant process described above, in some circumstances it may be more efficient or appropriate for employers to seek supplementary support from the Farm Service Agency (FSA, the USDA agency that administers most disaster payments) to pay workers' anticipated wages, provide other employer-sponsored benefits, and/or provide additional safety equipment, trainings, and resources when a disaster disrupts typical work schedules and working conditions. The Paycheck Protection Program—described previously, essentially, a forgivable loan if used for designated purposes—offers a useful framework.¹⁷² Implementing such a program would mean that supplementary support would be available for producers in the form of a loan from FSA that would be forgivable with proof that funds were used to pay lost wages and provide other support to workers following a disaster.

FARMWORKERS AND FUTURE EMERGENCIES

Ad hoc emergency disaster assistance programs provide additional, emergency aid in circumstances for which permanent programs do not account. Like producers, farmworkers and their families endure the economic insecurity that such

emergencies generate. Broadening USDA's emergency grant-making authority should empower the Department to quickly provide relief to farmworkers, alongside producers, when such situations arise in the future. Congress should also, however, in authorizing funds to support relief programs for producers, concurrently appropriate additional funding for USDA to distribute through its emergency grants process to ensure that sufficient and swift support reaches workers across the country.

RECOMMENDATION

Support Advancement Opportunities for Farmworkers

Although many of the tasks farmworkers perform require experience, technique, well-developed intuition, and knowledge of various crops, tools, and safety protocols, most farmworker positions are considered to be entry level.¹⁷³ As workers gain experience and undergo additional training, they may move into supervisory positions and/or take on jobs operating heavier machinery. Other mid- to high-skill positions include precision agriculture technicians, agricultural managers, and farm owners or operators.¹⁷⁴ However, in some cases, moving into a higher earning job requires leaving farm work and entering a new or related industry.

The federal government primarily invests in farmworker training through the DOL's National Farmworker Jobs Program. The program is designed to "provide[] career services, training services, housing assistance services, youth services, and related assistance services to low-income migrant and seasonal farmworkers,



including [] youth, and their dependents.”¹⁷⁵ Grantee organizations—nonprofit, community-based organizations and public agencies—administer projects to combat “the chronic unemployment and underemployment experienced by farmworkers who depend primarily on jobs in agricultural labor[.]”¹⁷⁶ In 2020, over \$74 million went to Employment and Training Grants, spanning 47 organizations in 43 states and Puerto Rico.¹⁷⁷ The program is run in coordination with the Monitor Advocate System. The two entities (NFJP and the Monitor Advocate System) provide information and technical assistance resources through an online “Agricultural Connection Community.”¹⁷⁸

USDA has also devoted some resources to projects designed to promote farmworkers’ career advancement. USDA’s National Institute of Food and Agriculture (NIFA) funds projects on Education and Workforce Development under its Agriculture and Food Research Initiative (AFRI).¹⁷⁹ In particular, it provides Agricultural Workforce Training (AWT) Grants, which fund projects that create or expand workforce training programs in food and agriculture at community, junior, and technical colleges or institutes.¹⁸⁰ Although funded projects have not typically centered on farmworkers, a grant issued in 2021 went to fund the Michigan Agriculture and Food System Workforce Advancement Initiative, which specifically aims to provide education, training, and support services for migrant and seasonal farmworkers to develop technology and other advanced skills.¹⁸¹ Projects supporting farmworkers transitioning into the role of farmer have also received support through USDA-NIFA’s Beginning Farmer and Rancher Development Program (BFRDP). For example, the Agriculture & Land-Based Training Association has received several grants to support its work empowering farmworkers to establish their own farming businesses.¹⁸² Finally, the new Rural Innovation Stronger Economy (RISE) Grant Program could potentially benefit farmworkers in

rural communities, as the program is meant to “improve the ability of distressed rural communities to create high-wage jobs, accelerate the formation of new businesses with high-growth potential, and strengthen regional economies,” as well as “help rural communities identify and maximize local assets and connect to regional opportunities, networks, and industry clusters that demonstrate high growth potential.”¹⁸³ As the Department guiding the future of the agricultural industry, USDA should continue to play a role in supporting skill-building and career advancement of the agricultural workforce, complementing and coordinating with NFJP as appropriate.

LEGISLATIVE OPPORTUNITY

Establish new funding for land-grant institutions to build farmworker capacity on farmworker-identified needs and priorities

Much of the funding NIFA distributes is directed toward land-grant colleges and universities to carry out teaching, research, and extension for agriculture and the mechanical arts through post-secondary education.¹⁸⁴ Established by federal legislation in 1862 (initial grant for 57 institutions, in each state, territory, and Washington D.C.), 1890 (historically Black colleges and universities, or HBCUs), and 1994 (tribal colleges and universities, or TCUs), these institutions are specially eligible for federal support through various types of NIFA-administered grants.¹⁸⁵ Some of this federal funding supports the Cooperative Extension System (CES), designed to bring agricultural research to producers through informal, practical education and in partnership with agents at cooperative extension county offices.¹⁸⁶ Land-grant institutions and CES offer another avenue for providing training, education, and advancement opportunities to farmworkers. While CES has not typically regarded farmworkers as its client base, some



programs and specialists are working to bridge this gap. The Cornell Farmworker Program conducts research, education, and outreach with farmworkers and recently received a NIFA grant to collaborate with Cornell Cooperative Extension to support outreach to, and communication between, farmworkers and farmers.¹⁸⁷

With their resources, knowledge base, and extension network, land-grant institutions can and should play a much larger role in building farmworker capacity. To encourage investment and activity in farmworker-centered projects, Congress should establish a NIFA-administered competitive grant for land-grant institutions to implement projects developed in response to farmworker-identified needs and priorities. To ensure the projects are worker driven, NIFA could require letters of support from farmworkers and documentation of community engagement. It should also include farmworkers, those engaged in farmworker support, and those familiar with community-driven work to review the applications. To kick start projects, NIFA could offer small seed grants to support initial engagement with farmworker communities to facilitate the identification of priorities and project design. This grant opportunity should also be open to Hispanic-Serving Agricultural Colleges and Universities; although they have not seen the same level of federal investment in their research and extension services, many of them are sited in areas near farmworker communities¹⁸⁸ and may have existing relationships and be well-positioned to support farmworker capacity-building projects. To ensure these projects can be carried out through extension, Congress should amend the statute governing cooperative agricultural extension work to

contemplate farmworker capacity building in its scope.¹⁸⁹

LEGISLATIVE OPPORTUNITY

Increase NIFA funding for existing competitive grants supporting advanced trainings for farmworkers

NIFA's BFRDP and AWT Grants should more deliberately prioritize projects supporting farmworker career advancement. Under the authorizing statute, not less than 5% of funding for the BFRDP must be allocated to "limited resource" beginning farmers and ranchers (BFRs), socially disadvantaged BFRs, or farmworkers desiring to be BFRs.¹⁹⁰ This set aside could be increased to ensure sufficient funds are available to support these types of programs and the distinct resources needed to develop and implement them. Congress should also require that a portion of funds supporting AFRI's AWT Grants be set aside for projects specifically geared toward limited resource farmworkers or farmworkers from a socially disadvantaged group. These grants should be flexible and allow grantees to work on career development other than just becoming a farm owner or operator. Additionally, Congress should direct NIFA to solicit input from the Farmworker Coordinator and other stakeholders in developing priorities and criteria for these projects. It should be noted, however, that the efficacy of these programs, particularly BFRDP projects, may be minimal so long as most farmworkers lack authorized immigration status, which prevents them from taking on many of the debts and responsibilities needed to become the owner or operator of a farm. Comprehensive immigration reform, discussed in Goal I, above, should be enacted to address this need.



Making Federal Grant Applications Accessible to Community-Based Organizations

In discussions with farmworker organizations about access to existing USDA grant opportunities, many expressed that the time and resource investment necessary to complete such substantial and complex applications exceeds the organization's capacity. The subsequent grant reporting process is also resource intensive, further discouraging applicants. Although increased outreach and relationship building with farmworker organizations could increase utilization of existing opportunities—a general lack of information was also cited as a problem—applications may remain low if these other barriers are not reduced. Securing third-party technical assistance providers familiar with the needs of farmworker organizations and capable of providing assistance in languages other than English—as USDA has done with the Farm and Food Worker Relief Grant Program—helps address one aspect of this problem. USDA should also work to streamline and simplify its grant application and reporting processes, establishing reasonable requirements that minimize the burden on these organizations. Stakeholders have identified the need for grant streamlining for community based organizations and underserved communities across federal programs; the challenge is a key concern in the Biden Administration's Justice40 initiative, which aims to deliver "at least 40% of the overall benefits from Federal investments in climate and clean energy to disadvantaged communities."³⁴⁸ USDA should leverage lessons from these federal initiatives and further tailor them to the farmworker context as appropriate, to make its grant programs more accessible to farmworker organizations in particular.

RECOMMENDATION



Specifically Support Farmworker Access to Mental Health Services

Both farmers and farmworkers work under circumstances that commonly lead to high levels of stress and mental health challenges, the severity of which have been well documented and subject to increased scrutiny.¹⁹¹ The vast majority (82%) of farmers and farmworkers say mental health is an important issue to them and their families.¹⁹² Roughly 1 in 5 farmers and farmworkers

(surveyed together) report having sought care for a mental health condition.¹⁹³ One case study focusing on farmworkers reported that 38% of migrant farmworkers show significant levels of stress, and 18.4% had impairing levels of anxiety.¹⁹⁴ Farmworkers frequently have elevated levels of depressive symptoms relative to the general population. One study reports 28% of agricultural workers show depression symptoms¹⁹⁵ whereas another study puts this number much higher at 41.6%,¹⁹⁶ whereas 18.5% of Americans on average experience mild, moderate, or severe depressive symptoms.¹⁹⁷ These symptoms may contribute to the ongoing opioid epidemic in rural communities; 42% of farmers and farmworkers know someone who



has self-medicated due to stress (specifically by using opioids or other medication).¹⁹⁸ The COVID-19 pandemic exacerbated much of this job-related stress.¹⁹⁹ One study found that most rural adults believe that the pandemic has impacted mental health. This impact was evident among farmers and farmworkers, who were 10% more likely than rural adults, generally, to have experienced feeling nervous, anxious, or on edge during the pandemic.²⁰⁰ Unfortunately, mental health professionals can be hard to come by; per 100,000 people, rural communities had less than half the number of psychologists and psychiatrists as found in metropolitan areas.²⁰¹ Mental health professionals fluent in Spanish and Indigenous languages are even harder, if not impossible, to find.

Largely in response to increasing awareness and media attention to farmers' mental health and elevated suicide rates (though inflated at the time due to inaccurate reporting),²⁰² Congress took action in the 2018 Farm Bill to help address these concerns. It revamped the Farm and Ranch Stress Assistance Network (FRSAN), a grant program that aims to establish a network of resources for farmers facing stress,²⁰³ and authorized \$10 million annually to carry out the program, which has since been appropriated.²⁰⁴ Two years later, Congress passed several measures to address rural mental health in the Seeding Rural Resilience Act, as an amendment to the Defense Authorization Bill.²⁰⁵ The Act established a mental health public service announcement campaign, established training for certain USDA employees "in the management of stress experienced by farmers and ranchers, including the detection of stress and suicide prevention," and directed the Secretary of Agriculture to form a task force to assess causes of mental stress among farmers and ranchers and identify best practices to respond.

Faced with similar, and sometimes worse, stressors and barriers to mental health services, farmworkers are likewise deserving of increased and targeted mental health support. Working conditions that make the job challenging—long hours, repetitive tasks, low wages—contribute to stress, as do economic hardship and the immigration experience for those who were not born in the United States.²⁰⁶ Migrant farmworkers report experiencing a sense of invisibility in their communities.²⁰⁷ Farmworkers' circumstances put many mental health services out of reach. Language access is one challenge; there are a limited number of Spanish-speaking mental health professionals,²⁰⁸ yet 65% of farmworkers are most comfortable conversing in Spanish and 1% are most comfortable speaking an Indigenous language.²⁰⁹ These numbers are even higher when H-2A workers are accounted for, as most of the workers in this program are Spanish-speaking and an increasing number speak Indigenous languages like Mixteco, Triqui, Zapoteco, and Purepecha.²¹⁰ Residency status may inhibit program usage due to fear of surveillance and the potential risk of deportation. Furthermore, services offered to the farming community writ large—as are the FRSAN grantee programs—may lack culturally appropriate services that account for distinct concepts surrounding mental illness, its sources, triggers, and treatments, held by immigrants and their communities.²¹¹ Many of the mental health services currently provided to farming communities are either generally available or specifically targeted at farmers rather than farmworkers. As farmworkers are less likely to have access to health care generally—or have sufficient income to support health care needs outside of emergency situations—mental health services apart from these targeted, free initiatives are largely out of reach.



LEGISLATIVE OPPORTUNITY

Increase FR SAN funding to provide targeted farmworker services

FR SAN contemplates mental health services made broadly available to the agricultural community, but more is needed for those resources to be accessible to farmworkers. As detailed above, there are nearly (or potentially more than) twice the number of farmworkers as active farmers in the United States, with over 83% of hired farmworkers identifying as Latinx and 95.4% of producers identifying as white. FR SAN programs should therefore make language access and availability of culturally appropriate materials for farmworkers a central component of program design.

Currently, NIFA funds 4 grantee projects, each representing a Regional Center (Northeast, North Central, Southern, or Western).²¹² These grantees are employing various strategies for reaching Latinx farmworkers, such as working with “promotores” (community health workers) on outreach,²¹³ training helpline operators in service provision to migrant farmworkers,²¹⁴ and hiring Spanish-speaking hotline operators.²¹⁵ More resources are needed, however, to build partnerships with community-based organizations serving farmworker communities and to provide services appropriately tailored to the unique circumstances facing farmworkers. Congress should expand the budget and require that program grantees include a plan for working with and for farmworker communities in broadening their service provision in order to receive the additional funding.

LEGISLATIVE OPPORTUNITY

Commission a mental health module for incorporation in the NAWS

There is also a general lack of data and analysis

regarding farmworkers’ mental health on a national scale. As shown by the data points conveyed in the background to this section, many of the studies that currently exist survey both farmers and farmworkers together and do not provide the information necessary to investigate disparities between the two groups or isolate challenges unique to farmworkers. Additionally, certain qualities of the farm workforce can make interviews and surveys more challenging, such as worker-hesitancy to participate due to their immigration status and an overall lack of privacy due to employer control of farmworker housing.

A natural fit for this kind of survey would be an addition to DOL’s NAWS. In fact, such a supplement was developed and piloted at the recommendation of “a national meeting of a multidisciplinary panel of experts convened in 2004.”²¹⁶ This “Work Organization and Psychosocial Factors” Supplement was then added to the NAWS in Fiscal Years 2009 and 2010, with good or acceptable reliability for most components of the survey.²¹⁷ However, the Supplement has not been incorporated into subsequent surveys, meaning the last dataset available is over ten years old.

Congress should commission an update and review of the Work Organization and Psychosocial Factors Supplement, with the goal of establishing mental health questions as a permanent addition to the NAWS. This addition would provide baseline data concerning farmworker stress and mental health to assist policymakers, service providers, and public health entities in addressing these symptoms and the underlying environmental stressors. Critically, this module should be reviewed and revised as appropriate to ensure it is available in multiple languages and accounts for cultural differences, such as stigma, before being reintroduced.



Telehealth Expansion in Rural Communities

People living in rural communities are increasingly relying on telehealth, or telemedicine, to receive healthcare due to the shortage of medical providers in rural areas. Increased availability of telehealth services in rural communities has already proven its effectiveness, decreasing morbidity, lowering hospital readmission rates, and achieving financial savings for rural hospitals.³⁴⁹ Although policy mechanisms for expanding access to telehealth services primarily fall in the purview of the Department of Health and Human Services, USDA also supports access in rural areas through its Distance Learning and Telemedicine Grant Program³⁵⁰ and its programs targeting rural broadband expansion, such as the ReConnect Program (currently framed as a pilot).³⁵¹ As demand for telehealth services and broadband increased during the pandemic, Congress devoted additional funds to their expansion.³⁵² In addition to improving healthcare access generally, these programs set the stage for increased access to mental health services via telehealth. Congress should thus maintain and expand these initiatives in the 2023 Farm Bill to build on recent investments and ensure that people living in remote areas can access critical health services via telehealth.

RECOMMENDATION



Increase USDA's Role in Pesticide Oversight

The current regulatory framework related to pesticide use and preventing pesticide exposure in the workplace falls to the EPA. The EPA implements FIFRA, which governs pesticide labeling and registration, and FIFRA's Worker Protection Standard (WPS), which targets risks associated with pesticide-related illness among farmworkers. Although OSHA would typically have authority over workplace health and safety standards under the OSH Act,²¹⁸ the statute prohibits OSHA from exerting jurisdiction over workplace conditions that other agencies regulate and thus OSHA has ceded pesticide safety regulation to the EPA.²¹⁹

Mapping, quantifying, or studying the impact of pesticides on farmworkers and neighboring

communities is impossible to do nationally as comprehensive, accurate data on pesticide applications and pesticide-related illness are not readily available for most states. Although certified pesticide applicators are required to maintain records of their application of federally restricted use pesticides for two years, this information is not reported.²²⁰ Further, "[t]here are no federal requirements to monitor pesticide exposure levels for workers who handle commonly used pesticides."²²¹ NIOSH collects state-level data for 12 to 13 states on acute pesticide illness and could track occupational pesticide illnesses through its Sentinel Notification System for Occupational Risks (SENSOR) Pesticides Program, but SENSOR has been inactive in recent years, with the latest public data coming from 2011.²²² While the National Poison Data Systems offer a glimpse into incidents reported to poison control centers, an estimated 88% of acute occupational illnesses go unreported.²²³ There are various obstacles to reporting, including



fear, language barriers, mistrust of healthcare providers, high costs, lack of awareness about the symptoms of pesticide-related illness, and failure of the provider to recognize the symptoms, collect the proper information, or value reporting to public health authorities.²²⁴

LEGISLATIVE OPPORTUNITY

Expand Federal Pesticide Recordkeeping Program to be a national agricultural pesticide use reporting program

Farmworker advocacy groups and the White House Environmental Justice Council have recommended establishing a national pesticide use reporting system.²²⁵ While such a system could be overseen by the EPA, USDA's Agricultural Marketing Service already administers the Federal Pesticide Recordkeeping Program. Broadening this mandate to include administration of a national reporting system would allow monitoring and research related to pesticide use and potential exposure for health, safety, environmental, and national security reasons. The database could be modeled after the California Department of Pesticide Regulation's Pesticide Use Report system, a comprehensive system that has proven a worthy model.²²⁶

LEGISLATIVE OPPORTUNITY

Establish an Interagency Working Group to provide recommendations for pesticide monitoring and enforcement

Congress should direct USDA to establish an Interagency Working Group on Pesticide Exposures to coordinate collaboration between it, EPA, DOL/OSHA, and NIOSH on pesticide exposure monitoring and enforcement activities. The Working Group should be charged with developing recommendations for how federal agencies can and should monitor pesticide exposures across the country; what kinds of state, local, and community-based organization or other private partnerships could be leveraged to implement monitoring and enforcement systems; and strategies for addressing current gaps in the protections provided by and the enforcement of the Worker Protection Standard. The Working Group would also identify existing or necessary authorities and appropriations for carrying out the recommendations, as well as publishing those recommendations and submitting them to Congress. In carrying this out, the Group should also be required to solicit meaningful input from farmworkers and the organizations that represent them, as well as



communities impacted by pesticide exposure, with particular attention to maternal and child health. The Group should also review and advise on potential private-public partnership opportunities for implementing improved monitoring and enforcement systems.

RECOMMENDATION

Increase USDA's Farmworker-Focused Research

USDA supports new research and innovative projects through its own research agencies (“intramural” agencies that carry out research work directly) and by providing funding to outside institutions and organizations (“extramural” research). The three intramural agencies include: the Agricultural Research Service (ARS), USDA’s primary agricultural research agency;²²⁷ the National Agricultural Statistics Service (NASS), whose analysts collect and compile U.S. agricultural statistics including the Census of Agriculture;²²⁸ and the Economic Research Service (ERS), which conducts economic research and analysis on various aspects of the agricultural sector, including the agricultural economy, food and nutrition, food safety, global markets and trade, resources and environment, and rural economy.²²⁹ NIFA, mentioned elsewhere in this Report, is USDA’s “extramural science-funding agency,” which administers support for research (and other) projects conducted at land-grant institutions and by other entities (e.g., non-land grant universities, nonprofit organizations).²³⁰

USDA’s lead research agencies have not prioritized or seriously addressed farmworkers and their concerns. Even programs that contemplate projects that will advance worker concerns have rarely made workers a priority. For instance, NIFA issues grants for farm safety education as part of the Rural Health and Safety Education (RHSE) Program.²³¹ Farm safety education grants may support

programs directed toward farmworkers, family farmers, and timber harvesters, and that focus on reducing farm chemical exposure, occupational injury and death rates, and agricultural respiratory diseases, among other hazards. However, for FY 2019, 2020, and 2021, NIFA solicited applications specifically for the Individual and Family Health Education area of the RHSE Competitive Grants Program and not for farm safety programs targeting farmworkers.²³² Thus, even where opportunities might exist, NIFA has not prioritized research or training that supports farmworkers.

Similarly, ERS’s research and publications on farm labor focus on data that will benefit producers, federal trade agencies, and market analysts rather contemplating the perspective of workers and their communities.²³³ Currently, three ERS economists specialize in Farm Labor as a subject, their division areas spanning the Rural Economy Branch of the Resource and Rural Economics Division²³⁴ and the Crops Branch and the International Trade and Development Branch of the Market and Trade Economics Division.²³⁵ As Farm Labor specialists, these three economists analyze trends related to farmworkers from a 10,000-foot view. While they may occasionally conduct a narrower analysis, such as observing that the changing mix of farmworkers now includes more women and older workers,²³⁶ their reports tend to focus on broad economic trends in labor markets, international migration, and international trade. Such analysis is important, but should be supplemented to provide more complete and useful data.

LEGISLATIVE OPPORTUNITY

Introduce a dedicated extramural program focused on farmworkers within NIFA

With competing priorities drawing resources and attention away from farmworker issues, Congress should establish an extramural program designed to advance research,



extension, and education activities specifically focused on farmworkers. As this objective aligns well with the Agricultural and Food Research Initiative's (AFRI) "Agriculture economies and rural communities" priority area, Congress should amend the statutory directive at 7 U.S.C. § 3157(2)(F) to expressly contemplate labor and circumstances pertaining to farmworkers' economic stability and advancement. This amendment could open the door to fund research on farmworkers' health and safety concerns as well as research to better identify and understand unmet needs or service gaps in farmworker communities. Congress should appropriate an initial sum for NIFA to start and implement a new grant program that carries out this directive and to design the contours of the program in consultation with farmworkers and organizations representing farmworker interests. In implementing the program, NIFA should ensure that application reviewers include farmworker representatives and researchers who have experience working with farmworkers and/or expertise in community-based research so the review panels will be equipped to accurately assess proposals.

LEGISLATIVE OPPORTUNITY

Direct ERS to study farmworkers' circumstances, not just labor markets

Although ERS researchers have a degree of autonomy in their work, their priorities are determined by Congressional directive and departmental goals and policies.²³⁷ Congress should thus direct ERS to study the characteristics, income and economic stability, economic contributions, job prospects, and quality of life of the nation's farm and agricultural workers and evaluate the effectiveness of public policies, programs, and services in supporting workers in agricultural sector and their families.²³⁸ It should also study the impacts of the H-2A program on domestic farmworkers' wages and working conditions.

This responsibility would likely fall to the ERS' Rural Economy Division, which is currently responsible for "[d]eveloping estimates and analyzing labor force trends in rural labor markets, including analyses of unemployment and employment by industry and occupational groups, including farm labor."²³⁹ That Division is already charged with conducting a program of economic *and* social science research, providing the flexibility needed to integrate economic analysis with sociological, geographical, and anthropological research. To ensure this directive is carried forth, Congress should require publication of an initial report within 180 days of the farm bill's passage and an annual publication thereafter. Congress should also provide resources for additional Division staff who specialize in farmworkers, including, in particular, a sociologist. Sociological insight will be essential to grounding data and economic analysis in the actual lives and circumstances of workers and communities.

OPPORTUNITIES IN THE SUSTAINABLE AGRICULTURE RESEARCH AND EDUCATION PROGRAM

Another important USDA-backed competitive grant program is the Sustainable Agriculture Research and Education (SARE) Program. SARE is a regionally-operated program that funds farmer-driven and -focused research and education projects that advance sustainable agriculture.²⁴⁰ Appropriations for the program have fallen in the range of \$37-45 million over the last several years.²⁴¹ SARE grants provide another key opportunity to support farmworker-focused or related research projects. For instance, in 2021, the North Central SARE Program awarded funds to the Ohio Ecological Food and Farm Association for its project "Identifying and Incorporating Fair Labor and Fair Pricing on Sustainable Farms in the North Central Region."²⁴² The



project aims to address “the interrelated issues of fair pricing for farm products and just working conditions for farmworkers” and will do so, in part, by helping farmers institute clear, fair labor policies and practices.²⁴³ Another past grant supported capacity building for CATA’s (El Comité de Apoyo a los Trabajadores Agrícolas) Agricultural Justice Project pilot for standard setting on organic farms.²⁴⁴ While most of SARE’s labor-focused projects center labor management and recruitment from the employer’s perspective, the grant program has room for projects supporting worker-driven initiatives that align with promoting a sustainable and economically just farm economy as well.

data serves as a basis for the Adverse Effect Wage Rate (AEWR), which effectively sets the minimum wage for H-2A workers the following year.²⁴⁹ As noted above, this figure is critical for ensuring the H-2A program does not depress wages for domestic workers in the agricultural sector. FLS data is superior to other sources in determining this rate; the source DOL relies on to establish wage rates in other occupations, the Occupation Employment and Wage Statistics program conducted by the Bureau of Labor Statistics (BLS), does not collect wage data directly from farmers and ranchers and even BLS recognizes the FLS “as the authoritative source for data on agricultural wages.”²⁵⁰

LEGISLATIVE OPPORTUNITY

Codify the Farm Labor Survey

In October 2020, USDA announced its suspension of FLS data collection, breaking its 100-year streak of annually conducting this survey and sending shockwaves through farmworker advocacy groups.²⁵¹ While subsequent litigation cast doubt on USDA authority to suspend the FLS without notice-and-comment and required USDA to reverse course,²⁵² the situation highlighted the survey’s vulnerability to political shifts. Notably, DOL used the survey’s cancellation as justification for attempting to freeze H-2A worker wage rates.²⁵³

Given the importance of the FLS in determining the AEWR, which influences wage rates across the industry, Congress should protect its regular execution.²⁵⁴ A congressional mandate would ensure that the FLS does not become a pawn in a larger political scheme to undercut the protections baked into the H-2A statute—namely, that the program not harm domestic workers. Additionally, not having the FLS available would hamper USDA and DOL’s ability to execute their other relevant responsibilities.²⁵⁵

Congress should establish a default rule requiring NASS to conduct the FLS at the

RECOMMENDATION



Commit to and Coordinate Collection and Publication of Key Data

NASS collects data to estimate farm labor employment and wages through the Farm Labor Survey (FLS). Via semiannual mail questionnaires and follow-up calls, surveyors interview a random sample of farm employers—targeting all farms and ranches, excluding Alaska farms, with \$1,000 or more in agricultural sales—about wages, employment counts, and average weekly hours for all hired workers.²⁴⁵ No demographic information on workforce is collected and contract labor is excluded.²⁴⁶ NASS collects and publishes FLS data in biannual reports in May and November.²⁴⁷

Federal agencies rely on FLS data for a number of purposes. The FLS helps USDA and DOL estimate availability and demand for seasonal agricultural workers, oversee farm labor recruitment programs, and aid legislators in defining labor policies.²⁴⁸ Importantly, FLS



standard, biannual interval. Congress could provide a safety valve through a force majeure clause that permits departure, justified by written rationale, from that schedule in the event that conducting the survey is infeasible due to extraordinary extenuating circumstances.

LEGISLATIVE OPPORTUNITY

Require additional wage data verification

Despite its critical role in providing employment and wage data, the FLS also has some challenges. All the information, including wage data, that flows into the FLS is collected from farm employers; there is no triangulation of wage data to cross check with farmworkers and confirm whether or not these are the wages they are actually receiving. The NAWS, on the other hand, deploys trained enumerators to gather data from interviews with farmworkers about the terms and conditions of their employment. However, the NAWS surveyors contacts workers through their employers and thus may reach only those workers whose employers are comfortable with transparency and less likely to be underpaying workers. Increased coordination between the two surveys could improve accuracy of FLS data. Congress should thus direct USDA-NASS to develop methods for verifying FLS wage data in consultation and partnership with the Farmworker Coordinator's office and DOL.

LEGISLATIVE OPPORTUNITY

Empower NIOSH to lead an agricultural injury and fatality surveillance system

NASS has also worked with the National Institute for Occupational Safety and Health (NIOSH) to conduct the Farm Safety Survey (FSS). This survey produced national estimates

for the number of farms with potential injury exposures tied to certain types of machinery, animals, grain storage facilities, and other hazards.²⁵⁶ While the survey was conducted in 2006 and 2011,²⁵⁷ NIOSH suspended further efforts in 2015 owing to resource constraints.²⁵⁸

Despite discontinuing this survey, NIOSH continues to play an important role in agricultural safety, particularly through ten Centers for Agricultural Safety and Health sited around the country. This focused attention is necessary; according to data collected by the Bureau of Labor Statistics, the Agriculture, Forestry, Fishing, and Hunting sector has the highest fatal work injury rate in the United States, at approximately 21.5 per 100,000 workers.²⁵⁹ For this sector (Agriculture, Forestry, and Fishing), the Centers develop and conduct research, outreach, evaluation, and consultations to reduce injuries among workers.²⁶⁰

The Centers can and should play a greater role in surveilling agricultural fatalities and injuries in a given region. Such an expanded role was contemplated in recommendations issued by the National Academies of Sciences, Engineering, and Medicine—*A Smarter National Surveillance System for Occupational Safety and Health in the 21st Century*—as well as in stakeholder feedback and an independent panel's evaluation of the Centers in 2012.²⁶¹ Despite these recommendations, a lack of resources constrains the Centers' surveillance activities. To overcome this barrier and institute a viable surveillance system for occupational injuries in the agricultural sector, Congress should deputize and fund NIOSH to lead a collaborative effort, involving USDA and DOL, to develop and establish such a surveillance system to collect and publish comprehensive agricultural fatality, injury, and illness data.



GOAL IV



Leverage Federal Support for Producers to Curb Worker Exploitation and Incentivize Best Practices

Not all farms employ workers; the 2017 Census of Agriculture reported 513,137 farms employing workers and just 35,541 with 10 or more direct hires.²⁶² Some farms, rather than directly employing workers, rely on farm labor contractors that act as intermediaries and hire workers whom they bring to one or more farms to work. While a precise number of workers employed in this manner is difficult to come by, estimated prevalence ranges from 10–20%.²⁶³ Those farms that do hire farmworkers (direct or contracted) frequently rely on USDA resources to support their business. Summarized further below, USDA supports producers' bottom lines through various farm safety net programs—effectively insuring producers against losses—and by purchasing food for the Department's food programs. Through these forms of producer assistance, USDA invests public dollars in the sector's viability and should ensure that its investment promotes equity, justice, and the long-term sustainability and improvement of the industry.

As described in the Introduction, farmworkers endure some of the toughest working conditions in the country. Even where legal protections exist, laws go unenforced or under-enforced due to DOL resource and personnel constraints.²⁶⁴ Owing, in part, to this limited capacity, legal violations such as wage theft are a prevalent problem. Research suggests

that “total wages stolen from workers due to minimum wage violations exceeds \$15 billion each year.”²⁶⁵ The “agriculture, forestry, and fishing” industry ranked second (in 2017) among all industries in its rate of wage violations, at 9.1%.²⁶⁶ Agriculture is also overrepresented in WHD investigations and confirmed violations; despite comprising “about 1% of total U.S. employment . . . agriculture accounted for 7% of all federal wage and hour investigations and 3% of the 10 million violations found.”²⁶⁷ Of agricultural employers, farm labor contractors take up more than their fair share, accounting for 25% of the violations with just 14% of the labor force.²⁶⁸ The majority—70%—of agricultural industry investigations uncover one or more violations, with 30% finding five or more.²⁶⁹ Viewed against WHD's limited personnel and budget capacity, these figures provide just a glimpse into the prevalence of employment law violations in the industry.

Although WHD enforcement data likely underrepresents the extent of the problem, recent analysis published by the Economic Policy Institute (EPI) revealed that many violations are concentrated among certain employers. Researchers found that a small number of “bad apple” employers make life tough for farmworkers”; “[a]mong the employers that were investigated [by WHD], the 5% that committed the most violations





accounted for half or more of all violations in a particular agricultural industry or commodity, including among farm labor contractors.²⁷⁰ Many employers abide by the law or course correct once notified that they violated the law, particularly when initial violations were unintentional. Nevertheless, this research demonstrates that some employers' business models fundamentally depend upon worker exploitation.

WHD's enforcement scheme is insufficient to deter unscrupulous practices. For one, agricultural employers face a very low probability of receiving a WHD inspection. Additionally, EPI's analysis suggests that current civil monetary penalties are too low relative to current or potential profit to discourage wrongdoing.²⁷¹ While much of the strategizing around effective enforcement rests with WHD, USDA can also play a role in ensuring the agricultural sector's profitability does not depend on the exploitation of its workforce.

RECOMMENDATION

Restrict Payments and Subsidies for Producers that Repeatedly Violate Worker Protection Laws

The U.S. agricultural sector relies on a range of governmental support and safety net systems that help keep producers in business. Commodity producers²⁷² have nonrecourse loans and other programs available to them to protect their crop revenues for a given year.²⁷³ Producers also receive support in the form of subsidized crop insurance, which is available for 100 different crops, including both commodity and specialty crops (e.g., fruits, vegetables, nuts).²⁷⁴ Those ineligible for crop insurance may still receive aid in the form of disaster assistance.²⁷⁵ Additionally, federal policymakers have frequently stepped in to provide relief, typically in the form of direct payments, to producers in response to disasters (e.g., the COVID-19 pandemic) and trade disputes.²⁷⁶ Finally, many producers receive additional support through cost-share agreements for implementing conservation practices as well as other USDA research and grant programs designed to support industry advances.

USDA already safeguards its investments in an important respect; producers enrolling in USDA-backed programs must certify compliance with minimum conservation standards in order to be eligible.²⁷⁷ Just as we expect producers to meet land stewardship requirements as a condition of federal support through conservation compliance, public dollars should only support



those producers that uphold the minimum acceptable standards for employers, reflected in the employment and labor law statutes and regulations.

LEGISLATIVE OPPORTUNITY

Condition USDA programmatic support on compliance with employment laws

As an initial matter, Congress should require producers to certify, when applying for USDA assistance or programs, that they are in compliance with all applicable employment and labor laws and have not committed repeat violations.²⁷⁸ WHD and USDA could then collaborate to establish a searchable database of producers with repeat violations. Those producers should be deemed ineligible for USDA support—and have their applications rejected—until they reform their labor practices and establish a track-record of compliance. Producers could reestablish eligibility if they participate in a worker-driven social responsibility program, enter into a collective bargaining agreement with their workers, or receive certification from WHD following a subsequent investigation and interviews with current employees. By limiting the restriction to repeat violators, the policy could capture the worst offenders while providing room for producers with violations due to errors or unintentional missteps to course correct before losing access to USDA assistance.

This policy offers an imperfect solution, but is a step in the right direction. For one, without a commensurate increase in WHD resources, most violations will remain undetected. Still, putting producers on notice that they could lose USDA support due to employee mistreatment would send a powerful message and heighten the risk of gaming the system at workers' expense. Additionally, while the certification could certainly contemplate state law violations as well, it would be more administratively challenging to enforce restrictions based on

non-federal violations. Lifting the small-farm exemption for OSHA enforcement will also be critical for reaching most farms employing workers. Finally, this system would merely hold producers accountable for *existing* legal obligations and would not raise the bar for worker treatment, even though there remain huge gaps between the protections provided to farmworkers and those for workers in other industries. A solution that could address these concerns in the future is requiring participation in a worker-driven social responsibility program, a collective bargaining agreement, or similar worker-centered enforcement mechanism/program in order to be eligible for USDA administered or supported programs.

RECOMMENDATION

Use USDA's Procurement Authority to Promote Fair Labor Practices

USDA wields significant influence as a market actor in the agriculture and food sector. USDA's Agricultural Marketing Service (AMS) purchases food through its Commodity Procurement Program to support a number of federal food programs, including domestic programs administered by the Food and Nutrition Service (FNS) and international food assistance programs.²⁷⁹ Domestic food distribution programs include the National School Lunch Program, Commodity Supplemental Food Program, Food Distribution Program on Indian Reservations, and The Emergency Food Assistance Program. For Fiscal Year 2021, AMS's domestic food purchases totaled over \$5 billion, after a peak of nearly \$8 billion in FY2020 and spending in the \$2-3.5 billion range in the several years preceding the pandemic.²⁸⁰

Each year, AMS issues a Master Solicitation for Commodity Procurement that establishes



the baseline provisions for all procurement contracts, and then issues individual solicitations (or, invitations for bids) for product-specific contracts that contain additional requirements tailored to that commodity.²⁸¹ The Master Solicitation references and incorporates requirements established by the Federal Acquisition Regulation, which applies to all federal acquisitions, and the Agriculture Acquisition Regulation, which sets forth additional policies and requirements for USDA acquisitions.²⁸²

Procurement policy is a powerful tool for aligning public spending with government policy objectives and promoting beneficial practices in private industry. Incorporating values-driven procurement principles into acquisition policy helps to ensure that public institutions spend taxpayer dollars in a manner that promotes the public interest.²⁸³ While a number of objectives may be advanced through such policies, one successful initiative targeting local government spending, the Good Food Purchasing Program, establishes a “metric-based, flexible procurement framework” that focuses on five values: nutrition, environmental sustainability, valued workforce, local economies, and animal welfare.²⁸⁴ By incorporating key values into procurement decisions, government actors are able to influence industry by way of business incentive, rather than by enacting new restrictions or regulations. Values-driven procurement strategies encourage adoption of better practices by decreasing the incentive for vendors to cut costs in order to compete for the lowest bid price to secure the government contract, such as by paying poor wages or choosing not to adopt more environmentally friendly practices. Procurement policy can thus put well-intentioned businesses implementing good practices on a more level playing field in seeking government contracts.

LEGISLATIVE & ADMINISTRATIVE OPPORTUNITY

Engage stakeholders to develop a values-driven procurement framework for USDA

USDA should engage stakeholders in developing a values-driven procurement strategy and recommendations for a framework to incorporate into the Department’s acquisition process. Following this stakeholder process and evaluation, the Department should release a report on the final strategy and recommendations, identifying actions USDA can take to implement the strategy and framework under existing authority—and plans for doing so—as well as actions that would require additional Congressional authorization to move forward. A core component of this strategy should be ensuring that public dollars empower workers and support fair wages, safe and secure working conditions, and the health and well-being of farmworkers and other food system workers. Congress should support this endeavor by providing funding to support the stakeholder engagement and reporting process and by working with USDA to authorize any additional statutory flexibilities needed to help implement the report’s recommended framework.

LEGISLATIVE & ADMINISTRATIVE OPPORTUNITY

Enact the labor law violation provisions in the proposed Agriculture Acquisition Regulation, with a few modifications

At the very minimum, the federal government should not buy products from vendors who are operating in violation of employment and labor laws. This sensible principle for government spending is currently, as of spring 2022, proposed and under review by USDA. In its recent proposal to update the Agriculture Acquisition Regulation, USDA



included a provision that would require all “solicitations and contracts that exceed the simplified acquisition threshold” to include a clause under which the contractor certifies that it is in compliance with all applicable labor laws and that, to the best of its knowledge, its subcontractors and suppliers are also in compliance.²⁸⁵ It would also require the contractor to certify that they and their subcontractors “are in compliance with all previously required corrective actions for adjudicated labor law violations.”²⁸⁶ Failing to enact this common-sense proposal will continue to reinforce the race-to-the-bottom that puts employers taking the higher road at a disadvantage in competing for government solicitations that prioritize cost-savings above overall public value. USDA should finalize this rule and Congress should expressly endorse it doing so.

Several modifications could further strengthen the rule. First, as described previously, USDA could further encourage employers to participate in a WSR program or enter into a collective bargaining agreement with workers

by specifying that employers who enter into such arrangements are presumptively in compliance with all required corrective action for adjudicated labor law violations.²⁸⁷ This change would help conserve USDA resources in making such determinations and provide vendors with a clear pathway for re-establishing eligibility for USDA contracts. Regarding the laws at issue, USDA should add compliance with the H-2A regulations to the list of labor laws in the certification and clarify that *all* state employment and labor laws, such as overtime-pay requirements and workplace safety regulations, qualify for the certification.²⁸⁸ Furthermore, USDA should make sure that information about sub-contractors and suppliers to the awardee vendor are publicly available—and easily searchable—so that workers and consumers can discern whether a given employer is subject to USDA contract terms, providing an additional layer of accountability.²⁸⁹ With these additional measures, USDA will be better positioned to direct public dollars away from exploitative labor conditions and toward worker welfare.



GOAL V



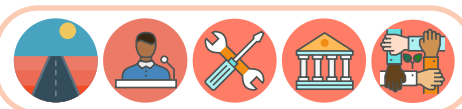
Support Growth of Worker Cooperatives in the Agricultural Sector

U.S. farm owners and operators are aging—one-third are over the age of 65 and the average age is steadily increasing²⁹⁰—and the number of mid-sized farms continues to shrink. As farmland and farm businesses have been more frequently transferred from retiring farmers into the hands of corporate investors or consolidated farm operators, rural economies have suffered.²⁹¹ To curb this trend, policymakers and advocates have searched for ways to lower barriers to entry for new farmers and ranchers.²⁹² However, an obvious pool of potential new farm owners has been overlooked in these efforts: farmworkers.

Farm work, for those who are not members of a farm owner or operator's family, does not generally provide a ready avenue for building wealth, stability, or career advancement. However, many farmworkers are highly skilled and knowledgeable about their industry. The average farmworker has 19 years of work experience on U.S. farms and has worked for their current employer for 8 years.²⁹³ More than three quarters (80%) of farmworkers anticipate staying in agriculture for five or more additional years.²⁹⁴ Congress should formally recognize the untapped expertise of the industry's workforce and support their advancement in becoming owners, operators, and leaders of the sector. Worker cooperatives offer one promising avenue for worker advancement in the agricultural sector, while countering industry consolidation by expanding farm-ownership opportunities

for those who might not otherwise assume an owner role.

Worker cooperatives are a specific type of cooperative model in which the cooperative's workers own the business,²⁹⁵ make decisions about the cooperative's governance and day-to-day operations, and receive profits from the cooperative.²⁹⁶ Any business that employs workers has the potential to become a worker cooperative. The worker cooperative model could be utilized in the context of both individual farms and farm labor contracting businesses. Worker cooperatives tend to provide workers with above-market pay and benefits, access to shared business ownership and asset building, skill-building and professional development opportunities, and decision-making power and control over working conditions.²⁹⁷ Farms managed as worker cooperatives present a framework for farming that foregrounds worker rights and may have additional positive on- and off-farm effects, such as more robust economic activity in farming communities.²⁹⁸ The worker cooperative model also offers a more equitable alternative structure for farm labor contracting. Farmworkers employed by traditional farm labor contractors are at increased risk of experiencing labor law violations;²⁹⁹ a cooperative farm labor contracting business owned by the contracted laborers themselves is likely to reduce worker exploitation, and



improve wages and working conditions.

USDA has a longstanding tradition of supporting *producer* cooperatives, encouraging farm owners and operators to band together for easier access to benefits like lower overhead costs, more robust distribution networks, and mutual support from peer farmers.³⁰⁰ Over time, producer cooperatives have endured as important institutions that help bolster family farm viability and strengthen rural producer communities.³⁰¹ However, USDA's support for producer cooperatives and lack of investment in worker cooperatives replicates many of the inequitable outcomes of other longstanding USDA programming.³⁰² Fortunately, existing USDA cooperative and business development programs could be easily adapted or re-focused to target the development of worker cooperatives.

Many of USDA's cooperative services, like Rural Development grants, are housed within its Rural Development arm (USDA-RD), and this report offers some possible adjustments to those programs that could better support worker cooperatives. Further, USDA's Farm Services Agency (FSA) administers land transfer programs that could be tweaked to allow worker cooperatives to more easily take over farming operations from retiring farmers. Finally, this section identifies miscellaneous other areas in which USDA could promote worker cooperative development in order to empower U.S. farmworkers to assume the responsibilities and benefits of producing the nation's food supply. In the 2023 Farm Bill, Congress should direct USDA to increase support and funding for worker cooperative development and existing worker cooperatives in an effort to increase worker opportunity and rebalance the scales of opportunity and equity in the agricultural sector.

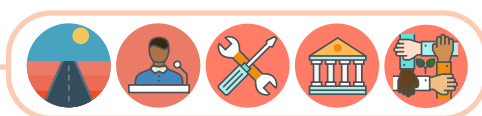
RECOMMENDATION



Leverage Rural Development Grants to Support Worker Cooperatives

USDA-RD administers a suite of cooperative services programming and business development grants that could be deployed to encourage the growth of worker cooperatives. In particular, the Rural Cooperative Development Grant, Socially Disadvantaged Group Grant, and Rural Business Development Grant programs are all designed to encourage economic growth and support small business development in rural communities.³⁰³ Although all three programs vary in their core aims, each could be adapted or, in some cases, simply advertised differently in order to more specifically support worker cooperatives. Funding for these Rural Development grant programs should be increased, while also targeting a portion of the funding to worker cooperatives, including worker cooperative farms. Worker cooperatives face unique barriers to entry, including workers' lack of cooperative business management experience, unfamiliarity with cooperative models, and limited access to financing. Increased funding with an emphasis on worker cooperatives, including worker cooperative farms, could provide the technical assistance necessary to further develop and expand this model.

The Rural Cooperative Development Grant Program provides grants of up to \$200,000 to nonprofits and higher education institutions, who may then utilize these grants to further the development and operation of Rural Cooperative Development Centers.³⁰⁴ Cooperative Development Centers are nonprofit organizations or centers operated by institutions of higher education that provide development assistance to those wishing to start, develop, or



expand a cooperative.³⁰⁵ Socially Disadvantaged Groups Grants provide up to \$175,000 to cooperatives and Cooperative Development Centers who can then offer technical assistance to socially disadvantaged groups located in eligible rural areas.³⁰⁶ The funding for these grant programs is capped at \$5.8 million and \$3 million, respectively.³⁰⁷ Additionally, these Centers generally serve *all* cooperative models, not just worker cooperatives,³⁰⁸ and producer-owned cooperatives (primarily agricultural producer cooperatives) far outnumber worker cooperatives in number, size, and political power. Therefore, when spread across all cooperatives who may be eligible, this level of funding is inadequate.

A third Rural Development grant program, the Rural Business Development Grant, provides technical assistance and training to small rural businesses (less than \$1 million in gross revenue) by issuing grants to public institutions like municipal governments and nonprofits in rural areas.³⁰⁹ This grant funding, generally between \$10,000 and \$500,000 per grant, could be used for helping agricultural workers start or convert to a worker-owned enterprise, and may be particularly impactful in converting farm labor contractor services to a worker-owned model, which is likely to be less exploitative than traditional FLCs. Notably, the funding for the Rural Business Development Grant program is much higher than the other two Rural Development grants—in FY2020, the program was funded at \$37 million³¹⁰—and Congress could direct or set aside some portion of those funds specifically to projects facilitating a growth in worker-ownership.

LEGISLATIVE OPPORTUNITY

Revamp USDA Rural Development grants to support worker cooperatives

Currently, none of the applications, educational materials, or promotional materials for the Rural Cooperative Development Grant, Socially Disadvantaged Group Grant, and Rural Business

Development Grant programs specifically mention worker cooperatives. Instead, cooperative services programming is directed toward more “traditional” co-op forms like producer cooperatives.³¹¹ Congress should direct USDA to set aside a portion of grant funds for organizations that focus on worker cooperative development, or increase grant caps for organizations that provide development services to worker cooperatives. Even relatively small set-asides could leverage this robust existing funding stream for worker-owned business development and increasing worker empowerment. Additionally, USDA could encourage worker cooperative development through no- to low-cost changes like specifying worker cooperative development as a goal of these grant programs in its written materials.

When allocating and directing this funding, Congress and USDA should give attention to the following considerations to grow the worker cooperative model:

- *Target funding to worker cooperatives owned by Black, Indigenous, and People of Color workers and migrant farm workers*

Insufficient funding to start a worker cooperative farm is the primary reason why there are so few. The difficulty in accessing financial resources is particularly acute for workers who are Black, Indigenous, and People of Color (BIPOC). This same difficulty is compounded for migrant farmworkers who are also vulnerable to workplace abuse in the industrial agricultural system. Encouraging the development of more worker cooperative farms, especially those owned by BIPOC and migrant workers, will require additional and tailored funding. Tailored funding for migrant and BIPOC farmworkers may be a powerful tool to help mitigate systemic and historic discrimination in U.S. agricultural policy and to combat pervasive labor abuses migrant workers



face in traditional agricultural businesses.

- *Promote opportunities to support worker cooperative conversions*

Converting farms into worker cooperatives means that an existing business owner sells the business to its employees who in turn structure the business as a worker cooperative.³¹²

Conversions can be important for local communities to preserve small businesses in a way that is easier, less risky, and has fewer barriers at the outset than starting a business from scratch.³¹³ With the average age of the U.S. farmer at 57.5 years old,³¹⁴ conversions are a timely consideration for a workforce headed for retirement. However, barriers to worker cooperative conversions exist in the familiar forms of insufficient technical assistance and financing, and a lack of public awareness that the option of business conversion exists.³¹⁵

The federal government can assist in raising public awareness through the Small Business Administration and USDA and can provide financial resources in the form of prioritizing grants for conversion purposes. Conversions can also be further incentivized through the tax code.³¹⁶ To be effective in reaching farmworkers, outreach, assistance, and educational materials must be made available in languages other than English.

“SOCIALY DISADVANTAGED” GROUPS

Current law defines a “socially disadvantaged group” as a “group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.”³¹⁷ USDA further defines it to refer to those who identify as African American, American Indian, Alaskan Native, Asian, Hispanic, and Pacific Islander.³¹⁸ The term is most commonly used in identifying Socially Disadvantaged Farmers and Ranchers, or SDFRs. Many farmers that belong to one, or more, of

these groups challenge the accuracy and utility of the phrase and would prefer to eliminate it from the governing statutes and lexicon. For more, please see FBLE’s **Equity in Agricultural Production & Governance** Report. While this Report continues to use the term for clarity in describing existing laws and programs, we support removal of the term and replacement with something that better reflects the unique history of Black, Native American, Latinx, and Asian American farmers and ranchers.

RECOMMENDATION

Establish Worker Cooperative Transition Opportunities in Farm Service Agency Programs

FSA is USDA’s main farm financing arm, and administers numerous lending and guarantee programs that help U.S. farmers buy farmland or make significant monetary investments into farm operations and infrastructure. Two such programs, the Transition Incentives Program (TIP) and the Land Contract Guarantee Program (LCGP), are specifically targeted at reducing friction in transactions where exiting farmers are transferring farmland to beginning or socially disadvantaged farmers. Congress could direct the FSA to adjust these programs in order to allow farmworkers greater access to farm ownership.

Of all USDA’s bureaus and sub-agencies, FSA has a particularly fraught relationship with BIPOC farmers. This is particularly well-documented in the case of Black farmers, who won a historic civil rights settlement against USDA in *Pigford v. Glickman* for discriminatory lending practices and who continue to document disparate treatment in USDA’s lending programs.³¹⁹ Latinx farmers have leveled



similar allegations against USDA.³²⁰ Because of this long history of disparate treatment, USDA must be particularly attuned to trust-building with a largely Latinx farmworker population as it develops parameters and outreach strategies for FSA programs meant to serve these communities. Working with intermediary institutions, such as Community Development Financial Institutions, may be necessary to provide competent services.

LEGISLATIVE OPPORTUNITY

Modify the Transition Incentives Program and the Land Contract Guarantee Program to expressly include worker cooperative conversions of land ownership

TIP and LCGP are both designed to incentivize farmland transition to beginning farmers or socially disadvantaged farmers and are administered through the FSA. TIP provides two years of additional Conservation Reserve Program (CRP) payments to farmers who transition farmland at the end of a CRP contract to beginning, veteran, or socially disadvantaged farmers.³²¹ LCGP offers a ten-year payment guarantee to sellers who sell farmland to beginning or socially disadvantaged farmers through “land contract” installment sales.³²² In many cases, worker cooperative conversions of farm operations would qualify for these programs under existing standards. However, in the case of a conversion in which some of the cooperative owners are former employees who neither qualify as beginning farmers nor socially disadvantaged farmers, the conversion may not qualify. To incentivize cooperative conversions of farms, the eligibility requirements for TIP and LCGP should be expanded to expressly include transitions of farmland to former employees through cooperative conversions regardless of whether the cooperative is to

be owned exclusively by beginning or socially disadvantaged farmers.

LEGISLATIVE OPPORTUNITY

Redraft eligibility requirements for the Land Contract Guarantee Program to better incentivize transfer of farmland to farmworkers and worker cooperatives

LCGP currently contains a number of eligibility requirements that limit uptake of the program, most notably that the farm purchase price is capped at \$500,000.³²³ American farmland prices have dramatically increased over the last decade, and in some areas of the country, average farmland prices approach or exceed \$10,000 per acre.³²⁴ As many farm properties exceed 50 acres, this price cap severely limits the kinds of properties that aspiring farm owners may be able to access using this funding opportunity. Congress should direct USDA to redraft the LCGP requirements to make this program more accessible, particularly by raising the purchase price cap from \$500,000 to \$1,000,000. Adding worker cooperatives to the statute as eligible purchasers, in line with the recommendation above, would also help clarify their eligibility for this program.

Since LCGP’s launch in 2012, few sellers have taken advantage of its guarantee.³²⁵ This underuse is likely due to high demand for farmland—and a decreased need for seller-financed transactions—and the purchasing cap noted above. To promote greater utilization, alongside program reforms, Congress should direct FSA to update program materials and increase education and outreach to aging farm owners exploring land transfer options, as well as to beginning farmers and other eligible farmers or worker cooperatives in search of land.



RECOMMENDATION

▶ Amplify Worker Cooperatives in Other Federal Initiatives

In addition to the opportunities described above, USDA administers or influences several other programs that are relevant to worker cooperatives and could be better utilized to encourage greater proliferation of the worker cooperative model throughout the agricultural sector.

LEGISLATIVE OPPORTUNITY

Direct the Interagency Working Group on Cooperative Development to study how federal law may hinder the development of worker cooperative farms and how federal law could better promote the development of this cooperative model

USDA serves as the lead federal department chairing and coordinating the Interagency Working Group for Cooperative Development (IWGCD). The IWGCD was formed to “foster cooperative development and ensure coordination with Federal agencies and national and local cooperative organizations that have cooperative programs and interests.”³²⁶ Due to its organizing purpose to foster cooperative programs and interests, the IWGCD is the ideal group to research and assess areas where federal laws, including the U.S. tax code, may be hindering the development of worker cooperative farms while identifying where federal law could better promote worker cooperative farm development. With special attention to eliminating barriers to entry for groups historically marginalized in the farming and cooperative space, Congress should direct the IWGCD to identify key resources and legal tools necessary for expanding opportunities for farmworker cooperative development.

Additionally, the IWGCD should explore the possibilities of funding and developing worker cooperatives that serve as farm labor contractors, especially for migrant farm workers. By contracting labor through a worker cooperative, migrant farm workers stand to gain better wages and vastly improved working conditions. Although cooperatives focused on farm labor contracting are uncommon in the U.S., more financing and research can increase the development of cooperatives representative of the interests of farmworkers.

LEGISLATIVE OPPORTUNITY

Designate a position on the USDA’s Office of Urban Agriculture and Innovative Production’s Federal Advisory Committee for a representative of worker cooperative farm interests

The 2018 Farm Bill established the USDA Office of Urban Agriculture and Innovative Production to focus on the needs of urban farmers.³²⁷ The work this Office is tasked with consists of managing competitive grant programs; establishing a federal advisory committee and ten FSA urban and suburban county committees; engaging stakeholders and identifying state and municipal best practices to assist urban and suburban farmers; and developing policies and resources to assist urban producers.³²⁸ Membership on the federal advisory committee is “composed of agricultural producers and industry professionals who will advise the USDA on policies and outreach,”³²⁹ with the inaugural committee members announced in February 2022.³³⁰ County committee membership will be composed of farmers who will “help deliver FSA farm programs at the local level and ensure the programs serve the needs of local producers.”³³¹ Congress should require that, in future iterations, one member of the federal advisory committee be designated for an entity



representing the interests of worker cooperative farms and that preference be given for the same at the county committee levels where such cooperatives are located. This change would be an important way to ensure secured representation for the unique interests of urban farms structured as worker cooperatives.

LEGISLATIVE OPPORTUNITY

Make cooperatives a permanent part of the Economic Census and the Census of Agriculture

The Census Bureau, through the Economic Census taken every five years, “collects extensive statistics about businesses that are essential to understanding the American economy,” and provides an important “measurement of U.S. businesses and their economic impact.”³³² However, cooperatives have not been included in the Economic Census since the 1990s, leaving data on cooperatives to be collected at the state level.³³³ In 2017, the Office of Management and Budget approved the inclusion of a question on the Economic Census that identifies cooperative businesses.³³⁴ Congress should take action to ensure that the Economic Census continues to take cooperatives into account in all following Censuses to understand the prevalence of this cooperative business model and to ensure that cooperative interests are not ignored or undermined by outsized attention to other traditional business interests.

Similarly, the Census of Agriculture,³³⁵ conducted every five years, collects data on rural and urban U.S. farms, ranches, and their operators, as well as “land use and ownership, operator characteristics, production practices, income, and expenditures.”³³⁶ Yet, the Census of Agriculture does not reflect data regarding

worker cooperative farms. Congress should require USDA’s NASS to include an accounting of how many worker cooperative farms exist, where they are located, and information regarding their operations and workers, which would provide data necessary to better tailor federal services and understand how those services could be improved.

LEGISLATIVE OPPORTUNITY

Make permanent the removal of the personal guarantee requirement for securing Small Business Association loans

The Small Business Administration (SBA) assists small businesses with access to loans by working with partnering lenders, community development organizations, and micro-lending institutions to reduce their risk of lending to small businesses.³³⁷ SBA will guarantee a loan made by a partnering lender to the small business, usually for 50-85% of the loan, on behalf of the borrower.³³⁸ However, applicants who own 20% or more of a small business “must provide an unlimited personal guaranty” in order to obtain an SBA loan.³³⁹ A personal guarantee on a loan is essentially when a business owner signs an agreement to use their personal assets to pay off the loan if the business can’t afford to pay it back.³⁴⁰ Due to a cooperative’s unique business structure, these loan guarantee requirements restrict cooperative’s access to SBA lending programs.³⁴¹ The CARES Act, passed in 2020, waived the personal guarantee requirements for eligible small businesses.³⁴² However, the provisions of the CARES Act are a band-aid solution to worker cooperatives’ continued inability to access capital, and Congress should consider, among alternatives, the permanent elimination of the personal guarantee for cooperative SBA loan applicants.



Conclusion

With the 2023 Farm Bill, Congress has the opportunity to foreground farmworkers, a key constituency in policies affecting agricultural systems and rural communities but who have been largely excluded from the farm bill process and basic employment laws. A focus on protecting and uplifting farmworkers can help redress historical injustices, support equity, promote economic development in rural communities, and begin to level the playing field between producers and workers. Our

country relies on the agricultural sector to thrive, and the agricultural workforce is the backbone of the U.S. food industry. It is time for Congress to recognize, celebrate, and support these essential workers by enacting immigration reform, updates to employment and labor laws, changes to USDA's programs and investments, and increased support for worker cooperatives. It is time to count farmworkers as essential in the farm bill.



Endnotes

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270 *Id.*, at 6.

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