

Farm Viability



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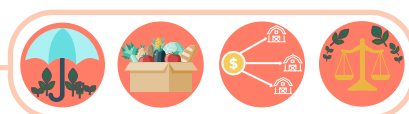
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Farm Bill on the Horizon

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. 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.

- **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.

This Report belongs to a collection of reports based on the collaborative research of FBLE members. 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, www.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.

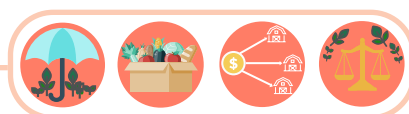


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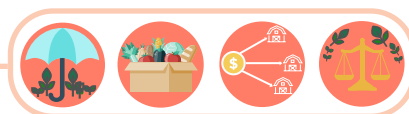
EXECUTIVE SUMMARY

The farm bill is a wide-ranging, omnibus legislative endeavor that Congress undertakes every five years. It is the primary vehicle for changing federal food and agriculture policy and addresses issues including agricultural support programs, conservation, nutrition, and much more. Each new farm bill presents a unique occasion to promote a healthy agricultural sector and offer support to producers, particularly small and mid-sized farms.

Small and mid-sized farms undergird a robust and sustainable agricultural economy and contribute significantly to the economic vitality of rural communities. However, the number of these farms has declined over the past few decades, and the principal operators of smaller farms can rarely earn a living from

farming alone. Structural changes in U.S. agriculture have shifted the benefits of farm bill programs toward fewer, larger operations. The consolidation of agricultural production, wealth, land, and federal support has handicapped smaller farms.

In response to these trends, recent farm bills have made modest investments to enhance the viability of small and mid-sized farms. Now, more drastic changes are required. The next farm bill should accelerate progress by addressing the barriers impeding a more diverse and robust rural economy. This Report outlines Goals and Recommendations, including specific Legislative and Administrative Opportunities for change, tailored to advancing these objectives in the 2023 Farm Bill.



Goal I



Bolster Farm Support Mechanisms to Help Small and Mid-Sized Farms Thrive

Programs that target support for, or particularly benefit, beginning, small and mid-sized farms can be transformative for the trajectory of producers operating these farms. Programs providing such support are generally administered by the U.S. Department of Agriculture (USDA) and its agencies. Among other offerings, these programs include subsidized crop insurance policies, cost-share arrangements, and various grant programs. Although currently insufficient to level the playing field between small and mid-sized producers and large, consolidated farms, these programs are an important tool for enabling a diverse range of farms to thrive in U.S. agriculture. The next farm bill can support small and mid-sized producers, including beginning farmers and ranchers and socially disadvantaged farmers and ranchers, to bring a vibrant farm economy to fruition.

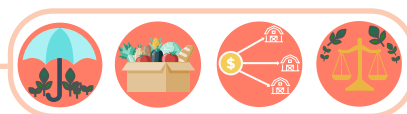
► Priority for the Next Farm Bill

Expand and Improve Whole-Farm Revenue Protection Crop Insurance

Comprehensive and affordable crop insurance can help small and mid-sized farms weather downturns and bad harvest years. Under the farm bill's traditional crop insurance, farms must insure each crop individually. This type of insurance benefits large monoculture producers, further concentrating profits. An alternative to traditional insurance is Whole Farm Revenue Protection (WFRP), which provides insurance for the revenue of all the crops and livestock on an individual farm, rather than just a single crop. Congress should increase the accessibility of WFRP for small and mid-sized farms, which could lead to more crop diversity, less systemic risk, and lower overall cost of insurance for all farms and taxpayers. In the long-term, WFRP should be the preferred crop insurance option for producers of any size.

Additional Recommendations

- Leverage farm incubator programs to support beginning farmers and ranchers
- Increase access to funding for organic certification
- Increase access to regional slaughterhouse and processing facilities for small-scale meat and poultry producers



Goal II



Strengthen Local and Regional Food Systems and Market Opportunities

While established large-scale agricultural producers can take advantage of a variety of outlets for their products, such market opportunities are not always available or accessible for small and mid-sized producers, beginning farmers and ranchers, specialty crop producers, urban farmers, and independent meat producers. These producers can struggle to access intermediated markets. For example, they might not meet the product minimums required to sell to large wholesalers. Even when they are able to access intermediated markets, unequal bargaining power and low prevailing market rates can force them to sell at prices below the cost of production. Local and regional markets provide producers an opportunity to develop stable relationships with local buyers or sell directly to consumers. The next farm bill can support small and mid-sized producer viability by bolstering regional food systems and expanding local market opportunities.

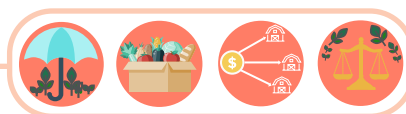
► Priority for the Next Farm Bill

Support the Connection of Small and Mid-Sized Farmers to Local and Regional Market Opportunities

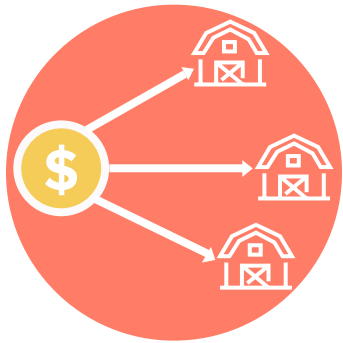
The Local Agriculture Market Program (LAMP) and Specialty Crop Block Grant Program (SCBGP) help farmers overcome barriers to accessing and cultivating local market opportunities. LAMP is a collection of programs which aim to expand direct-to-consumer markets, support marketing efforts for local food, and help producers enter into local value-added activities. SCBGP provides grants to make specialty crops more competitive on the market through a variety of means, such as marketing and promoting specialty crops or educating the public about the nutritional benefits of specialty crops. Both programs have been successful and demand for the programs is high. Congress should increase mandatory funding for these programs to meet demand. Additionally, Congress should amend SCBGP to require states to include strategies for supporting socially disadvantaged farmers and ranchers and beginning farmers and ranchers in their grant applications.

Additional Recommendations

- Support the development of state food system plans
- Improve support for urban agriculture



Goal III



Reform Farm Safety Net Programs to Promote Fair Competition

The farm bill's commodity and crop insurance programs, reflected in Title I and Title XI of the 2018 Farm Bill, offer the most direct support for agricultural producers. The programs effectively guarantee income levels of participating producers, either through payments to producers in certain circumstances or in the form of subsidized crop insurance premiums. These programs disproportionately benefit the largest and wealthiest farms. By favoring large, established producers, the programs allow these large farms to expand and amass greater resources, to the detriment of small and mid-sized producers. Congress should reform these programs and reallocate funding so that these programs help level the playing field rather than exacerbate concentration in the agricultural industry.

► Priority for the Next Farm Bill

Reform Commodity Programs to Direct Public Dollars Toward Farms and Farmers in Genuine Need of Support

Farm commodity programs support producers of eligible farm products by effectively subsidizing guaranteed income levels. The field-crop programs, Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC), provide payments to producers with land historically planted with named commodity crops. PLC and ARC are expensive programs that primarily support the largest and wealthiest industrial monoculture farms. Congress should shift their focus away from these large operations and ensure support flows to small and mid-sized producers that actually need the support by lowering the adjusted gross income cap for receiving payments, reducing the percentage of base acres covered, and closing loopholes that allow individuals far removed from farming to collect payments.

Additional Recommendation

- Reduce government subsidization of inflated profits through crop insurance



Goal IV



Strengthen Antitrust Enforcement Authority to Address Consolidation in the Agricultural Industry

In recent decades, consolidation and concentration have dramatically spiked among agricultural businesses. Large intermediary firms exercise substantial market power that allows them to profit from consumers and producers alike. Unfortunately, producers have little choice but to accept the prices the large buyers and integrators offer for their product, even when those prices are unfair. These conditions have caused further concentration among farms seeking to remain competitive, squeezing out small and mid-sized operations as larger operations gain market share. This trend has been devastating to the viability of small and mid-sized farms and livestock producers. The negative effects of consolidation have become even more apparent in recent years, and political will to address consolidation through antitrust law has increased. The next farm bill can build on this momentum and strengthen antitrust authority to prevent further consolidation and concentrated market power in the agriculture sector.

► Priority for the Next Farm Bill

Provide for Full Enforcement of the Packers and Stockyards Act

The Packers and Stockyards Act (PSA) governs competition in the marketing of livestock, meat, and poultry. It provides producers and growers recourse against packers who engage in unfair practices, and also addresses market wide antitrust issues such as monopolies and anti-competitive practices. Enforcement of the PSA has been notably weak, however. In the 2023 Farm Bill, Congress can take steps to strengthen enforcement of the PSA. Congress should clarify the requirements for producers seeking recourse under the law, expand USDA's authorized enforcement mechanisms to poultry dealers, and establish a Special Investigator's Office in USDA to better prevent anticompetitive activities in the agricultural industry. For its part, USDA should repeal and replace the current undue preference violation criteria that protects packers and return PSA enforcement to a standalone agency in USDA.

Additional Recommendation

- Strengthen antitrust enforcement under the Clayton Act to protect the already consolidated agricultural sector from further anticompetitive mergers, acquisitions, and transactions.

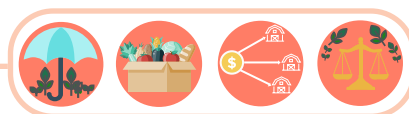


Introduction

Through nearly a century of farm bills, the federal government has provided many different types of support to farmers and rural communities. Farmers receive such support to offset the unique risks they face and to ensure their continued role in growing the food and fiber necessary for human survival. The farm bill, with its expansive reach, has the potential to address the interrelated challenges facing producers, consumers, and intermediaries in the food and agriculture system. This Report will specifically focus on how the farm bill can address challenges facing small and mid-sized producers, some of the most vital members of the food and agricultural system. Much of the support the farm bill provides goes to large-scale operations producing a handful of agricultural commodities.¹ Yet small and mid-sized farms offer vast social and environmental benefits that large, monoculture farms do not.

As acknowledged by USDA decades ago, these benefits include crop diversity; environmental stewardship; empowerment and community responsibility; personal connection to food; and economic contributions through job and market creation.²

Small and mid-sized farms undergird a robust and sustainable agricultural economy and contribute to the economic vitality of rural communities. Small operations, in particular, disproportionately incorporate environmentally sustainable production methods.³ This includes diversification of crops, benefits of which can include reduced erosion and improved soil health.⁴ Smaller farms also tend to employ more people per acre, and smaller farm size has been linked to a stronger middle class, lower unemployment, greater socioeconomic stability, and more civically engaged communities.⁵



Increasing the number and financial stability of small and mid-sized diversified farms can infuse life into rural development efforts. Unfortunately, the United States risks losing many of these benefits because the agriculture industry has become increasingly concentrated over the last few decades.⁶

The rest of this Introduction provides context for the Recommendations for the 2023 Farm Bill that follow. It first reviews several dominant trends from the last several decades that have changed the agricultural landscape. It next describes groups of producers, those who are just beginning and those who are Black, Native American, Hispanic (or Latinx), or Asian American, for whom policies relating to small and mid-sized farms may be particularly impactful. Finally, it briefly discusses challenges in agricultural supply chains and how the COVID-19 pandemic brought those challenges to the forefront of U.S. policy.

Trends in the Agricultural Sector

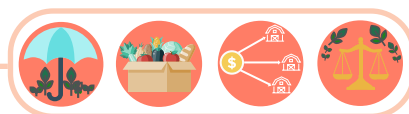
The past three decades have seen a significant shift in crop production from small and mid-sized farms to large farms.⁷ In 1987, large farms, defined as farms with over \$1,000,000 of Market Value of Agricultural Products Sold (MVAP), accounted for 38% of total MVAP across the agricultural industry.⁸ In the intervening years, that proportion steadily increased; by 2017, large farms accounted for 68% of the total MVAP in the United States but only 4% of the total number of farms.⁹ This shift in revenue displays a clear, continuous trend of consolidation among farms in the agricultural industry. Between 1978 and 2017, the number and total acreage of mid-sized farms decreased by half.¹⁰ Although the number of small farms seemed to increase over that period, their total acreage also decreased.¹¹

DEFINING SMALL, MID-SIZED, AND LARGE FARMS

USDA uses gross cash farm income (GCFI) to determine farm size. An operation with GCFI of less than \$350,000 is considered to be a small farm, an operation with GCFI between \$350,000 and \$999,999 is considered to be a mid-sized farm, and an operation with a GCFI higher than \$1,000,000 is considered to be a large farm.¹² Unless otherwise specified, this Report adopts USDA's definition for purposes of its Recommendations.

Large farms and specialization have become the norm in U.S. agriculture. In 1900, the average farm grew five different products for sale, while in 2002 that number had decreased to just over one.¹³ Farmland in the United States is overwhelmingly used to produce commodity crops in monoculture, and the top four crops—corn, soybeans, hay, and wheat—account for over 90% of harvested cropland acres.¹⁴ Farm bill programs contribute to these disparities by channeling support to large-scale producers through commodity programs and subsidized crop insurance (see Goal III).¹⁵ Furthermore, despite USDA's authority to regulate and enforce laws intended to curb anticompetitive behavior (specifically, the Packers and Stockyards Act) in the marketing of livestock, meat, and poultry,¹⁶ and the Department of Justice's (DOJ) and Federal Trade Commission's (FTC) power to seek to prevent mergers and acquisitions that lessen competition,¹⁷ weak oversight and enforcement has allowed the industry to consolidate and concentrate even further (see Goal IV).

Recent years have also seen a rise in innovative agricultural enterprises and practices that make up a growing proportion of the farm economy. For instance, although official census data is lacking, there were approximately 300 urban farms in the United States in 2012, and interest in urban farming has only increased since



then.¹⁸ Recognizing this demand, Congress, in the 2018 Farm Bill, established a new office of Urban Agriculture and Innovative Production and created a grant program to support urban agriculture and innovative production.¹⁹ Organic agriculture also continues to see rising demand; consumers are increasingly purchasing and paying a premium price for organic food products, generally defined as food produced without synthetic substances.²⁰ The consistent demand and price premium translate into more money for farmers, driving many farmers to choose to certify their operations as organic. However, beginning, small, and mid-sized producers face financial and knowledge hurdles when seeking to transition their farm to organic. USDA has grant programs to help support producers in making the transition, but barriers to entry persist.²¹

Beginning Farmers & Ranchers

As the average age of farmers continues to increase,²² new farmers entering the field are critical to achieving a dynamic and thriving farming sector. In 2017, there were about 516,000 farms where the owners were classified as a beginning farmer or rancher (BFR),²³ an increase of 5% from 2012.²⁴ Sales of agricultural products from BFR operations comprised 15% of total U.S. farm sales or \$60.4 billion in 2017.²⁵ Despite this positive trend, it is hard to be a farmer and rancher just starting out. BFRs—typically defined as persons with less than 10 years of farm or ranch operating experience²⁶—face many financial barriers, from start-up costs to lack of access to land, capital, and established marketplaces.²⁷ BFRs also face knowledge gaps, as they may not come from a farming background or have the experience and skills needed to establish a viable farm business.²⁸ Supporting small and mid-sized farms and local and regional food systems supports BFRs, in turn, because BFRs are most likely to start or

own small and mid-sized farms,²⁹ and many are involved in the direct-to-consumer market and not in conventional agriculture.³⁰ Many BFRs also are younger and have a lower household income compared to established farms, making farm support programs even more pivotal.³¹ Indeed, between 2013 and 2017 a smaller proportion of beginning farms received USDA farm support program payments as compared to established farms (33% and 41% respectively), but those receiving payments relied more heavily on that support for net cash income than their established counterparts.³² The broad range of farm bill programs discussed in this Report are critical mechanisms for catalyzing the next generation of farmers.

Marginalized Producers

Promoting the vitality of small and mid-sized farms can also foster equity and diversity in the agricultural sector. Compared to the average size of a U.S. farm at 444 acres,³³ farms operated by Black, Native American, Hispanic, and Asian American producers were much smaller in size. In 2017, more than 80% of Black-operated farms had an acreage of less than 180,³⁴ more than 60% of the Hispanic and Asian-operated farms were less than 50 acres in size,³⁵ and more than 70% of American Indian or Alaska Native-operated farms were less than 180 acres in size.³⁶ A century of racial discrimination in U.S. farm policy has perpetuated disparities between the success of these groups and white farmers.³⁷ For instance, for Black farmers, well-documented discriminatory practices have included failure to grant loans, delayed approval of funds or delayed disbursement of funds when approved, and failure to address discrimination complaints.³⁸ Owing in part to this poor track record, there is still low participation in federal agricultural programs by Black, Native American, Hispanic, and Asian American farmers. Further, programs created to address challenges marginalized



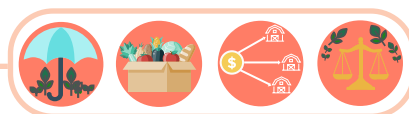
producers face have been insufficient to overcome these disparities. Congress and USDA have recently taken additional steps to redress decades of discrimination, such as through the establishment of the first-ever Equity Commission and the USDA Racial Justice and Equity Working Group to among others, advance racial justice and equity across the agency to help remove barriers to accessing USDA programs and services, particularly USDA grant, loan, and other financial assistance programs.³⁹ The next farm bill provides an opportunity to build on these recent efforts to advance equity in the food and agriculture system. In several places, this Report discusses how programs that promote farm viability can contribute to this goal. Additional detailed recommendations focused on advancing equity may be found in FBLE's **Equity in Agricultural Production & Governance** Report.

Supply Chain Dynamics and COVID-19

Demand for locally- and sustainably-raised agricultural products is high.⁴⁰ Growth in demand for local food⁴¹ is illustrated by the boom in farmers markets, farm stands, and community supported agriculture programs (CSAs) over the past 20 years.⁴² Purchasing food directly from farmers or through channels such as food hubs can transform local economies⁴³ and allow significantly more revenue to remain within the local community, generating a multiplier effect wherein each dollar cascades through other local businesses.⁴⁴ Local purchases increase the farmer's share of each food dollar, while farmers who engage in local food systems are more likely to purchase inputs like livestock, seed, and equipment from local vendors, further spurring economic development.⁴⁵ Despite the popularity of farm stands and farmers markets, local sales still represent a small percentage of total farm sales. Many small and mid-sized farms engage in

specialty crop production, particularly of fresh fruits and vegetables, which requires the farmer to transport and sell the produce quickly before it perishes.⁴⁶ Specialty crop producers also face higher labor costs as they rely on manual labor to harvest produce to minimize damage and ensure produce remains aesthetically pleasing.⁴⁷ These dynamics make local market opportunities particularly advantageous for these specialty crop producers.

The COVID-19 pandemic shutdown resulted in demand and supply shocks and demonstrated that the food supply chain was ill-equipped to adapt.⁴⁸ These shifts exacerbated many of the existing challenges that small and mid-sized producers face in entering and remaining viable in local and regional food systems and markets. For example, small and independent livestock producers often struggle to access facilities to process their animals, and pandemic-related plant closures threatened to cause hundreds of thousands of animals to be euthanized.⁴⁹ Moreover, with much of the food service industry closed, farmers were left with tens of millions of pounds of produce they could no longer sell.⁵⁰ Approximately half of the produce harvested is for consumption through the food service industry, in institutions like hotels, schools, and restaurants.⁵¹ Although food was eventually redirected to consumers—including through USDA-sponsored programs like the Farmers to Families Food Box Program that purchased agricultural products to be distributed to nonprofits providing emergency food services⁵²—millions of tons of food was lost and wasted in the interim.⁵³ Amid these challenges, demand for local food rose as many consumers preferred open air farmers markets to grocery stores and because grocery stores faced stocking shortages.⁵⁴ In many cases, local and regional food systems were able to adapt and innovate in response to COVID-19 restrictions faster than national supply chains.⁵⁵ The crisis emphasized the need for U.S. policy and funding to support local food economies



and small and mid-sized farmers as part of its resiliency strategy moving forward.

Looking to the 2023 Farm Bill, this Report makes a series of Recommendations for Congress to consider in order to enhance small and mid-sized farm viability. Goal I identifies several opportunities to improve current farm support programs to more powerfully benefit small and mid-sized farms. Goal II recommends ways to expand market opportunities and

strengthen local and regional food systems. Turning to the ways farm policy currently works in favor of large farms and concentrated agriculture, Goal III recommends curbing those investments in order to level the playing field and conserve farm bill spending. Goal IV similarly focuses on combatting concentration in the sector and recommends changes to the laws governing unfair and anticompetitive business activities in order to prevent further bad practices and concentration.

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:

- Commodities (I)
- Credit (V)
- Research, Extension and Related Matters (VII)
- Horticulture (X)
- Crop Insurance (XI)
- Miscellaneous (XII)



GOAL I



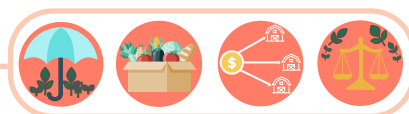
Bolster Farm Support Mechanisms to Help Small and Mid-Sized Farms Thrive

As the United States' primary legislation governing programs for the agricultural sector, the farm bill is Congress's best opportunity to support the growth and viability of the farmers who feed the nation. While some farm bill programs support research or market development that will shape the agricultural and food system more broadly, many of the bill's provisions authorize programs that directly benefit producers in starting, growing, or reshaping their farming business. Programs that target support for, or particularly benefit, beginning, small, and mid-sized farms can be especially transformative for the trajectory of producers operating these farms. As detailed in the Introduction, supporting smaller farms leads to outsized social, economic, and environmental benefits that legislators should be eager to see realized.

Programs supporting small and mid-sized farm viability are generally administered by USDA and its agencies. Through a public-private partnership, it offers subsidized crop insurance policies that help farmers protect their crop revenues when a disaster or market forces would otherwise cause significant loss. It also offers various cost-share arrangements to help producers adopt new practices (e.g., conservation practices, discussed in FBLE's **Climate & Conservation** Report) or obtain certifications for their production practices or

products. Department-provided grants can also support farm viability through programs and assistance offered by intermediaries. For example, the Farming Opportunities Training and Outreach (FOTO) program offers grants for training, education, outreach, and technical assistance to support beginning farmers and ranchers (under the Beginning Farmer and Rancher Development Program, or BFRDP) and socially disadvantaged and veteran farmers and ranchers (under Outreach and Assistance to Socially Disadvantaged and Veteran Farmers and Ranchers Program, or the 2501 Program, as it is commonly known). From the \$20-50 million in (incrementally increasing) annual, mandatory funding for FOTO, half is devoted to BFRDP to award grants of up to \$250,000.⁵⁶ For beginning, socially disadvantaged, and veteran farmers, USDA support programs often offer streamlined applications, increased cost-share, or funding set asides to better ensure access, recognizing that these systems have frequently failed to serve their needs.

Although currently insufficient to level the playing field between small and mid-sized producers and large, consolidated farms, these programs are an important tool for enabling a diverse range of farms to thrive in U.S. agriculture. Enhancing these support mechanisms will go even further to bring a vibrant farm economy to fruition. The Recommendations that follow outline



opportunities to improve specific aspects of the various types of assistance USDA provides farmers so that they better serve small and mid-sized farms, including those operated by beginning farmers. These proposals for Congress to enact in the next farm bill include expanding access to whole farm revenue protection crop insurance, supporting farm incubator programs for beginning farmers and ranchers, improving financial support for organic certification, and fostering access to regional slaughterhouse and processing facilities for small-scale meat and poultry producers.

RECOMMENDATION



Expand and Improve Whole-Farm Revenue Protection Crop Insurance

The federal crop insurance program is the second largest expenditure of the farm bill after nutrition and the largest share of payments to farmers from farm safety net programs.⁵⁷ Through a public-private partnership, USDA's Risk Management Agency (RMA) and the Federal Crop Insurance Corporation (FCIC) administer premium subsidies, develop and set terms for federal crop insurance policies, set premium rates, and regulate the private insurance companies, also known as Approved Insurance Providers (AIPs), that sell and service crop insurance policies to farmers.⁵⁸ The principal advantage the program offers producers is the premium subsidy that USDA pays, which varies but averages 60% of the total premium amount. In addition, USDA subsidizes AIPs' overhead costs by paying an Administrative and Operating (A&O) subsidy for "offering and servicing" federal crop insurance policies (other than catastrophic coverage, which has its own subsidy).⁵⁹

While the federal crop insurance program offers various policies for a number of different

crops—124 in 2019⁶⁰—certain policies and crops overshadow the rest. Yield insurance policies (Actual Production History and Yield Protection) insure against yield loss, which can occur due to a range of adverse events, such as hail, drought, or infestation.⁶¹ Yield-based policies together comprised 23% of total policies sold, 9% of total acres insured, and 18% of total liabilities insured in 2019.⁶² The federal crop insurance program also provides Revenue Protection policies for individual crops, which in 2019, accounted for about "70% of policies purchased, 53% of acres insured, and 65% of the total liabilities insured" in the United States.⁶³ Revenue protection provides a somewhat guaranteed income for the crop year, and as such is the most popular program among producers.⁶⁴ The four principal commodity crops grown in the United States make up the vast majority of total enrolled acres as well as insurance claims;⁶⁵ corn, soybeans, cotton, and wheat make up about 75% of the enrolled acres and 80% of the paid out claims.⁶⁶

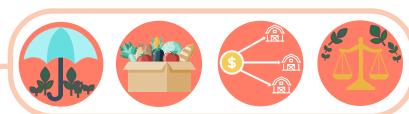
Outside of the commodity crop sector, many specialty crop, organic, and diversified farms have struggled to access insurance products that would help protect their livelihoods when bad weather or other qualifying hardships threaten their production or marketability. The types of insurance policies described above insure yield or revenue for just one type of crop, meaning producers with diversified farms would need to apply for coverage separately for each crop they plant or when integrating livestock, which can be logistically difficult given the paperwork involved.⁶⁷ In some cases, applying for each crop can even be impossible because crop insurance offerings are determined on a county-by-county basis.⁶⁸ If coverage for a particular crop is not offered for farmers in a particular county, that portion of the harvest would go uninsured without a whole-farm insurance option.⁶⁹

Unable to use traditional crop insurance policies, diversified farms are left without



the same support offered to producers of major commodity crops and those practicing monoculture. The deficit means they lose out on federally subsidized premiums—which, as noted above, average 60% of the premium rate—thus putting them at a competitive disadvantage and placing the prospect of operating a viable farm business further out of reach. Furthermore, in agriculture, insurance provides more than protection against catastrophic loss; it is often a prerequisite to access credit.⁷⁰ Given the vulnerability of agriculture to natural and market phenomena beyond farmers' control, consistent revenue is difficult to achieve in the absence of insurance.⁷¹ Without evidence of consistent income, farms cannot establish their reliability for loans,⁷² making it more difficult to plan and invest in future growth.

Whole-farm insurance policies, currently available through Whole-Farm Revenue Protection (WFRP), expand access to crop insurance to farms that have traditionally been underserved. Under whole-farm policies, producers can purchase subsidized insurance for their total farm revenue regardless of what they produce or whether they straddle county lines.⁷³ Enrolled producers can receive a 56% to 80% federal subsidy on their premium rate, based on the coverage level purchased.⁷⁴ While all farms can benefit from WFRP, small and mid-sized farms stand to gain from its availability; these operations are more likely to grow and diversify their production to more than one crop than large producers.⁷⁵ Likewise, they are more likely to face barriers to acquiring insurance, which has put these



farms at a disadvantage.⁷⁶ WFRP also supports crop diversification on farms, which confers important environmental advantages and increases the agricultural sector's resilience to natural disaster and a changing climate, benefits discussed further in FBLE's **Climate & Conservation** Report.

WFRP's full potential is under-realized. WFRP—a successor to previous whole-farm offerings, Adjusted Gross Revenue and Adjusted Gross Revenue-Lite⁷⁷—started small, selling 1,128 policies in its first year (2015),⁷⁸ but doubled to 2,833 policies for the 2017 crop year, insuring \$2.8 billion in production value.⁷⁹ However, enrollment in the program has since declined with only 1,932 policies sold in 2021.⁸⁰ To boost participation in the WFRP program, the 2018 Farm Bill directed the FCIC to gather stakeholder feedback and to review and modify procedures.⁸¹ This required review was to consider nine factors, including minimizing paperwork, developing and using alternative records, and improving agent training and outreach to underserved regions and sectors.⁸²

After holding the required stakeholders meetings, RMA identified and the FCIC Board approved several changes to the program to improve its ability to serve small, direct market, and organic farmers.⁸³ In 2019, RMA modified the program to allow WFRP coverage concurrent with Noninsured Crop Disaster Assistance Program coverage.⁸⁴ Previously, farmers had to choose which indemnity to receive in case of a loss.⁸⁵ Additionally, RMA began to allow options to smooth the historical revenue values on which coverage is based to prevent under-insurance.⁸⁶ In 2020, RMA modified the WFRP reporting requirements to allow insurance applicants to report two or more crops under a single commodity code, reducing the reporting burden.⁸⁷ In 2021, RMA modified WFRP to better accommodate farmers with missing records, allowing them to report a partial yield history for one of the

years reported.⁸⁸ Additionally, RMA increased the expansion limits for organic farms and now allows farms that have requested, but not yet received, an organic certification to report them as organic acres.⁸⁹ Finally, USDA introduced a new Micro Farm Insurance Program pilot within WFRP, which offers simplified insurance by eliminating the expense report requirement and, for direct market producers, minimizing recordkeeping requirements for farms with up to \$100,000 of approved revenue.⁹⁰

Comprehensive and affordable risk management is necessary to preserve small and mid-sized farms, and to attract new farmers. Despite the recent changes, the 2,833 WFRP policies sold in 2017 remains the high-water mark of the program⁹¹ and volume has since declined.⁹² To boost further adoption of WFRP, USDA must continue to tailor WFRP to increase accessibility for small and mid-sized operations and, for the long term, make WFRP attractive to insurers and farms of all size across the United States.

LEGISLATIVE OPPORTUNITY

Further streamline WFRP to reduce burdensome paperwork and recordkeeping

WFRP offers a vehicle to both insure and ensure the livelihoods of small farms by guaranteeing revenues sufficient to service debt and make a decent living. However, paperwork and recordkeeping prevent broader participation in WFRP.⁹³ Farmers must produce extensive revenue histories in order to sign up, and then submit multiple interim reports throughout the growing season.⁹⁴ For small farms this additional recordkeeping can be prohibitive. The 2018 Farm Bill directed FCIC to review application burdens on agents and producers in order to increase the effectiveness and accessibility of WFRP;⁹⁵ it specifically directed FCIC to consider reducing paperwork for producers and agents.⁹⁶ Since then, RMA has modified the WFRP reporting requirements



to allow insurance applicants to report two or more crops under a single commodity code,⁹⁷ and now accommodates one year of missing historical revenue records.⁹⁸ While these modifications are steps in the right direction, the paperwork required still presents a significant barrier for WFRP applicants.⁹⁹ For instance, RMA has not implemented Congress's suggestion to allow time-stamped photograph records to verify production history.¹⁰⁰ Beyond merely calling for further review of burdensome requirements, Congress should direct that Schedule F (Form 1040), Profit or Loss from Farming of the Internal Revenue Service be sufficient to establish historical revenue records.¹⁰¹ In addition, Congress should direct that AIPs only request verifiable tax records in the instance where a farmer's tax form is not sufficient to support the application.

LEGISLATIVE & ADMINISTRATIVE OPPORTUNITY

Expand Micro Farm Insurance Program cap to include mid-sized farms

In the 2018 Farm Bill, Congress instructed FCIC to consider minimizing the recordkeeping burden for farms with up to \$1 million in gross revenue.¹⁰² RMA recently announced a new Micro Farm Insurance Program, which minimizes underwriting and recordkeeping requirements for farms with less than \$100,000 of revenue, far less than the \$1 million figure suggested by Congress.¹⁰³ The program is targeted at farmers selling locally, for example at roadside stands.¹⁰⁴ To qualify, at least 50% of revenue must come from direct sales to consumers not for resale.¹⁰⁵ As a potential justification for the reduced cap on the Micro Farm Insurance Program, RMA has indicated that 85% of local producers make less than \$75,000 in gross sales.¹⁰⁶ Congress should expand the revenue cap for this simplified WFRP procedure to include all farms up to mid-sized farms, which USDA defines as farms

with under \$1 million in annual revenue.¹⁰⁷ This would be in line with the figure suggested by Congress in the 2018 Farm Bill.¹⁰⁸ Congress should also consider removing the 50% direct sale requirement to open the program up to even more farms. USDA could act on its own in this area to adjust the program, without further Congressional action.

LEGISLATIVE OPPORTUNITY

Direct RMA to review and change the AIP compensation structure for WFRP

A frequently noted challenge to access to and uptake of WFRP is the dearth of crop insurance agents knowledgeable of and interested in or willing to sell such policies.¹⁰⁹ This challenge is likely due—at least in part—to the time and resources it takes to put a WFRP policy together relative to the financial incentive.¹¹⁰ The A&O subsidy provided to AIPs is 12% or 20.1% of the premium value of issued policies (percentage varying by policy type),¹¹¹ regardless of the time and resources an agent spends administering the policy. Compared to the more common crop insurance policies, WFRP policies are smaller but more complex, thus offering a smaller payout for more work.¹¹² In order to overcome this barrier and incentivize more sales, Congress should direct RMA to review the compensation structure for WFRP and increase the A&O subsidy on WFRP policies—or recalibrate the subsidy across policies so that WFRP's is relatively higher—to an amount that will incentivize increased sales. It should also waive in this instance or remove altogether the budget neutrality requirement for the Standard Reinsurance Agreement (which sets forth the contract terms between FCIC and the AIPs, discussed further below) so that RMA has flexibility to implement this directive, including by making any necessary adjustments to the A&O reimbursement cap so that the new incentives will be meaningfully effective.





LEGISLATIVE OPPORTUNITY

Increase education and outreach about WFRP

WFRP is still a relatively new and unfamiliar program to many farmers and crop insurance agents. Broader familiarity with the program will be critical to scaling it up. The 2018 Farm Bill allocated \$10 million annually for RMA's Agricultural Risk Management Education Partnerships (ARME), a grant program that supports education and technical assistance to producers on farm viability and risk mitigation.¹¹³ At least half of the funding is earmarked for the education of producers whom FCIC determines are underserved by the federal crop insurance program.¹¹⁴ Congress could leverage this existing program by introducing education about WFRP as a new focus area, or could separately provide RMA with increased funding specifically to conduct outreach and education about WFRP. If Congress funds educational activities with RMA directly, it should direct RMA to offer educational resources to crop insurance agents as well.

ADMINISTRATIVE OPPORTUNITY

Direct AIPs to inform farmers about WFRP and offer WFRP policies

As noted above, agents' lack of knowledge and interest has hindered producer uptake of WFRP. Nevertheless, all AIPs are technically required to "offer WFRP to all persons."¹¹⁵ To reduce any ambiguity in this directive and increase uptake, RMA should require AIPs to expressly offer and inform all persons seeking federal crop insurance about WFRP and should promote this policy so its directive to AIPs and agents is clear.

ADMINISTRATIVE OPPORTUNITY

Leverage Noninsured Crop Disaster Assistance Program to support WFRP access for beginning farmers and ranchers

The 2018 Farm Bill expanded the definition of beginning farmer or rancher under WFRP to include farmers who have farmed for less than 10 years, up from the previous 5 year cutoff.¹¹⁶ Nevertheless, beginning farmers who lack three years of revenue history generally



cannot access WFRP.¹¹⁷ Though this is less than the requirement for other farmers, which is five years of revenue history,¹¹⁸ the paperwork and recordkeeping still impose a high hurdle for someone just starting out. In traditional insurance programs, a beginning farmer could build a revenue history using county averages for yield for a particular crop, but such averages are based on monoculture systems and thus not appropriate for diversified farms.¹¹⁹

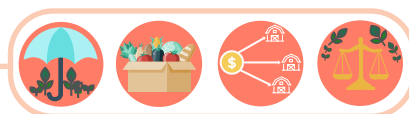
In the absence of WFRP coverage, new farmers (and farmers transitioning to diversified production) may depend on baseline coverage offered under the Noninsured Crop Disaster Assistance Program (NAP).¹²⁰ Administered by the Farm Service Agency (FSA), producers can enroll in NAP when catastrophic risk protection insurance—a minimum level of crop insurance that covers yield losses over 50% for certain crops—is unavailable for their crops. NAP provides minimum coverage (50% to 65% of the crop's value) in the wake of a disaster. Diversified farms that would rely on WFRP but do not yet have the revenue history to do so can enroll in NAP,¹²¹ which fills a critical gap because catastrophic crop insurance coverage is generally not suitable or available for these farms.¹²² Beginning farmers can also receive a service-fee waiver and a 50% premium reduction in NAP.¹²³ The requirements to enroll are also less burdensome than those for WFRP. Beginning and transitioning farmers' reliance on NAP provides an opportunity for RMA to work with FSA to use NAP as an on-ramp for enrollment in WFRP.¹²⁴ Congress already directed RMA and FSA to work together to collect and share data, coordinate, and streamline efforts between NAP and the crop insurance program.¹²⁵ The agencies should build on this directive to establish an on-ramp policy and collaborate to structure the programs in a manner that provides as seamless a transition as possible from NAP into WFRP.

RECOMMENDATION

Leverage Farm Incubator Programs to Support Beginning Farmers and Ranchers

As the average age of farmers has increased, the number of farmers entering the field has not kept pace.¹²⁶ The limited number of aspiring new farmers is often attributed to the unique challenges that beginning farmers face,¹²⁷ start-up costs and access to land being two of the most significant.¹²⁸ In addition to land, new farmers often have a harder time accessing established markets and face more severe financial struggles than established farmers.¹²⁹ Further, new farmers are less likely to come from a farming background and have not yet developed all the skills necessary to foster a successful agribusiness.¹³⁰ The next generation of farmers and ranchers needs support to establish sustainable and profitable farming operations.¹³¹

Incubator farm training programs seek to reduce barriers to entry for beginning farmers and ranchers and provide support and professional skills development.¹³² As of 2017, there were an estimated 117 farm incubators in the United States.¹³³ While incubator programs may vary depending on geography, climate, target audience, land access, and budget, many offer support to new and beginning farmers and ranchers through shared infrastructure, equipment, storage and processing facilities as well as training and technical assistance.¹³⁴ Incubator farm programs provide beginning farmers and ranchers with valuable experience and help develop fundamental skills to promote land stewardship and viable farming operations.¹³⁵ As one incubator, in a grant proposal, explained: "Incubators are a more accessible training model for those who can't afford to take advantage of university-based programs or those with high tuitions;



especially for socially disadvantaged producers, low-income individuals, immigrants, and refugees.”¹³⁶ However, when farmers transition from incubator farms to establishing their own businesses on other land, typically after three-to-five years with the incubator,¹³⁷ they face a new set of challenges, such as finding and acquiring land, funding capital improvements to make it productive, creating a new business plan, serving a new market, and technical questions about new types of production.¹³⁸ Early operational support, especially in the first 10 years, is critical to building a sustainable and profitable agricultural operation.¹³⁹ Thus, while incubator programs should continue to grow as a key mechanism for launching beginning farmers and ranchers, additional support is needed beyond the “incubation” period.

LEGISLATIVE OPPORTUNITY

Increase FOTO funding and carve out targeted support for incubator farm programs and transitional services

Similar to the beginning farmers and ranchers they serve, incubator farm programs identify sustained funding as the largest challenge to their operation.¹⁴⁰ These incubators often rely on federal grants—followed by foundation grants—to operate,¹⁴¹ especially grants awarded through USDA’s BFRDP, under FOTO.¹⁴² For example, Lansing Roots, an incubator farm in Michigan, uses BFRDP funding to provide BFRs with farming and marketing training.¹⁴³ There are not, however, dedicated USDA funds for farm incubator programs; farm incubators compete for BFRDP grants against other projects providing supportive services for beginning farmers and ranchers. The catalytic potential of incubator farms that provide robust technical assistance to beginning farmers and ranchers merits more targeted investment and infrastructural support from USDA.

Congress should institutionalize a greater role for USDA in sponsoring and coordinating

among farm incubator programs across the United States. This support could look like a dedicated pool of funding in BFRDP, a separate grant program, or a more hands-on approach through active technical assistance and seeding new programs in target, underserved regions of the country. Under any approach, funding for FOTO should significantly increase—double—to support incubator farms alongside other promising FOTO-backed initiatives. The National Beginning Farmer and Rancher Coordinator—a position established in the last farm bill—could be charged with conducting a landscape scan and developing a strategy for how to best leverage USDA support to increase access to farm incubator programs and enhance the services the programs are able to provide. Congress should authorize funds for carrying out the recommendations identified in this strategy and provide initial, mandatory funding to support stakeholder engagement and any pilot initiatives needed to develop the strategic plan. In light of the challenges new farmers and ranchers face as they transition out of incubator programs, the strategic plan should also address how to support farm incubator programs in providing further technical assistance for those transitioning out of the incubator program, such as assistance accessing USDA programs, establishing business plans, finding affordable farmland, and other key needs.¹⁴⁴

ADMINISTRATIVE OPPORTUNITY

Study the Beginning Farmer and Rancher Development Program with a focus on program equity

BFRDP was reauthorized in the 2018 Farm Bill and provides mandatory funding to support education, mentorship, and technical assistance initiatives for beginning farmers and ranchers.¹⁴⁵ Currently, BFRDP collects and reports data on program outcomes annually through the institutions that are awarded grants.¹⁴⁶ However, the last program evaluation report that is publicly available was conducted in 2017 by



the National Sustainable Agriculture Coalition (with NIFA) and evaluated program outcomes from 2009 to 2015.¹⁴⁷ Before this, the last report published summarized program outcomes in 2011.¹⁴⁸

USDA should commission a new program evaluation and make publicly available an annual report identifying successes and limitations of the BFRDP. The evaluation should pay particular attention to whether the program promotes equity and racial, ethnic, and economic diversity among participants and the farming sector, as well as the barriers and opportunities to make the programs more accessible to systemically marginalized producers. Gathering and analyzing data on the BFRDP is critical to inform the development of programming and initiatives to address the unique needs of beginning farmers and ranchers¹⁴⁹ and modifications to promote racial and ethnic equity in program accessibility.

RECOMMENDATION

Increase Access to Funding for Organic Certification

A niche but growing market is organic food production and sales. The numbers of certified organic farms and organic food sales have steadily increased.¹⁵⁰ Between 2016 and 2019, the number of certified organic farms rose from 14,217 to 16,585.¹⁵¹ Sales of organic foods also rose to \$9.93 billion, an increase of 31% from 2016 to 2019.¹⁵² Based on the National Agricultural Statistics Service's 2019 Organic Survey, most certified organic farms (13,700 of the 16,524 farms with sales) had less than \$500,000 in sales,¹⁵³ meaning that the vast majority fall into the small and mid-sized farm category. However, initial startup costs and certification fees impede access to this lucrative market.¹⁵⁴ Initial certification can cost up to several thousand dollars¹⁵⁵ and that

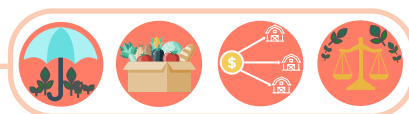
does not count annual recertification fees in subsequent years nor the costs associated with recordkeeping. The price tag of certification has also significantly increased over the past two decades, with some farms reporting that their certification costs nearly doubled over the last five years.¹⁵⁶ Moreover, in the three years leading up to certification (the “transition period”) producers must follow organic practices, which requires more human and financial resources, but cannot charge a premium price for the organic products during the same period.¹⁵⁷

USDA already has a number of programs in place to help farmers access organic certification. One key program, the Organic Certification Cost Share Program (OCCSP), allows USDA to reimburse farmers for up to 75% of the cost of certification, capped at \$750.¹⁵⁸ The 2018 Farm Bill decreased the annual amount of mandatory funding available to OCCSP from \$11.5 million annually (the amount set in the 2014 Farm Bill¹⁵⁹), to \$2 million in FY2019 and 2020, \$4 million in FY2021, and \$8 million in FY2022 and 2023.¹⁶⁰ The decrease occurred, at least in part, due to estimated carryover funds of \$16.5 million, which later proved to be grossly overestimated or misstated.¹⁶¹ Demand has since outstripped the program's resources, however, and the next farm bill should address this deficit to make organic certification accessible.

LEGISLATIVE OPPORTUNITY

Increase funding for the Organic Certification Cost Share Program (OCCSP)

Over the past two years, USDA's available funds have been insufficient to offer the cost-share arrangement authorized in the statute. In 2020, FSA announced that it anticipated being unable to cover expected participation levels and lowered the reimbursement amount to 50% of the certified organic operation's eligible expenses, up to a maximum of \$500,



for FY2020–2023.¹⁶² Due to the 2018 reduction in mandatory funding, and an error that overestimated carryover funds from prior years, the program was no longer equipped to fully effectuate its purpose.¹⁶³ Fortunately, USDA has since offered additional funds to support organic cost share through the Pandemic Assistance for Producers initiative.¹⁶⁴

Given its critical role in supporting small and mid-sized producers make the organic transition, Congress should increase funding for OCCSP to cover the full cost share authorized under the statute for all interested producers. If a cap is included, \$1,500 is a more reasonable figure to replace the current \$750 cap, given the increase in costs related to organic certification. Additionally, because the program is currently structured as a reimbursement program, less economically secure producers may have a difficult time taking advantage of the opportunity. To relieve the upfront financial burden, Congress should authorize USDA to make cost-share payments in advance of expenses for SDFRs and BFRs—as is done in similar cost-sharing program like the Environmental Quality Incentives Program¹⁶⁵—so that such producers are not financially barred from using the program.

RECOMMENDATION



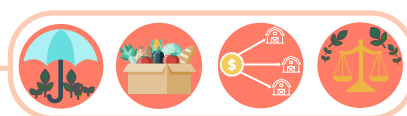
Increase Access to Regional Slaughterhouse and Processing Facilities for Small-Scale Meat and Poultry Producers

Consolidation in animal agriculture has led to a decline in direct sales of animals on the “spot” market, meaning the open, competitive market where buyers bid to purchase an independent producer’s animals. Instead, farmers are often compelled to raise animals under contract, meaning that large packers,

contractors, and dealers (PCD) own the animals and contract with growers to raise them.¹⁶⁶ Consolidation mainly takes place through horizontal and vertical integration. Horizontal integration occurs when a firm acquires related businesses,¹⁶⁷ while vertical integration occurs when a firm takes control of an entire supply chain.¹⁶⁸ PCDs can then either sell large quantities of animals to processing firms or, if the business is vertically integrated, process the animals themselves for sale. This system places independent producers who own their animals at a competitive disadvantage, and many struggle to keep their businesses solvent as a result.¹⁶⁹

One of the most significant challenges for small-scale, independent meat producers is securing access to slaughterhouses and processing facilities. In the early days of the COVID-19 pandemic, meatpacking and poultry processing facilities were a hot spot for disease spread.¹⁷⁰ By September 2021, over 90,000 workers had tested positive for COVID-19 with over 400 deaths.¹⁷¹ Due to the outbreaks, many meat processing plants shut down for weeks,¹⁷² while consumers saw the price of meat products rise dramatically.¹⁷³ Notably, however, subsequent investigations revealed that any threat to the meat supply due to safety-based closures was illusory, as meatpacking companies continued to export meat products at exponential rates during the pandemic.¹⁷⁴ Nevertheless, many producers were forced to euthanize animals due to the limited capacity of slaughter and processing facilities.¹⁷⁵

Already, large processors may be located far from producers and, especially for poultry and hogs, often exclude producers that do not have a production contract with them.¹⁷⁶ At the same time, the number of smaller slaughterhouses has declined significantly in recent years, in part due to the 1998 implementation of Hazard Analysis Critical Control Point (HACCP) requirements in federally and state-inspected



slaughterhouses, which dramatically increased costs for smaller plants.¹⁷⁷ Conventional slaughterhouses must either be inspected by USDA¹⁷⁸ or by state agencies following state laws that are at least as strict as their federal counterparts.¹⁷⁹ Generally, state-inspected meat can be sold only intrastate.¹⁸⁰ The Cooperative Interstate Meat and Poultry Shipment Program, first enacted by the 2008 Farm Bill, established limited exceptions to that rule,¹⁸¹ allowing some state-inspected facilities that meet certain conditions to sell their products in interstate commerce and internationally.¹⁸² However, only the 27 states with meat inspection programs are eligible to participate in the program, and of those states, only ten currently participate.¹⁸³

Regardless of whether facilities are federally or non-federally inspected, operations costs under HACCP can be expensive.¹⁸⁴ Between 1990 and 2016, federally-inspected slaughterhouses declined by 36%, while non-federally inspected slaughterhouses declined by 42%.¹⁸⁵ “Custom slaughterhouses,” a less regulated alternative, allow for periodic rather than continuous inspection and do not have to implement HACCP, reducing operational costs.¹⁸⁶ However, the resulting meat products are restricted for the personal use of the animal’s owner and must be marked “not for sale.”¹⁸⁷ Primarily used by hunters, custom slaughterhouses may process domestic livestock, but the animals must be owned and used by the owners, members of the owners’ household and non-paying guests.¹⁸⁸ As a result, custom slaughterhouses and the consumers who use them are generally limited to small-scale operations, and to consumers who can afford to purchase an entire animal, or a significant portion of the animal, upfront. Due to the pandemic, there was an increase in the number of people using custom slaughterhouses.¹⁸⁹ For example, at the height of the pandemic demand for custom slaughter at an Iowa facility increased by 120%.¹⁹⁰ The next farm bill provides an opportunity to level the playing

field for small-scale and mid-sized producers and independent livestock producers, while maintaining the safety of the food supply.

LEGISLATIVE OPPORTUNITY

Enact the Strengthening Local Processing Act to increase options for local livestock and poultry producers

The COVID-19 pandemic impacted access to processing facilities by small meat and poultry producers, highlighting the need for targeted support as local and regional economies recover from the pandemic. In 2021, USDA announced a grant program to increase access to meat and poultry processing facilities and access to local and regional markets.¹⁹¹ In particular, the funds will support expansion of processing capacity of small processing facilities and also provide \$150 million to enable these facilities to compete in the marketplace.¹⁹² To bolster those efforts, Congress should enact the Strengthening Local Processing Act which would increase opportunities for small-scale livestock and poultry producers to access slaughter and processing facilities. If enacted, the Strengthening Local Processing Act would authorize competitive grants to small and very small meat and poultry producers for any activities related to recovery from the impacts of the pandemic.¹⁹³ In addition, the legislation would increase the federal government’s cost share for meat and poultry state inspection programs from 50% to 65%,¹⁹⁴ and provide grants to cover expenses related to complying with the HACCP requirements.¹⁹⁵ The legislation would also increase the federal government’s cost share for the Cooperative Interstate Shipping Program (CIS) (which expands business opportunities for state-inspected slaughterhouses) from 60% to 80%, and require USDA to examine barriers to expanding the program in order to identify opportunities for expansion,¹⁹⁶ thereby supporting the long-term viability of small meat and poultry producers.



GOAL II



Strengthen Local and Regional Food Systems and Market Opportunities

As our food system has grown to become increasingly global and consolidated, small and mid-sized farmers have struggled to subsist. The consolidation of agricultural processors and distributors into a few powerful companies has created an often-asymmetrical market system where small and mid-sized farmers have become price-takers with no real bargaining power.¹⁹⁷ Small and mid-sized farmers are often better suited to operating within local and regional systems in which they can partner with and sell to a more varied group of smaller buyers. Rebuilding local and regional food systems to provide farmers with reliable local access to markets is essential for the continued viability of small and mid-sized producers, beginning farmers and ranchers, specialty crop producers, and urban farmers.¹⁹⁸

While large-scale agricultural producers can take advantage of a variety of outlets for their products, including distribution through wholesalers, institutions, retailers, or direct-to-consumer sales,¹⁹⁹ structural barriers impede small and mid-sized producers from accessing the full range of potential markets. Small and mid-sized farms struggle to access intermediated markets such as grocers, restaurants, and regional distributors that often require a large quantity of product.²⁰⁰ Convenience and minimum order requirements can also force local food co-ops and distributors to purchase from major suppliers rather than

nearby farms.²⁰¹ For small producers selling to national wholesalers, unequal bargaining power and low prevailing market rates can sometimes force them to sell at prices below the cost of production.²⁰² More robust local and regional food systems can provide farmers with alternatives to selling to large wholesalers and processors, increasing their bargaining power and providing profitable revenue opportunities.

Local and regional food systems foster direct sales from producer to consumers, but both parties face hurdles in pursuing such transactions. For example, farmers who sell their products directly to consumers often rely on urban markets,²⁰³ which can be costly to access for farmers in rural areas.²⁰⁴ Low population density and poor infrastructure development can impose barriers to successful local food markets in rural areas.²⁰⁵ On the consumer side, fresh foods are difficult to find in many communities that lack alternative food access channels like farmers markets or community supported agriculture.²⁰⁶ In many urban areas, decades of disinvestment has led to the creation of food deserts, which are increasingly being described as “food apartheid” to better capture the racialized and systemic nature of the disparities in access.²⁰⁷ Meanwhile, access to food in rural areas has also decreased, as grocery stores have shuttered in response to declining populations, often to be replaced by dollar stores.²⁰⁸ For both rural and urban



communities, alternative food distribution channels such as farmers markets and food hubs are import mechanisms for promoting access to fresh foods.²⁰⁹ As described in the Introduction, demand and supply shocks throughout the food system from the COVID-19 pandemic showed how the agricultural economy is ill-equipped to adapt to changes in available market channels²¹⁰ and amplified the challenges faced by small and mid-sized producers. In doing so, the COVID-19 pandemic brought renewed attention to the important role local food systems and regional market opportunities play for both producers and consumers and revealed the need for increased investment in these systems.

In the next farm bill, Congress should support small and mid-sized producers by bolstering these regional food systems and expanding local market opportunities. Promising opportunities for doing so include increasing grant funding that supports the establishment and enhancement of market and marketing opportunities, incentivizing state food system planning, and further investing in urban agriculture.

RECOMMENDATION



Support the Connection of Small and Mid-Sized Farmers to Local and Regional Market Opportunities

Increasing opportunities for local, direct sales of agricultural products is in the interests of farmers and consumers. For a small or mid-sized producer, selling into a wholesale market strips them of bargaining power: they have to take the price they are offered.²¹¹ Direct-to-consumer markets—and other direct or near-direct channels—often offer the most profitable opportunities for small and mid-sized producers, as a higher proportion of the dollars

spent on food return to the producer. Farm-direct sales also provides farmers with control over the prices they charge²¹² and can provide financial benefits over traditional channels.²¹³ On the other side of the transaction, consumers have a growing interest in purchasing locally-grown food,²¹⁴ and also benefit nutritionally as whole foods purchased directly from farmers are more nutrient-dense than processed foods.²¹⁵

Direct-to-consumer sales amounted to approximately \$10.7 billion in 2020,²¹⁶ a small but important fraction of the overall \$134.7 billion in total U.S. farm sales.²¹⁷ Small and mid-sized producers benefit from these market opportunities and usually sell their products close to the farm, most often within 20 miles.²¹⁸ Strong local food systems—i.e., those in which agricultural food products travel less than 400 miles from production to market²¹⁹—are thus particularly important for small and mid-sized producers' long-term viability.

The 2018 Farm Bill funded programs to strengthen these systems by expanding local agricultural markets and supporting state specialty crop programs. These programs have been popular and successful in shortening supply chains and diversifying the food options produced and consumed in the United States. As described below, demand is high for these programs and their impact could be even greater. Congress should reinforce these programs' role in invigorating local and regional food systems and economic opportunities for the diverse range of farmers across the United States.

LEGISLATIVE OPPORTUNITY

Double baseline funding for the Local Agriculture Market Program

The 2018 Farm Bill reauthorized the Farmers Market and Local Food Promotion Program (FMLFPP), administered by the USDA



Agricultural Marketing Service, and the Value-Added Producer Grant (VAPG) administered by the USDA Rural Business-Cooperative Service to create the Local Agriculture Market Program (LAMP).²²⁰ In addition to merging FMLFPP and VAPG, Congress also authorized a new Regional Food Systems Partnership (RFSP) program under LAMP.²²¹ Congress provided annual mandatory funding of \$50 million for FY2019 and authorized appropriations of \$20 million for FY2019 and each fiscal year thereafter until expended.²²² By combining these programs via LAMP, Congress ensured that the three programs would continue with permanent, baseline funding.²²³ With 47% of the LAMP funding,²²⁴ FMLFPP is administered by AMS as two subprograms: the Farmers Market Promotion Program (FMPP) and the Local Food Promotion Program (LFPP). FMPP aims to expand direct producer to consumer markets to help increase access to and availability of locally and regionally produced agricultural products by supporting farmers markets.²²⁵ LFPP offers funding to projects that develop, coordinate, and expand local and regional food business enterprises that engage as intermediaries in indirect producer to consumer marketing to help increase access to and availability of locally and regionally produced agricultural products.²²⁶ 35% of LAMP funding goes to VAPG, which helps agricultural producers enter into value-added activities related to the processing and marketing of new products, generating new products, creating and expanding marketing opportunities and increasing producer income.²²⁷ The program plays a critical role in supporting the market opportunities for small and mid-sized producers and includes reserves for applications submitted by beginning and socially disadvantaged farmers and ranchers.²²⁸ Finally, 10% of the funding is devoted to supporting regional partnerships through RFSP,²²⁹ and 8% goes to supporting grant administrative expenses.²³⁰

Despite LAMP's solid footing, funding levels,

particularly for FMPP and LFPP (together FMLFPP), remain inadequate.²³¹ According to the Agricultural Marketing Service (AMS), only 49 (27%) of the 182 FMPP applications received funding in FY2019.²³² That same year, AMS funded just 42 (19%) of the 216 LFPP applicants.²³³ The following year, FY2020, AMS funded 49 (24%) of the 206 applications received for FMPP,²³⁴ and 44 (20%) of the 225 applications received for LFPP.²³⁵ This snapshot shows that demand for funding outstrips the program's capacity.²³⁶ Recognizing the importance of FMLFPP in establishing stronger local food systems and supply chains, as well as supporting currently underserved producers and agricultural businesses, USDA devoted \$47 million in pandemic-related emergency funding (appropriated through the Consolidated Appropriations Act, 2021) to FMLFPP projects, bringing total program funds to \$76.9 million for 2021.²³⁷ According to USDA, VAPG awarded 347 grants in 2020.²³⁸ The Department's available data on the program, including applications, is sparse, so it is difficult to determine the proportion of applications receiving awards.²³⁹ Stakeholders report, however, that demand for the program—like other LAMP grants—remains high. In FY2020, the inaugural round of funding for the Regional Food Systems Partnership Program (discussed further below), AMS funded 23 (20%) of the 114 applications received.²⁴⁰

The outsized demand for LAMP funding demonstrates that USDA is addressing an unmet need for developing markets and local food systems through the program. Research also shows that businesses that participate in the program create more jobs and are “less likely to fail” compared to businesses that do not participate in the program.²⁴¹ In order to foster even stronger collaborations and growth, Congress should double the mandatory funding for the program so more projects can receive support, and the program can meet the needs of small and mid-sized producers, beginning



farmers and ranchers, specialty crop producers, and independent meat producers.²⁴²

More resources are also needed to specifically support projects that leverage new and innovative distribution models via technology. To deal with the challenges brought on by the COVID-19 pandemic,²⁴³ producers quickly pivoted to alternative distribution models such as online sales, drive thru sales, and curbside pickups.²⁴⁴ Producers created e-commerce websites or updated their existing platforms. For example, according to the Farmers Market Coalition almost 26% of farmers markets surveyed established a “pre-market-level pre-ordering online platform” due to the pandemic.²⁴⁵ Farmers also increasingly started using online platforms such as social media to communicate their offerings and operating hours with consumers.²⁴⁶ To further support small and mid-sized producers, Congress should appropriate funds and direct AMS

to establish a separate grant pool for such technology-oriented projects.

SNAP Online

In April 2019, USDA launched the Supplemental Nutrition Assistance Program (SNAP) Online Purchasing Pilot, authorizing SNAP retailers to allow online purchases by customers using their SNAP benefits.²⁴⁷ The program quickly expanded during the pandemic and was available in 49 states and the District of Columbia as of April 2022.²⁴⁸ However, the online platform is dominated by large retailers and chains, and remains largely inaccessible to small retailers or producers selling directly to consumers.²⁴⁹ Detailed Recommendations to improve SNAP Online and SNAP payment options, making them more accessible to these smaller vendors, can be found in FBLE’s **Food Access & Nutrition** Report.



LEGISLATIVE OPPORTUNITY

Diversify funding opportunities for the Specialty Crop Block Grant Program

The Specialty Crop Block Grant Program (SCBGP) was created to enhance the competitiveness of specialty crops.²⁵⁰ Specialty crops include fruits, vegetables, tree nuts, dried fruits, horticulture, and floriculture.²⁵¹ Over the last several farm bills, funding for the program has grown.²⁵² The 2018 Farm Bill reauthorized the SCBGP and provided mandatory annual funding of \$85 million.²⁵³ USDA awards a minimum amount to each state (an estimated \$243,000 per state for FY2022²⁵⁴) “plus additional funds based on the state’s share of the total value of U.S. specialty crop production.”²⁵⁵ States then use funds to issue sub-awards based on that particular state’s priorities which are consistent with the program’s statutory purposes.²⁵⁶ In FY2020, AMS awarded 56 grants to the states’ departments of agriculture (with 687 sub-awards) for a total of \$72,488,098.²⁵⁷ With large concentrations of the United States’ specialty crop producers, California, Florida, and Washington together receive almost half of SCBGP’s funds.²⁵⁸ The 2018 Farm Bill required USDA and state departments of agriculture to develop performance measures for evaluating the program,²⁵⁹ which led to new performance measures and a new website with tools and resources to support the rollout and application of these measures moving forward.²⁶⁰

SCBGP is an important tool for supporting the economic viability of producers of fresh, nutritious food across the United States. Promoting specialty crop development and marketing in various regions of the country can help reduce reliance on long supply chains and transportation networks, strengthen local and regional food systems, and lead to innovations that diversify U.S. crop production and thereby increase the sector’s resiliency. However,

SCBGP funds may not be optimally allocated to further this purpose in all states. Funding formulas direct the majority of SCBGP funding to states that already have robust markets and infrastructure to support specialty crops, leaving behind states that have unrealized potential in advancing specialty crop production and building new regional market channels. Congress could amplify the impact of the program by amending the formula to better channel funding to these states with unrealized potential or by establishing a separate, competitive fund—administered in conjunction with SCBGP—reserved for states that fall outside of the subset of top recipients (e.g., outside of the top ten highest award states). Congress could also amend the funding formula so that more funding goes to states with a high potential to expand specialty crop production and build new local and regional marketing channels.

LEGISLATIVE OPPORTUNITY

Establish stronger mandate to serve SDFRs and BFRs in SCBGP

A large proportion of Black, Native American, Latinx, and Asian American (currently grouped together for purposes of USDA programs as socially disadvantaged farmers and ranchers or SDFRs) and beginning farmers and ranchers (BFRs) operate farms that produce specialty crops.²⁶¹ As Congress and USDA work to reduce barriers to entering and maintaining careers in farming and to advance equity in the agricultural sector, support for specialty crop development should be directed toward advancing opportunities for SDFRs and BFRs in particular. Currently, AMS encourages state departments of agriculture to conduct outreach with SDFRs, BFRs, veteran farmers, and underserved communities in developing projects, but there is no specific mandate to prioritize these groups in administering grant funds.²⁶² In the next farm bill, Congress should amend SCBGP to require states to include a



strategy for supporting SDFRs and BFRs in their plan for grant administration, in order for the state to be eligible to receive SCBGP funds.

“Socially 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.”²⁶³ USDA further defines it to refer to those who identify as African American, American Indian, Alaskan Native, Asian, Hispanic, and Pacific Islander.²⁶⁴ 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.

LEGISLATIVE OPPORTUNITY

Support specialty crop production by small and mid-sized and socially disadvantaged producers through USDA procurement of fresh produce

USDA procurement is another mechanism for connecting producers of fresh produce to local consumers, particularly those who rely on food banks and other charitable food organizations to meet their nutritional needs. The COVID-19 pandemic provided a testing ground for several different programs that took this approach. USDA’s Farmers to Families Food Box Program provided over 173 million boxes of food to food-

insecure Americans by awarding contracts to distributors and other value-chain entities to purchase fresh agricultural products from farms and processors for distribution to nonprofits addressing food insecurity.²⁶⁵ In its initial stages, the program created contracting opportunities for small and mid-sized producers and helped mitigate the growing threat to food security. As a quickly developed band-aid to an emergency situation, the program did, however, have some shortfalls that offered lessons for future programs, such as the need for more equitable distribution of food and allocation of contracts, more participation of small and mid-sized producers, women, and socially disadvantaged owned farms in later program phases, and the need to circumvent any unintentional creation of food waste.²⁶⁶ In 2021, after the program ended, USDA also purchased fresh produce to distribute through The Emergency Food Assistance Program (TEFAP) to supplement the nonperishable commodities typically bought and distributed by USDA to states through TEFAP to support their emergency feeding organizations.²⁶⁷ USDA’s Agricultural Marketing Service also announced an investment of \$400 million into a new Local Food Purchase Assistance Cooperative Agreement Program.²⁶⁸ The program will distribute funds to state and Tribal governments “to purchase foods from local and regional producers, targeting purchases from socially disadvantaged farmers and ranchers” for distribution to underserved communities,²⁶⁹ thereby aiming to serve producers and recipients less likely to have benefited from the Farmers to Families Food Box Program.

These fresh food purchasing programs offer multiple community benefits, supporting the economic stability of small and mid-sized producers as well as underserved consumers’ access to fresh food. Particularly for food banks and other nonprofit organizations that may often rely on donation of nonperishable food items, such programs diversify offerings



with nutritious produce. In the next farm bill, Congress should allocate funding for a similar program to purchase fresh produce for food recovery organizations to provide to food-insecure individuals. The proposed Fresh Produce Procurement Reform Act of 2021 is one proposal for doing so, and would prioritize purchasing produce from socially disadvantaged farmers and small and mid-sized farms.²⁷⁰ To ensure such a program does not negatively impact food markets, such a program should focus on food that would otherwise go to waste, like genuine surplus or items that are wholesome but do not meet market standards for retail.²⁷¹

RECOMMENDATION

▶ Incentivize the Development of State Food System Plans

A thriving food system is essential to the United States due to its implications for our nation's economy, individual and public health, environment, and social equality.²⁷² Food systems include the entire chain of movement by food and food products, including production, processing and packaging, distribution, access, preparation, and the management of surplus and waste.²⁷³ Despite the intersectional nature of the food system, national food laws and policies in the United States are fragmented. The food system is governed by a complex web of laws and regulations, with government agencies, foreign and domestic stakeholders, and community organizations advocating for policies that often conflict, create redundancies, or increase inefficiencies.²⁷⁴ At the state level, food system plans provide an opportunity to shape policies impacting the food system and establish processes for considering the perspective and input of multiple stakeholders across broad intersectionality of the state-level food system.²⁷⁵ Vermont offers a good example of how state

food system plans can strengthen a state's food system and farm economy. Vermont enacted its first state food system plan in 2009, the Farm to Plate Strategic Plan 2020.²⁷⁶ The plan was a 10-year strategy based on an assessment of current conditions, a vision for the future, and recommendations to close the gap. It created the Farm to Plate Network, which includes stakeholders from government, nonprofit organizations, and educational institutions, as well as farmers and food producers. The Network is responsible for implementing food system plan goals through "high impact projects to re-localize the food system."²⁷⁷ The state's new plan, the Vermont Agriculture and Food System Strategic Plan 2021–2030,²⁷⁸ draws on data collected over the first 10 years of the state food system plan and includes example indicators as ways to measure progress toward these goals. For example, goal 2, "demand for Vermont food will increase," sets a goal that 25% of food purchased in the state will



be produced in the state by 2030, and shows progress from 5% to 13.9% over the previous 10 years.²⁷⁹ Among other benefits, Vermont's state food system plan demonstrates increasing sales for producers in the state, sets a goal for further increases, and identifies priority strategies to achieve that goal, such as supporting product-specific value chain development.²⁸⁰ It provides similar metrics and priority strategies across 15 strategic goals to advance the state's food system.

Currently, 18 states and two regions have plans.²⁸¹ However, a lack of reliable funding is a commonly identified challenge among states with formal food system plans.²⁸² On average, just 9% of funding comes from federal sources.²⁸³ Consistent, reliable, and adequate funding would allow states to fully leverage food system planning as a process of identifying and finding solutions to food system challenges. Drafting a food system plan can take several years and involve outreach and networking with many stakeholders and representatives, and any support provided should account for this effort. The next farm bill offers an opportunity to support the development of state food system planning through increased funding, thereby strengthening local and regional food systems across the country.

LEGISLATIVE OPPORTUNITY

Increase funding for the Regional Food System Partnership program and amplify opportunities for state-level planning

The Regional Food System Partnership (RFSP) program, administered by the Agricultural Marketing Service under LAMP (described above), awards grant funds to public-private partnerships focused on local or regional food system plans.²⁸⁴ These partnerships “connect public and private resources to plan and develop local or regional food systems.”²⁸⁵

RFSP funds projects under two categories—planning and design for new projects, and implementation and design for past and current projects to strengthen existing state and regional food system partnerships.²⁸⁶ In FY2020, RFSP awarded \$9.3 million to 23 partnerships over two to three years.²⁸⁷ Unfortunately, this competitive application process means that some partnerships will have the opportunity to advance a food system plan, and some will not. In FY2020, about 20% of applications received funding.²⁸⁸ An additional 30 projects received awards in FY2021 due to an additional \$10.3 million appropriated in the Consolidated Appropriations Act, 2021, making just over \$15 million available to support regional food systems grow stronger following the pandemic.²⁸⁹

State agencies are currently able to partner with other entities to apply for RFSP funding. However, the statute's distinction between an “eligible entity” (a producer, farmer or rancher cooperative, producer network or association, food council, etc.) and an “eligible partner” (a state agency or regional authority, a philanthropic organization, institution of higher education, etc.) may curtail the role and leadership states are able to offer in state-level food system planning.²⁹⁰ Congress should clarify the program's parameters in the next farm bill to expressly contemplate state-level food system planning led by state government in partnership with local and regional agricultural stakeholders. To support this and other regional food system development projects, Congress should increase RFSP funding, in line with the above recommendation to double baseline funding for LAMP overall. In addition, given that food system planning is a lengthy process that requires substantial stakeholder engagement, Congress should extend the duration of RFSP funded projects from two to three years to up to five years.²⁹¹



RECOMMENDATION

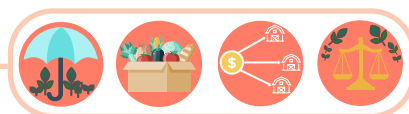
▶ Improve Support for Urban Agriculture

Growing interest in local food systems has led to increased attention to and opportunities for expanding urban agriculture.²⁹² While “urban agriculture” currently lacks a formal, statutory definition, it is generally understood to include small and very small agricultural operations in cities and suburban areas that produce agricultural products and “may include distribution, processing, and marketing efforts.”²⁹³ Community gardens, urban farms, and indoor hydroponics are common examples of urban agricultural operations.²⁹⁴ These enterprises offer a number of benefits for the communities in which they are sited, supporting community economic development through small business ventures and employment opportunities while, in most cases, increasing community access to locally produced fresh and healthy foods.

Urban agriculture earned increased attention in the 2018 Farm Bill cycle, with a number of new opportunities and administrative support mechanisms enacted. Rather than narrowing in on a specific definition of urban agriculture, these provisions broadly support urban, indoor, and other emerging agricultural practices, including urban/suburban community gardens and farms; rooftop farms, outdoor vertical production, and green walls; indoor farms, greenhouses, and high-tech vertical technology farms; hydroponic, aeroponic, and aquaponic farm facilities; and other agricultural innovations.²⁹⁵ The 2018 Farm Bill established an Office of Urban Agriculture and Innovative Production (OUAIP), charged with the mission of encouraging and promoting urban, indoor, and other emerging agricultural practices, and an Urban Agriculture and Innovative Production Advisory Committee.²⁹⁶ OUAIP was also charged with awarding competitive grants to nonprofits,

local governments, Tribal governments, and school districts for developing urban agriculture and innovative production.²⁹⁷ Further, Congress charged USDA with piloting the establishment of 10 Farm Service Agency (FSA) county committees in areas with high concentrations of urban or suburban farms.²⁹⁸ Congress also directed USDA to pilot community compost and food waste reduction cooperative agreements with municipalities.²⁹⁹ In light of the lack of data around urban agriculture—which is not collected in USDA’s standard surveys of agricultural operations—it directed USDA to conduct a follow-on study to the 2017 Census of Agriculture to take a census of urban, indoor, and other emerging agricultural production.³⁰⁰ Additionally, Congress established a competitive grant program, the Urban, Indoor, and other Emerging Agricultural Production Research, Education, and Extension Initiative, to facilitate growth and innovation in this area.³⁰¹ These programs provide specific support for urban agriculture, adding onto the opportunities to support local agriculture—such as LAMP, described above—through which many urban farms may also find support.

In the years since enactment, the pieces of USDA’s urban agriculture support infrastructure have incrementally fallen into place. USDA established the department-wide OUAIP, led by the Natural Resources Conservation Service, and announced its inaugural Federal Advisory Committee on Urban Agriculture in February 2022.³⁰² It also began awarding grants under the OUAIP Urban Agriculture and Innovative Production Competitive Grants Program, providing about \$3 million in funds to projects in 2020 and \$4.75 million to projects in 2021.³⁰³ It also invested \$1.09 and \$1.92 million in 2020 and 2021, respectively, in pilot projects under Community Compost and Food Waste Reduction Projects.³⁰⁴ FSA has worked to establish and elect members of 11 new county committees focused on urban agriculture.³⁰⁵ USDA’s National Institute of Food



and Agriculture (NIFA) solicited stakeholder input for the research, education, and extension competitive grant initiative in spring 2020,³⁰⁶ but, as of spring 2022, has not yet implemented the program because the Urban Agriculture Advisory Committee charged with overseeing the program was only announced in February 2022.³⁰⁷

Although the new infrastructure and grants have been important steps in urban agriculture development, more can be done in the next farm bill to support further expansion. To protect land for urban agriculture and bring fresh food and opportunities to urban communities, Congress should signal to USDA that urban agriculture should continue to be a departmental priority, and should increase funds for carrying out these activities.

LEGISLATIVE OPPORTUNITY

Provide mandatory funding to support urban agriculture

The 2018 Farm Bill established a number of new programs to support urban agriculture, the benefits of which may take several more years to fully realize. Congress should reauthorize these authorities in the next farm bill and increase funding, in particular, for the OUAIP competitive grant program. Notably, in its first year of awarding grants, OUAIP awarded just over \$3 million in grants to 10 projects, but received 500 applications for the program.³⁰⁸ Although Congress authorized \$25 million in annual appropriations for carrying out various OUAIP activities and grants, the program has been managed without funds specifically appropriated to establish and maintain it, drawing on other department accounts for its \$5 million and \$7 million budgets in 2020 and 2021, respectively.³⁰⁹ To secure OUAIP's activities and impact, Congress should provide \$25 million in mandatory funding in the 2023 Farm Bill.

In addition, the lack of data concerning urban agriculture led Congress to commission a follow-on study to the 2017 Census of Agriculture. However, Congress did not provide additional funding for the study and no information on the status of the contemplated study is publicly available. Congress should provide funding for conducting the census of urban, indoor, and other emerging agricultural production and publish findings. In particular, Congress should allocate funding to National Agricultural Statistics Service (NASS) to develop and implement this survey so that the findings can be used to better understand the sectors' needs and to develop responsive policies and programs.

ADMINISTRATIVE OPPORTUNITY

Promote USDA-backed opportunities to address legal barriers to urban agriculture

Beyond this additional support, USDA could do more with its existing authority to strengthen its leadership in growing urban agriculture. Specifically, USDA should promote OUAIP opportunities and successes in changing local zoning and land use regulations. Zoning and land use regulations are an important tool in promoting and supporting agriculture in urban areas, as restrictions or omissions of explicit authority can limit establishment of some agricultural enterprises.³¹⁰ Land use and development regulation is largely left to state and local authority, limiting the scope of federal action in this arena. OUAIP Competitive Grants are available for planning projects, which may include development of policies related to zoning and other needs of urban production.³¹¹ Given the important role zoning policy can play in enabling urban agriculture in a community, OUAIP should promote these grant opportunities and gather resources on successful policy-change focused projects to provide other localities and advocates models for amending land use policy to support urban agriculture.



LEGISLATIVE OPPORTUNITY

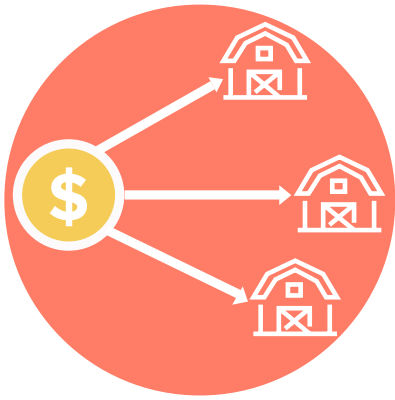
Establish an Urban Agriculture Conservation Easement Program

Agricultural land easements are a tool for protecting from development land that is or may be used for agriculture. In the United States, such easements have been used to prevent non-agricultural use of land and to achieve conservation goals, and typically assist partner institutions (i.e., state and local governments, nonprofits) in purchasing land easements by providing 50% to 75% of the easement's fair market value to support the purchase.³¹² Easements have already been an important tool in securing land for purposes of urban agriculture, improving affordability and accessibility of land for agricultural uses in these communities.

To spur further growth and innovation in urban agriculture, Congress should enact the "Urban Agriculture Conservation Easement Program" proposed in the Urban Agriculture and Community Food Security Act.³¹³ The program would provide funding and technical assistance to eligible entities to purchase an urban agricultural land easement, providing a federal share up to 75% of the fair market value of the easement.³¹⁴ The program would prioritize projects improving cropland access for beginning and socially disadvantaged producers.³¹⁵ The proposed Act includes \$20 million per year in mandatory appropriations, with an additional \$20 million authorized. A well-executed easement program would expand USDA's footprint in promoting urban agriculture and complement existing authorities focused on research, planning, and program implementation with increased access to land.



GOAL III



Reform Farm Safety Net Programs to Promote Fair Competition

In passing the farm bill, Congress authorizes several key programs that directly support the profitability and continuing business of U.S. farms. The 2018 legislation housed these programs in Title I, Commodities, and Title XI, Crop Insurance. Described in greater detail below, federal commodity programs and the federal crop insurance program comprise a significant portion of the 2018 Farm Bill's projected outlays—7% and 9% respectively, the largest investments after nutrition programs.³¹⁶ The support these programs provide—including payments to commodity producers when prices or revenues drop, subsidized premiums to insure crop yields or revenues—primarily flow to large, industrial-scale farms that produce commodity crops like corn, soybeans, wheat, and cotton.³¹⁷ While not addressed at length in this Report, ad hoc direct-payment programs over the past several years—the Market Facilitation Program created in response to trade disputes with China and the Coronavirus Food Assistance Program (CFAP)—surpassed Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC) payments in 2018, 2019, and 2020.³¹⁸ Between 2018 and 2020, total payments under the Market Facilitation Program amounted to \$23 billion.³¹⁹ Pandemic related support under CFAP totaled over \$30 billion.³²⁰ These ad hoc programs perpetuated inequitable subsidy distribution, with most of the payments going to large—primarily white-

owned or operated—farms growing commodity crops.³²¹

By channeling this significant investment toward large, established producers, the programs allows these large farms to expand and amass greater resources to the detriment of small, beginning and mid-sized producers.³²² As noted in the Introduction to this Report, the number and total acreage of mid-sized farms has decreased by half since 1978, and although the number of small farms seemed to increase between 1978 and 2017, their total acreage has decreased.³²³ Over that period, the proportion of farmers with less than five years of experience and under the age 35 each decreased.³²⁴ The current system effectively guarantees the income of the nation's largest and wealthiest farms, thereby harming small, mid-sized, and beginning farms by increasing land values, making land more expensive to rent and buy and thus raising barriers to entry to farming and excluding those farmers and their communities from generating wealth and political power.³²⁵ It also makes it challenging, if not impossible, to compete in agricultural markets. Since commodity programs rely exclusively on public dollars—farmers do not need to pay or contribute a portion of the cost to participate—these programs should be designed in line with the broader public policy goals of slowing consolidation and supporting



the viability of small and mid-sized farms. Similarly, subsidized crop insurance premiums should focus support toward smaller farms with fewer resources to fall back on. At minimum, these programs should not be used to line the pockets of high-income producers capable of weathering market fluctuations or those with little engagement in the farming process.

RECOMMENDATION



Reform Commodity Programs to Direct Public Dollars Toward Farms and Farmers in Genuine Need of Support

Farm commodity programs support producers of eligible farm products by effectively subsidizing guaranteed income levels. The field-crop programs, PLC and ARC, provide payments to producers with land historically planted with named commodity crops: wheat, corn, grain, sorghum, barley, oats, long grain rice, medium grain rice, soybeans, other oilseeds, peanuts, dry peas, lentils, small chickpeas, and large chickpeas.³²⁶ Producers may enroll in either the PLC or ARC program based on preference but not both.³²⁷

PLC makes payments to eligible producers when the market price for a commodity falls below a statutory “reference price.”³²⁸ The payment amount is the payment rate multiplied by 85% of the producer’s base acres in the commodity multiplied by the payment yield.³²⁹ Since “reference prices” act as the “triggering” prices for PLC payments, their statutory levels determine how often and how generously producers will receive payments under a PLC election. The 2018 Farm Bill further modified the PLC program in two ways: producers were provided an opportunity to update their program yields based on their 2013-2017 yields; and the bill included an

escalator provision as part of the calculation for the payment rate, which could raise the effective reference price “by as much as 115% of the statutory PLC reference price based on 85% of the five-year Olympic average of farm prices.”³³⁰ This provision kicks in when historic averages exceed the reference price for a given year,³³¹ thus making the program potentially more generous since the 2018 change.

ARC makes payments when producer revenue (price multiplied by yield) falls below 85% of historical levels,³³² providing “shallow loss” protection for losses not otherwise covered under a producer’s crop insurance policies. If a producer experiences a 20% revenue loss relative to historical benchmarks, and his or her crop insurance carries a 25% deductible, the crop insurance policy would pay nothing, but ARC would make a payment.³³³ ARC payments are capped at 10% of the benchmark revenue.³³⁴ The overall effect is that producers bear the first 14% of estimated revenue losses relative to the benchmark, ARC covers estimated losses from 15% to 25%, and crop insurance (assuming producers buy sufficient coverage) and marketing assistance loans cover deeper losses.³³⁵

PLC and ARC are expensive programs that primarily support the largest and wealthiest industrial monoculture farms.³³⁶ In 2019 and 2020, PLC and ARC payments totaled over \$6 billion³³⁷ and \$2 billion, respectively.³³⁸ By channeling this significant investment toward large, established producers, the programs allows these large farms to expand and amass greater resources, to the detriment of small, beginning, and mid-sized producers.³³⁹ These investments should be curbed so that USDA no longer tips the scale in favor of these large industrial farms and subsidizes an environment that is prohibitively difficult for new, small, and mid-sized farms to succeed in.



LEGISLATIVE OPPORTUNITY

Lower adjusted gross income cap for receipt of commodity program subsidies

Ideally, producers with the highest incomes should not be subsidized through commodity programs because they face less financial stress,³⁴⁰ are able to make more intensive use of their labor and capital resources,³⁴¹ and are generally more capable of managing risk independently.³⁴² In the 2018 Farm Bill cycle, the Senate adopted a cap on receipt of commodity program subsidies for farmers with average adjusted gross incomes (AGI) over \$750,000 per year.³⁴³ This limitation almost made it into the final bill, but was raised to \$900,000 in conference committee.³⁴⁴ Data from 2013—a year of very high farm income—indicates that only about 0.7% of sole proprietors and share-rent landlords (the only groups of farm owners for which federal income tax data were easily ascertainable) have more than \$1 million in AGI, and only 2.2% had more than \$500,000 in AGI.³⁴⁵ For this reason, even a relatively low AGI cap is unlikely to impact all but the wealthiest operations. Congress should lower the AGI cap from \$900,000 to \$500,000,³⁴⁶ thereby taking a step toward leveling the playing field and conserving farm bill funding for supporting a fairer and more diverse agricultural sector.

LEGISLATIVE OPPORTUNITY

Decrease the percentage of base acres eligible for commodity program payments

Another option for cost-saving in commodity programs is to reduce the percentage of base acres for which ARC and PLC provide coverage. “Base acres” are a farm’s crop-specific acreage of the commodity crop eligible for program payments. Confusingly, base acres do not necessarily align with current crop production but are determined based on a historical average of acres planted for a covered commodity crop.³⁴⁷ Decreasing

the proportion of base acres covered would permit all qualifying producers to continue receiving commodity farm payments, but limit the outsized benefit received by larger farms and preserve funds for other farm support mechanisms that promote more farm diversity. As noted above, ARC and PLC cover 85% of a producer’s base acres. This percentage could be reduced to 80% for the majority of commodity farms, but could be calibrated (e.g., remain at 85%) in the case of beginning farmers or other farmers facing unique economic hurdles.

LEGISLATIVE OPPORTUNITY

Close exploitable loopholes in the “actively engaged in farming” standard

Commodity program payments are only supposed to be paid to persons, or legal entities, “actively engaged in farming” for the farming operation in question.³⁴⁸ However, the statute defines “actively engaged” to include those who make significant contribution of “active personal management” to the farming operation.³⁴⁹ Active personal management refers to an individual engaging in the management activities of a farming operation.³⁵⁰ However, contrary to its stated aims, the standard allows individuals who are not closely involved in farm activities to receive farm commodity payments, and thus incentivizes farms to structure their operations for the purpose of maximizing such payments.

There have been several attempts to close gaps in the “active personal management” standard; yet loopholes persist. A 2015 USDA rule partly closed the loophole for non-family farms by limiting the number of eligible farm managers to three and only allowing large farms to qualify for more than one farm manager.³⁵¹ The USDA rule also exempted family farms from the limit on eligible farm managers,³⁵² even though family farms make up approximately 97% of farms³⁵³ and can be just as large and profitable as corporate farms.³⁵⁴ In a 2018 report, the



U.S. Government Accountability Office (GAO) criticized the active personal management standard as overly broad, subjective, and difficult to enforce.³⁵⁵ The GAO report found numerous instances where the active personal management standard was abused; for example, in one farming operation, 16 of the 22 personnel working in the farming operation claimed to be part of active management, and subsequently received \$651,000 in payments.³⁵⁶

Leading up to the 2018 Farm Bill, Senator Grassley introduced a bill that, if enacted, would have limited the number of “managers” a farm could have to qualify for subsidies.³⁵⁷ While much of this proposal went into the Senate version of the farm bill, it ultimately was not included in the conference agreement.³⁵⁸ Notably, the final bill expanded the definition of “family farm” to include more individuals (first cousins, nieces, and nephews), meaning that even more individuals can claim farm payments and exploit the noted loopholes.³⁵⁹ In 2020, USDA promulgated a rule that revised the “active personal management” standard definition and required people to perform at least 500 hours of management or at least 25% of the management work required annually to merit a payment.³⁶⁰ Two months later, USDA amended the rule to exempt family farms from this limit,³⁶¹ which, as noted above, means the vast majority of farms are excluded from this restriction.

In the next farm bill, Congress should, on both family and non-family farms, limit program payments to individuals who are indeed actively engaged in farming activities. Senator Grassley’s proposal offers a workable solution for curtailing exploitation of program payments. It would restrict payments to those providing personal labor to the farming operation and just one individual whose contributions qualify them for the special designation of farm manager.³⁶² Alternatively, Congress could limit payments to those performing at least 1,000

hours of management. Congress should also impose record-keeping requirements that will allow for meaningful auditing of payments made to individuals who contribute personal management to the farm. Finally, it is critical that limitations apply to family farms as well as non-family farms, given the number of family farms and the ease of structuring a farm as a family operation in order to avoid application of the new rules.³⁶³

RECOMMENDATION

Reduce Government Subsidization of Inflated Profits Through Crop Insurance

Public dollars also flow to large, consolidated producers and private companies through the federal crop insurance program. The federal crop insurance program is a public-private partnership that delivers subsidized crop insurance options to farmers through approved insurance providers (AIPs).³⁶⁴ These AIPs work with farmers directly, selling and servicing the insurance policies.³⁶⁵ USDA’s Risk Management Agency (RMA) administers the program, establishes insurance policy terms, sets the premium rates, and regulates the AIPs.³⁶⁶ The Federal Crop Insurance Corporation (FCIC) provides program subsidies (described below) to AIPs, reinsures policies, and “shares underwriting gains and losses with AIPs.”³⁶⁷

The program, altogether, is projected to cost over \$80 billion for the ten-year period between 2021 and 2030.³⁶⁸ A large portion of this spending will go toward premium subsidies that USDA pays to AIPs to offset a portion of the participating producer’s premium cost. For most types of policies, this percentage can range from 38% to 67% of the policy’s premium depending on the coverage level provided, with an average subsidy of 60%.³⁶⁹



In addition, USDA pays AIPs separate subsidies to support their overhead costs, including an Administrative and Operating (A&O) subsidy for “offering and servicing” insurance policies (other than catastrophic coverage, which has its own subsidy).³⁷⁰ In 2019, USDA spent \$6.4 billion on premium subsidies and \$1.6 billion on A&O subsidies, amounts consistent with spending in the several years prior.³⁷¹ On the whole, AIPs have received a disproportionate share of underwriting gains and earned an above-market rate of return on their portfolios, making the private-public partnership a lucrative deal for the private companies involved.³⁷²

In 2019, over 2 million crop insurance policies were sold, insuring about 28% of the total value of production and roughly 379.9 million planted acres.³⁷³ These subsidized policies disproportionately benefits large farmers, with the largest 10% of producers receiving approximately 68% of all insurance premium subsidies.³⁷⁴ This concentration is not simply the result of larger operations insuring more production: acre by acre, operations in the top 2% of crop sales average \$50 per acre in premium subsidies, four times the average per-acre premium subsidy across all operations.³⁷⁵ The program insures more than 90% of acres for corn, soybeans, and cotton and more than 85% of planted acres for wheat.³⁷⁶ As noted earlier, corn, soybeans, cotton, and wheat make up about 75% of the enrolled acres, and 80% of the paid out claims.³⁷⁷ With subsidized premiums indemnifying farmers substantially beyond their contributions, the federal crop insurance program effectively serves as a form of income support for agricultural producers—primarily, large producers and producers of commodity crops—who can access it. This is expensive for the public and unfair to most producers, and Congress should reform the crop insurance program to focus on protecting the livelihoods of producers who need help.

Proponents justify federal crop insurance

subsidies and the public-private partnership on the basis of private market failure.³⁷⁸ Acting on its own, it is argued, the private market would fail to provide risk coverage at sufficiently affordable rates to induce widespread coverage.³⁷⁹ Without widespread coverage, Congress faces more pressure to step in and provide ad hoc disaster aid when uninsured producers experience losses. Federal crop insurance indemnifies against revenue and yield-based risk, both of which often are rarely limited to only one agricultural producer. While yield risk may reflect inter-farm variability in production methods or land attributes, it can also be driven by weather: droughts, hail, and floods occur at county, if not regional, scales.³⁸⁰ Price risk, on the other hand, is primarily systemic. Individual producers are at the mercy of the market, and price swings can particularly affect producers without the financial wealth or capacity to weather such fluctuations.³⁸¹ The possibility that many farms will simultaneously experience large losses—either through a weather-related yield loss or through a drop in prices—arguably makes insurance premiums more expensive than what many farmers are willing to pay in the absence of subsidies.³⁸²

Whether or not these arguments for maintaining a federal crop insurance program hold true, the contours of the program can influence producer behavior in ways that impact the long-term viability of both individual farms and U.S. agriculture, beyond the question



of a farm's crop yields for a given year. With a few exceptions, current crop insurance schemes do little to incentivize producers to adopt risk management strategies that would increase the resiliency of their farms, and the sector more broadly, to disasters and a changing climate. For instance, producers could shift to more resilient varieties, diversify their crop mixes, reduce production on marginal lands, and adopt other climate-friendly practices.³⁸³ Instead, studies have demonstrated that subsidizing risk has had a deleterious impact on agricultural environmental sustainability, encouraging farmers to allocate greater acreage to riskier higher-return commodity crops, reduce overall crop diversity, and plant on marginal land, affecting soil health.³⁸⁴ Furthermore, although producers must adhere to "good farming practices" to qualify for indemnity payments in the event of a loss, these guidelines focus on productive yields and not long-term resiliency or sustainability, further inhibiting farmers from adopting innovative risk mitigation strategies.³⁸⁵ The federal crop insurance program, as currently designed, thus threatens long-term resiliency by focusing narrowly on short-term, perceived risks to crop yields and primarily supporting large, commodity crop farms.

Federally subsidized crop insurance is ripe for reform that saves money and better aligns incentives with public values of fairness and long-term resilience. The current scheme reinforces market access barriers experienced by small, beginning, and mid-sized producers, and risks further entrenching large, industrial, consolidated farms in U.S. agriculture. The Recommendations that follow address specific issues identified above, including calibrating subsidies to limit the advantage the program bestows on the wealthiest farms, ensuring efficient use of public funds in the private-public partnership, and examining the current program's impact on equity in the agricultural sector. Additional Recommendations on ways the crop insurance program can better

protect the long-term viability of farms and the agricultural sector may also be found in FBLE's **Climate & Conservation Report**.

LEGISLATIVE OPPORTUNITY

Introduce tiered means testing to subsidized crop insurance.

If crop insurance is to perform like a true risk management tool, it should insulate farmers from catastrophe in bad years rather than subsidize risky behavior and further concentrate profits. However, unlike the commodity programs described above, which currently have an AGI cap of \$900,000, the federal crop insurance program has no means test for premium subsidy eligibility.³⁸⁶ As noted above, these subsidies disproportionately flow to large operations with some of the highest crop sales in the country.³⁸⁷ Thus, some of the most profitable farming enterprises have yet another leg up over small, beginning, and mid-sized producers seeking to enter and compete in agricultural markets. Premium support should primarily benefit producers who genuinely need the support to acquire appropriate risk coverage.

To achieve this, Congress should establish a tiered system that reduces premium subsidies according to AGI, as it does for commodity support programs. A modest first step toward this goal was proposed during the 2014 Farm Bill debate and gained majority support in the Senate before ultimately failing in the House.³⁸⁸ The Senate version would have reduced by 15 percentage points the crop insurance premium subsidy for producers with AGI over \$750,000.³⁸⁹ A more ambitious reform, proposed in an amendment to the House bill, would have ended premium subsidies to producers with AGI over \$250,000 while setting a total crop insurance subsidy cap at \$50,000.³⁹⁰ These bills provide a good starting point for Congress to include some version of means testing for insurance subsidies in the next farm bill.



Caps on Crop Insurance Subsidies

For most crop insurance products, the government pays a set percentage of the premiums that farmers owe on their policies. As a result, producers with higher premiums receive more total federal dollars than do producers with lower premiums. Higher premiums reflect perceived higher risks, either due to crop choice or the greater chance of drought or other natural causes of crop loss, meaning that the government subsidizes “riskier” producers more than lower risk ones. In addition, because the value of premium subsidies generally accrues to the farmers themselves as excess indemnities, the coupled premium and subsidy payments creates a perverse incentive in favor of riskier production decisions, thus promoting unsustainable production, such as planting on marginal land or choosing less resilient but higher-yielding crops.

Capping premium subsidies could help assuage this challenge and achieve cost savings. While various approaches are available, one way to do this would be to offer a fixed dollar amount per acre to spend on crop insurance.³⁹¹ A challenge to this approach is that crop insurance policy premiums are developed based on perceived risk, and current policies fail to fully apprehend the long-term risks of monoculture as compared to the benefits of more innovative, sustainable farming practices. Without shifting the way RMA and insurers evaluate risk, caps on subsidies could discourage such innovation. Subsidy reform should thus be approached holistically, with care to ensure that federal crop insurance encourages environmental sustainability and long-term risk mitigation, particularly as it relates to climate change adaptation and mitigation. Whole Farm Revenue Protection, discussed earlier in this Report and further in FBLE’s **Climate & Conservation** Report, offers greater potential for incentivizing such land stewardship.

LEGISLATIVE OPPORTUNITY

Reduce private profits to reasonable market rates

The Federal Crop Insurance Act of 1980 created the public-private partnership that delivered crop insurance through AIPs,³⁹² which led to increased enrollment in the crop insurance program.³⁹³ The financial terms and details of the partnership between FCIC and AIPs are determined in the Standard Reinsurance Agreement (SRA). The SRA is a contract that may be renegotiated between FCIC and AIPs every five years.³⁹⁴ The 2014 Farm Bill, however, required that a renegotiated SRA be budget

neutral relative to the preceding SRA, effectively fixing the financial terms of the 2011 SRA for future years.³⁹⁵ These terms set AIPs’ target rate of return at 14.5%, and the budget neutrality provision prevents FCIC from renegotiating a lower rate to achieve cost savings.³⁹⁶

Congress should heed 2017 recommendations made by the GAO to reduce the target rate of return.³⁹⁷ The 14.5% rate of return is unreasonably high relative to the risk AIPs undertake. Between 2007 and 2016, net underwriting gains for private companies amounted to about \$13.4 billion.³⁹⁸ 2012 was the only year that private companies had an



underwriting loss.³⁹⁹ Over this time period—specifically 2009 to 2015—GAO calculated that a reasonable rate of return would have been 9.6%.⁴⁰⁰ According to its analysis, reducing the target rate of return from the current 14.5% to that “average reasonable rate” of 9.6% would have saved \$364 million in 2015 alone.⁴⁰¹ Congress should remove the budget neutrality provision from the statute⁴⁰² and direct RMA—to the greatest extent feasible—to renegotiate the SRA’s target rate of return to approximate a reasonable market rate based on recent averages and to do so every five years.

LEGISLATIVE OPPORTUNITY

Direct USDA to study socially disadvantaged farmers and ranchers’ access to and utilization of crop insurance

Over a century of racial and ethnic discrimination in U.S. farm policy and across the farming sector has prevented or limited access to farm safety net programs by Black, Native American, Latinx, and Asian American farmers (groups collectively referred to as socially disadvantaged farmers and ranchers (SDFRs) in USDA programs).⁴⁰³ Discrimination has manifested in the failure to grant or offer loans on comparable terms to farmers of color, delayed disbursement of loan funds when approved, neglect of discrimination complaints, barriers to accessing conservation programs, and exclusion from major ad hoc farm relief programs.⁴⁰⁴ Generations of such discriminatory administration of farm support programs means that today, the largest producers are

primarily white and thus benefit the most from federal premium subsidies offered through crop insurance,⁴⁰⁵ further widening the gap between white farmers and SDFRs. The 2023 Farm Bill provides an opportunity to make the crop insurance program more equitable. Equity in the crop insurance program has proved tough to tackle due to the private-public system and lack of public data to enable evaluation. USDA currently does not publish demographic information concerning crop insurance utilization,⁴⁰⁶ thus limiting information on the actual use of the crop insurance program by Black, Native American, Latinx, and Asian American farmers. Congress should direct USDA’s Economic Research Service (ERS) and RMA to study access to and use of the federal crop insurance program by Black, Native American, Latinx, and Asian American farmers. This endeavor should include examination of crop insurance coverage by region and regional variations in claims coverage. Currently, crop insurance coverage is higher in the Midwest than the South,⁴⁰⁷ though Southern and Western states generally have higher concentrations of Black, Native American, Latinx, and Asian American farmers.⁴⁰⁸ A USDA report that reflects the findings of this study could then inform the Department’s strategy to address program equity and identify opportunities to improve the crop insurance program’s policies and administration. Congress should direct USDA to devise such a strategy upon completion of the ERS and RMA collaborative research and make the report publicly available.





Strengthen Antitrust Enforcement Authority to Address Consolidation in the Agricultural Industry

Background

In recent decades, consolidation has transformed agriculture in the United States. Crop and livestock production is shifting rapidly to larger, more specialized operations.⁴⁰⁹ Large producers, processors, suppliers, retailers, dealers, and brokers dominate the agriculture sector.⁴¹⁰ The trend towards larger operations reflects the financial advantages that accompany scale.⁴¹¹ Technological innovations, including machinery, equipment, herbicides, genetically engineered seeds, field management practices, and animal confinement and feeding techniques, have allowed producers to manage more land, livestock, and poultry with less labor.⁴¹² Several factors have contributed to, and exacerbated this shift. For several decades, federal policy has encouraged production operations to specialize, expand, and consolidate.⁴¹³

Additionally, corporate consolidation among the companies supplying the inputs and processing infrastructure and/or buying the product has exerted pressure on farming operations to likewise consolidate. For instance, four companies control 45% of the market for farm machinery,⁴¹⁴ and two firms control 70% of corn and 60% of soybean seed sales in the United States.⁴¹⁵ As power concentrates among just a few firms, larger farming operations are

better positioned than smaller farms to stay in business.

Consolidation has been particularly pronounced among meatpackers, processors, and slaughterhouses. Packers and processors have gained a substantially concentrated market share through vertical integration, that is, by purchasing or closely coordinating with livestock producers and poultry growers, controlling every step of the production process, which includes processing, storage, packing, and distribution.⁴¹⁶ Ranchers and poultry growers then are only stewards responsible for monitoring feeding, controlling animal reproduction, and preventing or containing disease, rather than sharing in the profit.⁴¹⁷ In 2015, the four-firm concentration ratios—the share of a market controlled by that market’s four largest firms—for beef, hog, and broiler slaughter were 85%, 66%, and 51%, respectively.⁴¹⁸ Livestock producers and poultry growers have, in turn, consolidated, likely owing to the demands from large integrators—the firms that contract with producers to produce an agricultural commodity, such as raise chickens or livestock⁴¹⁹—that necessitate scale for an operation to be profitable.⁴²⁰

Producers in many areas of the country find themselves subject to local and regional monopsonies that deploy buying power to extract unfair contracts and sales. Monopsony



power describes the ability of buyers in highly concentrated markets to pay a lower price for products than they would in fully competitive markets.⁴²¹ For example, in 2011, 54.7% of poultry growers had two or fewer poultry integrators in their area.⁴²² Price fixing has become a cause for concern among both consumers and growers and has recently drawn increased scrutiny. Several firms settled civil claims in 2021 (valued at over \$180 million) filed on behalf of consumers for fixing the prices of poultry over the preceding decade.⁴²³ Poultry growers have likewise sued these firms for fixing, and suppressing, the compensation rates paid to growers, culminating in large multi-district litigation and multimillion dollar settlements with some firms as well.⁴²⁴

Historically, Congress and federal policymakers have primarily addressed industry consolidation through antitrust statutes. These laws were designed to preserve industry competition by prohibiting certain types of mergers and acquisitions as well as other industry practices that interfere with market forces. The Clayton Act—which is enforced by both the Department of Justice (DOJ) and the Federal Trade Commission (FTC)—prohibits mergers and acquisitions in circumstances that tend to create a monopoly as well as other discriminatory practices.⁴²⁵ The Clayton Act applies broadly to business transactions including within the agriculture industry.⁴²⁶ The Clayton Act built upon earlier statutes—the Sherman Act (1890) and the Federal Trade Commission Act (1914), which, among other



things, established the FTC⁴²⁷—by expanding the range of prohibited practices and the tools available for enforcing the laws.

In addition to these general laws, the Packers and Stockyards Act (PSA) directly governs competition in the marketing of livestock, meat and poultry.⁴²⁸ The PSA gives USDA authority to regulate meat packers and those engaged in livestock marketing activities at large public stockyards, hear complaints, and issue reparation orders when stockyard owners, market agencies, or dealers violate any of the PSA's provisions.⁴²⁹ The PSA also provides the FTC some limited jurisdiction over transactions in poultry products and margarine, and over retail sales in other meat and meat products.⁴³⁰ The PSA applies to all auction markets operating in commerce, livestock activities of market agencies and dealers, live poultry dealers, wholesale brokers, dealers and distributors who market meat in commerce, and swine contractors.⁴³¹

Despite the PSA's stated goals, limits in the statutory framework, as well as a lack of enforcement, have allowed consolidation in the agriculture sector to dramatically spike in recent decades. However, there is a growing political willingness to shift the current paradigm around antitrust and competition in the agriculture industry.⁴³² In July 2021, the Biden Administration published an Executive Order on Promoting Competition in the American Economy to address consolidation generally.⁴³³ Among other initiatives, the Executive Order directed USDA to strengthen enforcement of the PSA to protect producers from anti-competitive practices.⁴³⁴ In response, USDA has since launched, in partnership with DOJ, a centralized portal for reporting of potential violations of competition laws under the Sherman and the Clayton Act, as well as the PSA.⁴³⁵ The Department has also committed to shifting its enforcement

policy and promulgating new rules under the PSA in line with the Executive Order's objectives.⁴³⁶ As promoting fair competition in U.S. agricultural markets is a bipartisan concern, Congress should build on this momentum and strengthen antitrust authority to prevent further consolidation and concentrated market power.

RECOMMENDATION



Provide for Full Enforcement of the Packers and Stockyards Act

The USDA Agriculture Marketing Service (AMS) Packers and Stockyards Division (PSD) monitors industry activities, conducts investigations and regulatory reviews.⁴³⁷ Subsection 202(a) of the PSA forbids packers, swine contractors, and live poultry dealers from engaging in any “unfair, unjustly discriminatory, or deceptive practice or device.”⁴³⁸ Subsection 202(b) prohibits the same groups from giving any person or locality “any undue or unreasonable preference or advantage” and from subjecting any person “to any undue or unreasonable disadvantage.”⁴³⁹ Violations of Sections 202(a) and (b) make packers, swine contractors, and live poultry dealers liable to injured livestock producers and poultry growers for damages.⁴⁴⁰ Livestock producers and poultry growers may bring Section 202 lawsuits against packers, swine contractors, and live poultry dealers in federal district court,⁴⁴¹ or file complaints with USDA.⁴⁴² Penalties for violations of the PSA include cease and desist orders; suspension of business operations; civil penalties; and permanent injunctions, fines, or jail sentences for justice actions.

However, over the years, USDA's enforcement of the PSA has been notably weak. USDA and Congress should take steps to strengthen the enforcement of Sections 202(a) and (b) of



the PSA, preventing the unfair practices and unreasonable preferences that harm producers, growers, and consumers.

LEGISLATIVE OPPORTUNITY

Clarify that livestock producers and poultry growers who bring actions under Sections 202(a) and (b) of the PSA do not need to show competitive injury to prevail on their claims

The PSA is a dual-purpose statute. First, Sections 202(a) and (b) provide producers and growers recourse against packers, swine contractors, and poultry growers who engage in unfair, discriminatory, and deceptive practices or who give undue or unreasonable preferences.⁴⁴³ Second, Sections 202(c) through (g) resemble the Sherman Act and the Clayton Act, addressing market-wide antitrust issues that include monopoly, price fixing, and anti-competitive practices.⁴⁴⁴ Thus, Congress intended the PSA to protect producers from

misconduct and to protect livestock and poultry markets from monopoly and manipulation. Although there is no statutory requirement to show competitive injury, many courts have applied antitrust-like standards to Sections 202(a) and (b), requiring producers to demonstrate competitive harm when bringing a PSA-based lawsuit. That is, courts not only require growers and producers to demonstrate that practices alleged to violate Sections 202(a) and (b) are unfair, discriminatory, or unreasonable, but also require growers and producers to demonstrate that the practices either adversely affect competition or are likely to lead to competitive injury.⁴⁴⁵ The Grain, Inspection, Packers and Stockyards Administration (GIPSA)—the predecessor to the PSD at AMS, discussed further below—described this judicial narrowing as contrary to USDA’s “longstanding interpretation” and “inconsistent with the plain language of the statute.”⁴⁴⁶ Members of Congress have also proposed legislation to clarify the standard in line with USDA’s interpretation and overturn the court-imposed competitive injury standard.⁴⁴⁷

In 2016, USDA responded to the courts by promulgating an interim final rule that removed any need to show competitive harm in Sections 202(a) and (b) claims.⁴⁴⁸ USDA, however, withdrew the rule after the Trump Administration took office, citing concerns that the standard was inconsistent with several court decisions and that courts would be unlikely to defer to GIPSA’s proposed interpretation.⁴⁴⁹ Under the Biden Administration, USDA published an enforcement policy in the form of “frequently asked questions” clarifying that the violation of the PSA does not require a show of harm to competition.⁴⁵⁰

Congress should endorse this interpretation to ensure that it withstands judicial challenge. Although courts *should* defer to USDA’s interpretation of the statute—and especially once that interpretation is codified in agency



rulemaking—clear statutory language will foreclose further risk of judicial overreach and misapplication of the law. Building on past proposals, Congress should resolve the issue by articulating in the Farm Bill that Section 202(a) and Section 202(b) suits do not require a claimant to allege competitive injury. Doing so would clarify livestock producers and poultry growers’ ability to bring claims against the full range of conduct that Congress initially intended the PSA to forbid.

ADMINISTRATIVE OPPORTUNITY

Withdraw USDA’s December 2020 final rule establishing criteria for identifying undue and unreasonable preferences and advantages under Section 202(b) of the PSA and initiate a new rulemaking

The 2008 Farm Bill directed USDA to establish criteria to determine whether an undue or unreasonable preference or advantage has occurred in violation of Section 202(b) of the PSA.⁴⁵¹ On December 11, 2020, USDA AMS published a final rule that established four criteria.⁴⁵² These criteria include whether the preference or advantage in question (a) cannot be justified on the basis of a cost savings related to dealing with different producers, sellers, or growers, (b) cannot be justified on the basis of meeting a competitor’s prices; (c) cannot be justified on the basis of meeting other terms offered by a competitor, and (d) cannot be justified as a reasonable business decision.⁴⁵³ The 2020 rule undermined Section 202(b) because it failed to establish “affirmative criteria” to identify violations of Section 202(b), instead establishing safe harbors—framed as subjective and fairly broad justifications—that shield packers, swine contractors, and live poultry dealers from enforcement, directly contradicting the PSA’s broad purpose to promote fair practices and competitive markets. Since the Biden Administration assumed office, USDA has announced its intention to strengthen enforcement of unfair and deceptive

practices, undue preferences, and unjust prejudices through rulemaking. USDA has since published an enforcement policy in the form of “frequently asked questions” to clarify the application of the December 2020 final rule.⁴⁵⁴ Despite plans to revisit the rule, USDA has indicated it will continue to enforce the final 2020 rule, despite its questionable ability to further USDA’s stated objectives. USDA should initiate a new rulemaking to develop criteria that facilitate enforcement of Section 202(b).

ADMINISTRATIVE OPPORTUNITY

Return enforcement of the PSA to a standalone agency within the USDA under the Secretary of Agriculture’s supervision.

From 1994 to 2017, GIPSA was the USDA agency responsible for administering the provisions of the PSA. However, in a move purportedly initiated to improve efficiencies, increase USDA’s focus on customers, and improve coordination, USDA downgraded these activities by dissolving GIPSA and delegating these authorities to AMS,⁴⁵⁵ where they now rest with the PSD.

This move was counterproductive for several reasons. First, AMS is structured to treat agriculture as its client and not as a regulated industry. AMS programs aim to create marketing opportunities for agriculture,⁴⁵⁶ a mission that conflicts with its responsibility to enforce the PSA. Further, the decision to bury enforcement within its organizational structure contradicts decades of evidence—including GAO and Office of Inspector General (OIG) reports—indicating that USDA’s leadership needs to devote more attention to enforcing the PSA, not less.⁴⁵⁷

USDA should return PSA enforcement to a standalone agency within USDA, resolving AMS’s conflict of interest and permitting the Secretary of Agriculture to conduct the oversight required to ensure that the PSA’s



provisions are fully enforced. In addition, USDA should provide greater administrative resources to this agency for more effectively investigating violations and overseeing administration of the PSA.

LEGISLATIVE OPPORTUNITY

Authorize USDA to enforce Sections 202(a) and (b) with respect to live poultry dealers

Sections 202(a) and (b) apply to live poultry dealers with the same force that they apply to packers and swine contractors.⁴⁵⁸ However, the PSA does not permit USDA to conduct administrative proceedings, issue injunctions, or assess civil penalties when live poultry dealers violate Sections 202(a) and (b), unlike violations by packers and swine contractors.⁴⁵⁹ Instead, USDA's power to enforce Sections 202(a) and (b) against live poultry dealers is limited to referring violations to the Attorney General for prosecution.⁴⁶⁰

USDA's authority to enforce Sections 202(a) and (b) with respect to packers, swine contractors, and live poultry dealers should be consistent. Congress should authorize USDA to take the same actions—that is, hear complaints, and issue reparation orders⁴⁶¹—when live poultry dealers violate Sections 202(a) and (b) that USDA is already authorized to in the case of packers and swine contractors. Enacting the Meat and Poultry Special Investigator Act, discussed below, would effectively meet this objective.⁴⁶²

LEGISLATIVE OPPORTUNITY

Establish a Special Investigator's Office in the USDA to investigate practices that violate the Packers and Stockyards Act

In 2010, the DOJ embarked on a series of “listening tours” and workshops regarding corporate consolidation in the agriculture sector.⁴⁶³ Despite substantial public interest, the

DOJ ultimately did not announce any changes regarding enforcement.⁴⁶⁴ While increased DOJ attention may still be useful, Congress should establish and provide funding for a special investigator to look into PSA infractions, as well as provide greater scrutiny of competition and consolidation in the agricultural sector.⁴⁶⁵ In addition to securing resources to examine anti-competitive behavior, a separate office within USDA would provide a critical space devoted to the enforcement of antitrust laws in the industry.⁴⁶⁶ The proposed Meat and Poultry Special Investigator Act—pending in the House and Senate—would establish this Special Investigator's Office at USDA to address anticompetitive practices.⁴⁶⁷ The bill currently has bipartisan support and should be enacted in the 2023 Farm Bill.⁴⁶⁸

RECOMMENDATION

Strengthen Antitrust Enforcement Under the Clayton Act to Prevent Further Anticompetitive Mergers and Acquisitions

Concentration in agriculture has spiked in recent decades. Between 2000 and 2015, the four-firm concentration ratio (CR4) for corn seed rose from 60% to 85%.⁴⁶⁹ During the same period, the CR4 for soybeans rose from 51% to 76%.⁴⁷⁰ In 2015, the CR4 for beef slaughter was 85%,⁴⁷¹ up from 39% in 1985.⁴⁷² In the same year, the four largest hog and broiler processing companies slaughtered 66% of hogs and 51% of broilers.⁴⁷³ Similar figures are seen in field crop processing. In 2007, the CR4 for cane sugar processing, wet corn milling, and soybean processing were 95%, 84%, and 82%, respectively.⁴⁷⁴ Heavy concentration negatively impacts small and mid-sized farms by reducing the possible number of purchasers of their goods, leaving them vulnerable to exploitation.⁴⁷⁵



As noted above, the Clayton Act prohibits mergers and acquisitions that significantly lessen competition or create a monopoly.⁴⁷⁶ While both the DOJ and FTC have authority to review mergers to prevent such concentration, DOJ's Antitrust Division typically reviews mergers in the agricultural sector.⁴⁷⁷ The two agencies—DOJ's Antitrust Division and the FTC—use the jointly-developed Horizontal Merger Guidelines to analyze potential mergers for anticompetitive effect.⁴⁷⁸ Despite these safeguards, mergers leading to greater concentrations of power in the agricultural sector have continued to occur, often to the detriment of producers, workers, and other stakeholders interested in a diverse agricultural landscape.⁴⁷⁹ Further, the statute does not expressly prohibit mergers that tend to create a monopsony, in which a firm is the sole buyer in a market.⁴⁸⁰ Monopsony power has made it difficult or impossible for producers to collect fair compensation for crops and livestock.⁴⁸¹ Although the DOJ has indicated that existing antitrust laws also apply to and target monopsony power,⁴⁸² robust enforcement has not occurred.⁴⁸³

Courts have also played a harmful role in shaping the contours of antitrust law. Since the late 1970s, courts have come to view the Clayton and Sherman Acts as tools to safeguard “consumer welfare,” only, rather than as tools for preserving competition generally.⁴⁸⁴ This focus on consumers—particularly consumer prices—has informed antitrust enforcement and understanding since then.⁴⁸⁵ Yet, consolidation can lead to myriad economic and social harms beyond price increases for consumer goods, such as further consolidation among suppliers that decrease diversity in available choices, increasing food system and supply chain fragility,⁴⁸⁶ and wage depression and poorer working conditions for workers.⁴⁸⁷

Complicating enforcement further, courts have heightened the government's burden in

proving anticompetitive behavior to challenge a proposed merger. Currently, courts presume that when the government (i.e., DOJ) challenges a horizontal merger under the antitrust laws and shows that the challenged merger would lead to a firm controlling an excessive share of the market, the circumstances would lessen competition in violation of the Clayton Act.⁴⁸⁸ However, a firm whose merger is challenged may rebut the presumption in court if it shows that the government's statistics are not accurate regarding the merger's effect on the relevant market.⁴⁸⁹ Over time, courts adjudicating antitrust disputes have increasingly applied a presumption that where the government easily establishes a case against a firm, then the burden imposed on the merging firm to rebut that presumption should also be light.⁴⁹⁰ The burden then shifts back to the government to produce additional evidence of anticompetitive effects.⁴⁹¹ This presumption defies logic; if the government can easily present a strong case, it counsels against easing the defendant's burden and encumbering the government even further. In such cases, the burden should rest on the already powerful entities that propose mergers, acquisitions, and other transactions. These judicial barriers and the apparent inefficacy of existing laws have kept the DOJ and FTC from curbing industry concentration.

LEGISLATIVE OPPORTUNITY

Amend the Clayton Act to restore its intended scope and overcome barriers to enforcement

Congressional action is necessary to make antitrust law an effective tool for combatting consolidation and concentration. Judicial responses to federal antitrust laws have narrowed the scope of the laws' application and made robust antitrust enforcement more challenging. Moreover, the statutes have proved ill-equipped to prevent the extreme levels of concentration observed in the agricultural industry today.



One pending bill, the Prohibiting Anticompetitive Mergers Act, proposes to fill these gaps by prohibiting mergers of a certain value or market share (over 33% for sellers) outright, giving agencies more authority to reject mergers, directing agencies to examine the labor and workforce impacts of proposed mergers, naming monopsony as an enforcement target, and establishing a process for retrospective review of past mergers, among

other changes.⁴⁹² Although amendments to the Clayton Act fall outside of the Senate and House Agriculture Committees' jurisdiction—the bill has been referred to the Committee on the Judiciary in each Chamber—antitrust reform is of critical importance to the agriculture industry and deserves serious attention as the next farm bill is taken up.

Modernizing Federal Merger Guidelines

Some of the concerns highlighted above—particularly, the scope of harms that antitrust law enforcement agencies aim to prevent—may also be addressed through changes to the DOJ and FTC merger guidelines. In January 2022, the DOJ and FTC sought public input for modernizing the federal horizontal merger guidelines to prevent anticompetitive mergers “in today’s modern markets.”⁴⁹³ Areas of inquiry included the purpose and scope of merger review, presumptions that certain transactions are anticompetitive, threats to potential and nascent competition, and the impact of monopsony power, including in labor markets, among other concerns.⁴⁹⁴ In response, advocates and stakeholders in the agricultural sector encouraged the agencies to take seriously the impact of regional monopsony power on producers, drawing parallels between the negative effects market concentration has on producers and on workers and labor markets.⁴⁹⁵ They also called for the agencies to reaffirm the purpose of the Clayton Act’s prohibitions—against mergers that may lessen competition, without requiring a higher degree of certainty—and realign their guidance and enforcement strategies accordingly.⁴⁹⁶ Those advocating for stronger antitrust enforcement more broadly emphasized the need for bright line rules and consideration of “the effects of a proposed merger on the resiliency and stability of industrial and financial systems, labor markets, supplier markets, data markets, and the privacy of individuals, while radically reducing the focus on pricing.”⁴⁹⁷ The DOJ and FTC should heed this counsel and revamp the horizontal merger guidelines in order to meaningfully protect against further concentration in the agricultural sector. The agencies should also revisit the vertical merger guidelines to ensure those guidelines similarly address the broad range of challenges identified by stakeholders.



Conclusion

The COVID-19 pandemic highlighted the importance of maintaining a robust and diversified agricultural sector. By directing farm bill support to small and mid-sized producers—particularly our nation’s beginning farmers and Black, Native American, Latinx, and Asian American farmers—and investing in local and regional food systems, Congress can enhance the economic vitality of rural communities, strengthen the resilience of the U.S. food system, and promote the availability of fresh,

local and regional food. Achieving this vision will also require meaningful reforms to farm bill programs that currently tip the scales in favor of large, consolidated operations, as well as new and improved tools for combatting concentration in the sector. As we turn to the 2023 Farm Bill, Congress and USDA should take up the Recommendations in this Report to promote the viability of our small and mid-sized farms across the United States.



Endnotes

- ¹ Anne Schechinger, *Farm Subsidies Ballooned Under Trump – President Biden Should Not Make the Same Mistakes*, ENV'T WORKING GRP. (Feb. 24, 2021), <https://www.ewg.org/interactive-maps/2021-farm-subsidies-ballooned-under-trump/> [<https://perma.cc/A4BE-WPMX>].
- ² U.S. DEP'T OF AGRIC. NAT'L COMM'N ON SMALL FARMS, *A TIME TO ACT 20–21* (1998).
- ³ Gerard D'Souza & John Ikerd, *Small Farms and Sustainable Development: Is Small More Sustainable?*, 28 J. OF AGRIC. & APPLIED ECON. 73, 82 (1996); Gilbert F. Hounbo, *Why small farms are key to the future of food – and how we can support them*, IFAD (Nov. 23, 2020), <https://www.ifad.org/en/web/latest/-/blog/why-small-farms-are-key-to-the-future-of-food-and-how-we-can-support-them> [<https://perma.cc/Q3G6-KNM4>].
- ⁴ P. A. Matson et al., *Agricultural Intensification and Ecosystem Properties*, 277 SCIENCE 504, 506–07 (1997); Brenda Lin, *Resilience in Agriculture through Crop Diversification: Adaptive Management for Environmental Change*, 61 BIOSCIENCE 183, 184–88 (2011); Olivier De Schutter, Rep. Submitted By The Special Rapporteur On The Right To Food, U.N. Human Rights Council, U.N. Doc A/HRC/16/49 at 1, 6 (2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/178/49/PDF/G1017849.pdf?OpenElement>.
- ⁵ See UNION OF CONCERNED SCIENTISTS, *GROWING ECONOMIES: CONNECTING LOCAL FARMERS AND LARGE-SCALE FOOD BUYERS TO CREATE JOBS AND REVITALIZE AMERICA'S HEARTLAND 1–2* (2016), <https://www.ucsusa.org/sites/default/files/attach/2016/01/ucs-growing-economies-2016.pdf> [<https://perma.cc/3JTK-TJRM>] (citing LINDA LOBAO, *LOCALITY AND INEQUALITY: FARM AND INDUSTRY STRUCTURE AND SOCIOECONOMIC CONDITION* (1990)); Thomas A. Lyson et al., *Scale of Agricultural Production, Civic Engagement, and Community Welfare*, 80 SOC. FORCES 311 (2010).
- ⁶ JAMES M. MACDONALD ET AL., *ECON. RSCH. SERV., EIB-189, THREE DECADES OF CONSOLIDATION IN U.S. AGRICULTURE 32–39* (2018), <https://www.ers.usda.gov/webdocs/publications/88057/eib-189.pdf> [<https://perma.cc/39PY-K79G>].
- ⁷ *Id.* at 21.
- ⁸ *Id.*
- ⁹ *Id.*; NAT'L AGRIC. STAT. SERV., 2017 CENSUS VOLUME 1, CHAPTER 1: U.S. NATIONAL LEVEL DATA, TABLE 3 (2017), https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/st99_1_0003_0003.pdf [<https://perma.cc/R4KU-Q4TH>].
- ¹⁰ See RAFTER FERGUSON, UNION OF CONCERNED SCIENTISTS, *LOSING GROUND: FARMLAND CONSOLIDATION AND THREATS TO NEW AND BLACK FARMERS AND THE FUTURE OF FARMING* (2021), <https://www.ucsusa.org/sites/default/files/2021-04/losing-ground-final-4-15-21.pdf> [<https://perma.cc/9K5Z-LTQA>].
- ¹¹ *Id.*
- ¹² *Farm Structure and Contracting*, U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization/farm-structure-and-contracting/> [<https://perma.cc/G9GZ-XDBB>]; U.S. DEP'T OF AGRIC., *AMERICA'S DIVERSE FAMILY FARMS 3* (2021), <https://www.ers.usda.gov/webdocs/publications/102808/eib-231.pdf?v=944> [<https://perma.cc/5QRY-BVJ8>].
- ¹³ CAROLYN DIMITRI, ANNE EFFLAND, & NEILSON CONKLIN, *ECON. RSCH. SERV., THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY 5* (2005), <http://ageconsearch.umn.edu/bitstream/59390/2/eib3.pdf>.
- ¹⁴ *ECON. RSCH. SERV., MAJOR USES OF LAND IN THE UNITED STATES 24* (2012), <https://www.ers.usda.gov/webdocs/publications/84880/eib-178.pdf?v=376.8> [<https://perma.cc/3UDU-3WZF>].
- ¹⁵ See, e.g., Anne Schechinger, *supra* note 1.
- ¹⁶ *About the Packers and Stockyards Act*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act> (last visited Sept. 15, 2021) [<https://perma.cc/T4LM-CGK9>].
- ¹⁷ *Antitrust laws*, FED. TRADE COMM'N, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Sept. 15, 2021) [<https://perma.cc/AK65-5QJ7>].
- ¹⁸ LYDIA OBERHOLTZER, CAROLYN DIMITRI, & ANDY PRESSMAN, *URBAN AGRICULTURE IN THE UNITED STATES: BASELINE FINDINGS OF A NATIONWIDE SURVEY* (2017), <https://attra.ncat.org/wp-content/uploads/2019/05/urbanagriculture.pdf> [<https://perma.cc/93HQ-QZQC>].
- ¹⁹ *Urban Agriculture*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/topics/urban>. [<https://perma.cc/7Z7E-YJWN>].
- ²⁰ See *National Organic Program*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/about-ams/programs-offices/national-organic-program> [<https://perma.cc/48PV-ZVQC>]; 7 U.S.C. § 6504 (establishing national standards for organic production); 7 C.F.R. §§ 205.600 – 205.606 (The National List of Allowed and Prohibited Substances).
- ²¹ See *USDA Accepting Applications to Help Cover Costs of Organic, Transitioning Producers*, FARM SERV. AGENCY (May 16, 2022), <https://www.fsa.usda.gov/news-room/news-releases/2022/usda-accepting-applications-to-help-cover-costs-of-organic-transitioning-producers> [<https://perma.cc/95UC-UWKU>].
- ²² Jessica Manly, *New Census Reveals Threat to the Future of Agriculture as Average Age of Farmers Continues to Rise*, NAT'L YOUNG FARMERS COAL. (Apr. 11, 2019), <https://www.youngfarmers.org/2019/04/census2017> [<https://perma.cc/RB3X-STUZ>].
- ²³ RENÉE JOHNSON, *CONG. RSCH. SERV., 2018 FARM BILL PRIMER: BEGINNING FARMERS AND RANCHERS 1* (2019), <https://crsreports.congress.gov/product/pdf/IF/IF11227>.
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *19 Million Available to Support Beginning Farmers and Ranchers In 2022*, NAT'L SUSTAINABLE AGRIC. COAL. (Mar. 28, 2022), <https://sustainableagriculture.net/blog/19-million-available-to-support-beginning-farmers-and-ranchers-in-2022/#:~:text=%2419%20Million%20Available%20to%20Support%20Beginning%20Farmers%20and%20Ranchers%20in%202022,-March%2028%2C%202022&text=Being%20new%20to%20farming%20can,income%20than%20more%20established%20farmers> [<https://perma.cc/8NBB-XRDR>]; 7 U.S.C. § 2279.



27 Tanya Brown, *Access to Land, Capital Biggest Obstacle for Beginning Farmers*, U.S. DEP'T OF AGRIC. (Feb. 21, 2017), <https://www.usda.gov/media/blog/2013/01/31/access-land-capital-biggest-obstacle-beginning-farmers> [https://perma.cc/JDW7-VCH3] (highlighting some of the greatest challenges facing new and beginning farmers including access to land and capital).

28 LINDSEY LUSHER SHUTE ET AL., NAT'L YOUNG FARMERS COAL, *BUILDING A FUTURE WITH FARMERS 25* (2011), https://www.youngfarmers.org/reports/Building_A_Future_With_Farmers.pdf [https://perma.cc/7SAG-766S]. (A survey of young farmers found that “more than three-quarters of farmers who took the survey did not come from farming backgrounds.”)

29 *Beginning Farmers and Ranchers at a Glance*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/media/blog/2013/01/30/beginning-farmers-and-ranchers-glance> [https://perma.cc/PKJ6-GBNW].

30 FARM FOUND., *THE NEW GENERATION OF FARMERS AND RANCHERS INFUSING U.S. AGRICULTURE 3* (2019), <https://d2fxn1d7fsdeeo.cloudfront.net/farmfoundation.com/wp-content/uploads/2020/02/03162655/FINAL-Beginning-Farmer-Issue-Report-Nov-2019.pdf> [https://perma.cc/JG8G-KV8L].

31 NIGEL KEY & GREG LYONS, U.S. DEP'T OF AGRIC., *AN OVERVIEW OF BEGINNING FARMERS AND RANCHERS 2*, <https://www.ers.usda.gov/webdocs/publications/95010/eb-29.pdf?v=8829.1> [https://perma.cc/CE85-LQ6V].

32 *Id.* at 13.

33 NAT'L AGRIC. STAT. SERV., *FARMS AND LAND IN FARMS 2019 SUMMARY 4, 5*, (2020) https://www.nass.usda.gov/Publications/Todays_Reports/reports/fnlo0220.pdf [https://perma.cc/FA3U-AUQC].

34 NAT'L AGRIC. STAT. SERV., *2017 CENSUS OF AGRICULTURE, BLACK PRODUCERS 2*, https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Black_Producers.pdf [https://perma.cc/7A2A-AMRZ].

35 NAT'L AGRIC. STAT. SERV., *2017 CENSUS OF AGRICULTURE, HISPANIC PRODUCERS 2*, https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Hispanic_Producers.pdf [https://perma.cc/USJ4-X8BU]; NAT'L AGRIC. STAT. SERV., *2017 CENSUS OF AGRICULTURE, ASIAN PRODUCERS 2*, https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Asian_Producers.pdf. [https://perma.cc/GGN5-MCXM].

36 NAT'L AGRIC. STAT. SERV., *2017 CENSUS OF AGRICULTURE, AMERICAN INDIAN/ALASKA NATIVES 2*, https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_AmericanIndianAlaskaNative_Producers.pdf [https://perma.cc/TZY2-NBK4].

37 Nathan Rosenberg & Bryce W. Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, THE COUNTER (June 26, 2019, 7:00 AM), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/> [https://perma.cc/6QKN-Y3KZ]; *Native American Agriculture Fund Is Helping Empower Farmers*, FOOD TANK (Jan. 2020), <https://foodtank.com/news/2020/01/native-american-agriculture-fund-is-helping-empower-farmers/> [https://perma.cc/4EZ9-PVDA].

38 See Nathan Rosenberg & Bryce W. Stucki, *supra* note 37.

39 *USDA Publishes Federal Register Notice for Public Input on Racial Justice and Equity*, U.S. DEP'T AGRIC. (Jun. 16, 2021), <https://www.usda.gov/media/press-releases/2021/06/16/usda-publishes-federal-register-notice-public-input-racial-justice> [https://perma.cc/4P9Q-XG25]; *Advancing Equity at USDA*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/equity-commission> (Last visited May 23, 2022) [https://perma.cc/WAY8-9JFF].

40 AGRIC. MKTG. SERV., *FARMERS MARKET PROMOTION PROGRAM 2016 REPORT 4* (2017), <https://www.ams.usda.gov/sites/default/files/media/FMPP2016Report.pdf> [https://perma.cc/FE7G-N7NM].

41 Although there is no consensus on the definition of “local” or “local food systems” in a geographic sense, it is generally defined in terms of the marketing arrangements, such as regional food hubs or farmers markets. STEVE MARTINEZ ET AL, *ECON. RSCH. SERV., ERR 97, LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES 3* (2010), https://www.ers.usda.gov/webdocs/publications/46393/7054_err97_1_.pdf?v=0 [https://perma.cc/5C5K-YPLA].

42 See AGRIC. MKTG. SERV., *supra* note 40. There are over 8,700 farmers markets registered in the USDA Farmers Market Directory, a four-fold increase since 1994; *What is a Farmers Market?*, FARMERS MARKET COAL., <https://farmersmarketcoalition.org/education/qanda/> [https://perma.cc/QTQ3-QTYK].

43 See generally, FED. RESERVE BANK OF ST. LOUIS, *HARVESTING OPPORTUNITY: THE POWER OF REGIONAL FOOD SYSTEM INVESTMENTS TO TRANSFORM COMMUNITIES* (2017), <https://www.stlouisfed.org/community-development/publications/harvesting-opportunity>. [https://perma.cc/2FC4-MMQR].

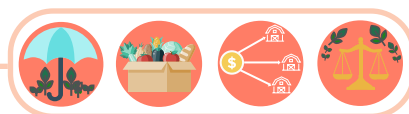
44 The effects can be startling. One economic analysis concluded that converting enough corn and soybean acreage to meet local fruit and vegetable demand in six Midwestern states would create over 6,700 jobs, add nearly a billion dollars to gross output, and generate \$1.71 in local economic activity for each dollar spent. JEFFREY K. O'HARA, UNION OF CONCERNED SCIENTISTS, *MARKET FORCES: CREATING JOBS THROUGH PUBLIC INVESTMENT IN LOCAL AND REGIONAL FOOD SYSTEMS 20* (2011), <http://sustainableagriculture.net/wp-content/uploads/2011/08/market-forces-report.pdf> [https://perma.cc/4L3V-E5SV]; See also DAVID SWENSON, LEOPOLD CTR. FOR SUSTAINABLE AGRIC., *SELECTED MEASURES OF THE ECONOMIC VALUES OF INCREASED FRUIT AND VEGETABLE PRODUCTION AND CONSUMPTION IN THE UPPER MIDWEST* (2010), <https://www.leopold.iastate.edu/files/pubs-and-papers/2010-03-selected-measures-economic-values-increased-fruit-and-vegetable-production-and-consumption-upper-mid.pdf> [https://perma.cc/V2XU-WKV8].

45 UNION OF CONCERNED SCIENTISTS, *GROWING ECONOMIES: CONNECTING LOCAL FARMERS AND LARGE-SCALE FOOD BUYERS TO CREATE JOBS AND REVITALIZE AMERICA'S HEARTLAND 2* (2016), <https://www.ucusa.org/sites/default/files/attach/2016/01/ucs-growing-economies-2016.pdf> [https://perma.cc/GY55-S9UD].

46 *Specialty Crops – An Overview*, NAT'L AGRIC. LAW CTR., <https://nationalaglawcenter.org/overview/specialty-crops/> [https://perma.cc/FC6E-SE76].

47 *Id.*

48 Lauren Chenarides et al., *COVID-19 and Food Supply Chains*, 43 *APPLIED ECON. PERSPS AND POL.* 270, 270 (2021), <https://asu.pure.elsevier.com/en/publications/covid-19-and-food-supply-chains>.



49 Michelle Nowlin et al., *(Meat Local®: Market and Distribution Challenges in the Local Meat System*, 25 DUKE ENVTL. LAW & POL'Y FORUM 339 358-62 (2015); see Tom Polansek, *Iowa to Give Aid to Farmers Who Euthanize Hogs During Pandemic*, REUTERS (May 26, 2020), <https://www.reuters.com/article/health-coronavirus-usa-meatpacking/iowa-to-give-aid-to-farmers-who-euthanize-hogs-during-pandemic-idUSL1N2D82T4> [https://perma.cc/9KXS-GAAF].

50 David Yaffey Bellany & Michael Corkey, *Dumped Milk, Smashed Eggs, Plowed Vegetables: Food Waste of the Pandemic*, NY TIMES (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/business/coronavirus-destroying-food.html> [https://perma.cc/7QFC-VMZA].

51 RENÉE JOHNSON, CONG. RESEARCH SERV., R46348, COVID-19: SUPPLY CHAIN DISRUPTIONS IN THE U.S. FRUIT AND VEGETABLE INDUSTRY: IN BRIEF (2020), <https://crsreports.congress.gov/product/pdf/R/R46348>.

52 USDA *Farmers to Families Food Box*, U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box> [https://perma.cc/3LKB-S8GF]; See generally EMILY BROAD LEIB, JOSEPH BECKMANN, ARIEL ARDURA ET AL., AN EVALUATION OF THE FARMERS TO FAMILIES FOOD BOX PROGRAM, HARV. L. SCH. FOOD L. & POL'Y CLINIC (FLPC), NAT'L SUSTAINABLE AGRIC. COAL., (2021), <https://chlp.org/wp-content/uploads/2022/04/2023-Farm-Bill-Food-Waste.pdf> [https://perma.cc/FHR8-VFER].

53 See David Yaffey Bellany & Michael Corkey, *supra* note 50.

54 North American Farmers Direct Marketing Association (NAFDMA) *August 2020*, LOCAL FOOD SYS. RESPONSE TO COVID, https://lfsccovid.localfoodeconomics.com/impact_assessments/north-american-farmers-direct-marketing-association-nafdma/ [https://perma.cc/QZD8-CDMG]; Jamie Lutz, *High Prices, Empty Shelves*, CTR FOR STRATEGIC & INT'L STUDIES, <https://www.csis.org/analysis/high-prices-empty-shelves> (Last visited May 23, 2022) [https://perma.cc/FG3G-3MC8].

55 Dawn Thilmay et al., *Local Food Supply Chain Dynamics and Resilience during COVID-19*, 43 APPLIED ECON. PERSPECTIVES & POL'Y 86 (2021), <https://foodsystems.colostate.edu/wp-content/uploads/2020/06/aapp13121-1-1.pdf> [https://perma.cc/2EQN-BAUW].

56 See RENÉE JOHNSON, *supra* note 23.; *Beginning Farmer and Rancher Development Program (BFRDP)*, U.S. DEP'T OF AGRIC., <https://nifa.usda.gov/grants/funding-opportunities/beginning-farmer-rancher-development-program-bfrdp> [https://perma.cc/2DLR-WUHE]; *Socially Disadvantaged Farmers and Ranchers*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/partnerships/socially-disadvantaged-farmers-and-ranchers> [https://perma.cc/3HND-2U8T].

57 CONG. RSCH. SERV., R46686, FEDERAL CROP INSURANCE: A PRIMER 1 (2021), <https://crsreports.congress.gov/product/pdf/R/R46686>.

58 *Id.*

59 *Id.* at 25.

60 *Id.* at 1.

61 *Id.*

62 *Id.* at 18.

63 *Id.* at 17.

64 Gary Schnitkey, Nick Paulson, Carl Zulauf, & Krista Swanson, *Revenue Protection: The Most Used Crop Insurance Product*, FARMDOC DAILY 198 (2020), <https://farmdocdaily.illinois.edu/2020/11/revenue-protection-the-most-used-crop-insurance-product.html> [https://perma.cc/NL8V-C6VJ]; See CONG. RSCH. SERV., *supra* note 57 at 1.

65 CONG. BUDGET OFF., OPTIONS TO REDUCE THE BUDGETARY COSTS OF THE FEDERAL CROP INSURANCE PROGRAM 13 (2018), <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53375-federalcropinsuranceprogram.pdf> [https://perma.cc/2DRY-9FE4].

66 *Id.*

67 See CONG. RSCH. SERV., *supra* note 57 at 9.; *Comment: New Changes To Whole Farm Revenue Protection Will Make Program More Accessible*, NAT'L SUSTAINABLE AGRIC. COAL. (Aug. 30, 2019), <https://sustainableagriculture.net/blog/wfrp-policy-update-comment-2019/> [https://perma.cc/E746-RVXA].

68 *Whole Farm Revenue Protection for Diversified Farms*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/whole-farm-revenue-protection-for-diversified-farms/> [https://perma.cc/C9VA-46N5].

69 *Id.*

70 See, e.g., *Formulation of the 2012 Farm Bill: Hearings Before the Subcommittees on: Rural Development, Research, Biotechnology, and Foreign Agriculture; Conservation, Energy, and Forestry; Livestock, Dairy, and Poultry; Nutrition and Horticulture; Department Operations, Oversight, and Credit; and General Farm Commodities and Risk Management of the Comm. on Agric.*, 112th Cong. 2047, 2052, 2064 (2012), <https://www.govinfo.gov/content/pkg/CHRG-112hrg74372/pdf/CHRG-112hrg74372.pdf> [https://perma.cc/53HY-2D24].

71 *Id.*

72 *Id.*

73 See CONG. RSCH. SERV., *supra* note 57 at 9.

74 *Id.*

75 See Mary Beth Miller & D. Lee Miller, *Insuring a Future for Small Farms*, 14 J. OF FOOD L. & POL'Y 69 (2018).

76 *Id.*

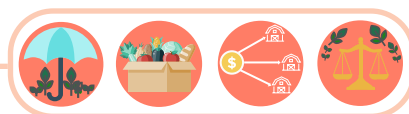
77 RENÉE JOHNSON, CONG. RSCH. SERV., FEDERAL CROP INSURANCE: SPECIALTY CROPS 1 (2019). <https://crsreports.congress.gov/product/pdf/R/R45459>.

78 FED. CROP INSURANCE CORP., COMMODITY YEAR STATISTICS FOR 2015, https://www3.rma.usda.gov/apps/sob/current_week/insplan2015.pdf [https://perma.cc/T498-HZKZ].

79 FED. CROP INSURANCE CORP., COMMODITY YEAR STATISTICS FOR 2017, https://www3.rma.usda.gov/apps/sob/current_week/insplan2017.pdf [https://perma.cc/B2E5-C6DT].

80 See *Whole Farm Revenue Protection for Diversified Farms*, *supra* note 68.

81 7 U.S.C. § 1522(c).



82 7 U.S.C. § 1522(c); see generally AGRALYTICA, FEASIBILITY OF INSURING LOCAL FOOD PRODUCTION (2021), <https://www.rma.usda.gov/-/media/RMA/Specialty-Crops/Feasibility-of-Insuring-Local-Food-Production.ashx?la=en> [https://perma.cc/8BRN-B77N].

83 See *Whole Farm Revenue Protection for Diversified Farms*, supra note 68.

84 RMA Announces Changes to Whole-Farm Revenue Protection Policy for 2020, RISK MGMT. AGENCY (Aug. 30, 2019), <https://www.rma.usda.gov/en/News-Room/Press/National-News-Archive/2019-News/2019-News/Whole-Farm-Revenue-Protection-Policy-for-2020> [https://perma.cc/QF8P-3MGY].

85 *Id.*

86 *Id.*

87 USDA Announces Whole-Farm Revenue Protection Program Improvements, RISK MGMT. AGENCY (Sept. 16, 2020), <https://www.rma.usda.gov/en/News-Room/Press/National-News-Archive/2020-News/2020-News/USDA-Announces-Whole-Farm-Revenue-Protection-Program-Improvements> [https://perma.cc/T7DD-6QTZ].

88 RMA Makes Improvements to Whole-Farm Revenue Protection, RISK MGMT. AGENCY (Sept. 1, 2021), <https://www.rma.usda.gov/News-Room/Press/Press-Releases/2021-News/RMA-Makes-Improvements-to-Whole-Farm-Revenue-Protection> [https://perma.cc/NE57-ZSNV].

89 *Id.*

90 *Small-Scale, Local Producers Get Improved Insurance through New Micro Farm Policy*, RISK MGMT. AGENCY (Nov. 30, 2021), <https://www.rma.usda.gov/en/News-Room/Press/National-News-Archive/2021-News/2021-News/Small-Scale-Local-Producers-Get-Improved-Insurance-Coverage-through-New-Micro-Farm-Policy> [https://perma.cc/F9LY-MZX5].

91 See FED. CROP INSURANCE CORP., supra note 79.

92 See *Whole Farm Revenue Protection for Diversified Farms*, supra note 68.

93 See, e.g., ANNA JOHNSON & GLEN READY, CTR. FOR RURAL AFFAIRS, NEW OPTION FOR RISK MANAGEMENT: WHOLE FARM REVENUE PROTECTION USAGE IN NEBRASKA 10 (2017), <https://www.cfra.org/sites/default/files/publications/new-option-for-farm-risk-management.pdf> [https://perma.cc/CF2F-8LUZ].

94 USDA Rolls Out New Whole-Farm Revenue Protection Insurance Policy, NAT'L SUSTAINABLE AGRIC. COAL. (Nov. 6, 2014), <http://sustainableagriculture.net/blog/wfrp-roll-out-blog/> [https://perma.cc/VZW6-3GBG].

95 7 U.S.C. § 1522(c)(7)(E)(i).

96 *Id.*

97 USDA Announces Whole-Farm Revenue Protection Program Improvements, RISK MGMT. AGENCY (Sept. 16, 2020), <https://www.rma.usda.gov/en/News-Room/Press/National-News-Archive/2020-News/2020-News/USDA-Announces-Whole-Farm-Revenue-Protection-Program-Improvements> [https://perma.cc/PG9R-N92G].

98 See *RMA Makes Improvements to Whole-Farm Revenue Protection*, supra note 88.

99 See AGRALYTICA, supra note 82 at i.

100 FED. CROP INS. CORP., WHOLE-FARM REVENUE PROTECTION PILOT HANDBOOK: 2022 AND SUCCEEDING POLICY YEARS 10 (2021), <https://rma.usda.gov/-/media/RMA/Handbooks/Coverage-Plans---18000/Whole-Farm-Revenue-Protection---18160/2022-18160A-WFRP-Pilot-Handbook.ashx?la=en> [https://perma.cc/8W4U-MXWY].

101 About Schedule F (Form 1040), Profit or Loss from Farming, <https://www.irs.gov/forms-pubs/about-schedule-f-form-1040> [https://perma.cc/GQT3-P59V]; see generally AGRALYTICA, FEASIBILITY OF INSURING LOCAL FOOD PRODUCTION 42 (2021), <https://www.rma.usda.gov/-/media/RMA/Specialty-Crops/Feasibility-of-Insuring-Local-Food-Production.ashx?la=en> [https://perma.cc/P2HQ-XTRJ].

102 7 U.S.C. § 1522(c)

103 *Small-Scale, Local Producers Get Improved Insurance through New Micro Farm Policy*, RISK MGMT. AGENCY (Nov. 30, 2021), <https://www.rma.usda.gov/en/News-Room/Press/National-News-Archive/2021-News/2021-News/Small-Scale-Local-Producers-Get-Improved-Insurance-Coverage-through-New-Micro-Farm-Policy> [https://perma.cc/F9LY-MZX5].

104 *Id.*

105 RISK MGMT. AGENCY, MICRO FARM PROGRAM (Nov. 2021), <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Micro-Farm-Program> [https://perma.cc/BCL9-CU5F].

106 See *Small-Scale, Local Producers Get Improved Insurance through New Micro Farm Policy*, supra note 103.; see also RENÉE JOHNSON, CONG. RSCH. SERV., 2018 FARM BILL PRIMER: SUPPORT FOR LOCAL FOOD SYSTEMS 1 (2019), <https://crsreports.congress.gov/product/pdf/IF/IF11252>.

107 *Most farms are small, but large scale farms account for almost half of production*, ECON. RSCH. SERV. (Dec. 1, 2021), <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58288> [https://perma.cc/J48P-USM5].

108 7 U.S.C. § 1522(c).

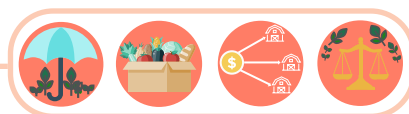
109 See *Whole-Farm Revenue Protection Analysis: A Few Bad Apples*, NAT'L SUSTAINABLE AGRIC. COAL. (Apr. 20, 2022), <https://sustainableagriculture.net/blog/whole-farm-revenue-protection-analysis-a-few-bad-apples/> [https://perma.cc/ETZ4-JMN2].

110 *Id.*

111 RISK MGMT. AGENCY, 2023 STANDARD REINSURANCE AGREEMENT (2022), <https://www.rma.usda.gov/-/media/RMA/Regulations/Appendix-2023/23sra.ashx?la=en> [https://perma.cc/Y8T5-FJYP].

112 See Mary Beth Miller & D. Lee Miller, supra note 75.; PRESIDENTIAL TRANSITION BRIEFING PAPERS, FOOD & AGRICULTURE PRIORITIES FOR ADMINISTRATIVE ACTION 24 (2020), <https://sustainableagriculture.net/wp-content/uploads/2020/12/NSAC-Final-Transition-Team-Documents-2020-Final.pdf> [https://perma.cc/S8SS-7QE7].

113 7 U.S.C. § 1524(a)(2)(A). NAT'L INST. OF FOOD & AGRIC., AGRICULTURE RISK MANAGEMENT EDUCATION PARTNERSHIPS (ARME) COMPETITIVE GRANTS PROGRAM: FY 2021 REQUEST FOR APPLICATIONS (2020), <https://www.nifa.usda.gov/sites/default/files/rfa/FY21-ARME-MOD-RFA-508.pdf> [https://perma.cc/H8C6-Y259].



114 7 U.S.C. § 1524.
 115 See FED. CROP INSURANCE CORP., *supra* note 100.
 116 7 U.S.C. § 1522(c).
 117 See FED. CROP INSURANCE CORP., *supra* note 100 at 10.
 118 See *Id.* at 9.
 119 Alejandro Plastina & William Edwards, *Proven Yields and Insurance Units for Crop Insurance*, IOWA STATE UNIV. EXTENSION & OUTREACH, <https://www.extension.iastate.edu/agdm/crops/html/a1-55.html> [https://perma.cc/7CG4-JEQG].
 120 FARM SERV. AGENCY, DISASTER ASSISTANCE: NONINSURED CROP DISASTER ASSISTANCE PROGRAM 2 (2020), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/noninsured_crop_disaster_assistance_program-nap-fact_sheet.pdf [https://perma.cc/Z8TT-C2A7].
 121 7 U.S.C. § 7333(k), (i).
 122 See CONG. RSCH. SERV., *supra* note 57 at 23.
 123 7 U.S.C. § 7333(k), (i).
 124 See Nat'l Sustainable Agric. Coal., Memo to FPAC Undersecretary Robert Bonnie Re: Recommendations to Improve Whole-Farm Revenue Protection (Feb. 8, 2022), <https://sustainableagriculture.net/wp-content/uploads/2022/02/WFRP-Memo-for-FPAC-FINAL.pdf>.
 125 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1601, 132 Stat. 4490, 4523.
 126 See Jessica Manly, *supra* note 22.
 127 See Tanya Brown, *supra* note 27. (Highlighting some of the greatest challenges facing new and beginning farmers including access to land and capital).
 128 *Id.*
 129 *The Challenges Facing Young Farmers*, AM. FARM BUREAU (Sep. 15, 2021), <https://www.fb.org/viewpoints/the-challenges-facing-young-farmers> [https://perma.cc/S8L4-PWZM].
 130 A survey of young farmers found that “more than three-quarters of farmers who took the survey did not come from farming backgrounds. LINDSEY LUSHER SHUTE ET AL., NAT’L YOUNG FARMERS COAL, BUILDING A FUTURE WITH FARMERS 25 (2011), https://www.youngfarmers.org/reports/Building_A_Future_With_Farmers.pdf [https://perma.cc/8SA4-AZW8].
 131 JULIA FREEDGOOD, MITCH HUNTER, JENNIFER DEMPSEY, & ANN SORENSEN, AM. FARMLAND TRUST, FARMS UNDER THREAT: THE STATE OF THE STATES (2020), https://s30428.pcdn.co/wp-content/uploads/sites/2/2020/09/AFT_FUT_StateoftheStates_rev.pdf [https://perma.cc/Z3KJ-LGVZ] (Examining farmland conversion and loss of agricultural resources to development).
 132 JACOB LEECH, JENNIFER WALKER, & JOANNA MASSEY LELEKACS, PIEDMONT CONSERVATION COUNCIL, DEVELOPING A STRATEGIC PLAN FOR REGIONAL FARM INCUBATION 4–5 (2014), <https://www.ptcr.org/Home/ShowDocument?id=7236>. [https://perma.cc/U7VH-F4HF].
 133 *Incubators Help Beginning Farmers Break into Farming Without Breaking the Bank*, AMERICAN FARM BUREAU FEDERATION, <https://www.fb.org/viewpoints/incubators-help-beginning-farmers-break-into-farming-without-breaking-the-b> [https://perma.cc/6GP6-GE85].
 134 EVA AGUDELO WINTHER, MEAGHAN OVERTON, & CALLIE HERON, NAT’L INCUBATOR FARM TRAINING INITIATIVE, THE FARM INCUBATOR TOOLKIT: GROWING THE NEXT GENERATION OF FARMERS 27 (2013), https://nesfp.org/sites/default/files/uploads/nifti_toolkit_v2.pdf [https://perma.cc/X2ZW-B5E9].
 135 See e.g., *Farm Incubator Educational Training Program and Web-Based Resource Center for Beginning Farmers and Ranchers*, U.S. DEP’T OF AGRIC. (2012), <https://reeis.usda.gov/web/crisprojectpages/0229205-farm-incubator-educational-training-program-and-web-based-resource-center-for-beginning-farmers-and-ranchers.html> [https://perma.cc/EN2R-EHKK]. (Describing one incubator program’s goals, including growing “the next generation of farmers, ranchers and entrepreneurs who will use the experience, skills and land stewardship to improve and enhance sustainability and productive capacity of their farms and ranches”).
 136 *Improving the viability of beginning farm enterprises by strengthening Northeastern farm incubator projects*, SUSTAINABLE AGRICULTURE AND RESEARCH EDUCATION PROJECTS, https://projects.sare.org/sare_project/ene14-132/ [https://perma.cc/GH9J-UZTR].
 137 *Farm Business Incubator*, VIVA FARMS, <https://vivafarms.org/farm-business-incubator> [https://perma.cc/Y96R-DT2W] (suggesting farmers spend about five years in the incubator program); *Transitioning Off the Incubator*, NEW ENTRY SUSTAINABLE FARMING PROJECT, <https://nesfp.org/farmer-training/incubator-farm/transitioning-incubator> [https://perma.cc/5BG8-BJU4] (noting that farm incubator participants transition from the program after three years); *Farmer Incubator Program*, S. APPALACHIAN HIGHLANDS CONSERVANCY, <https://appalachian.org/sahc-community-farm/farm-incubator-program> [https://perma.cc/FN6G-H9SK] (Participants spend up to five years in the program.).
 138 See Adam Calo & Kathryn Teigen De Master, *After the Incubator: Factors Impeding Land Access Along the Path from Farmworker to Proprietor*, 6 J. AGRIC. FOOD SYS. & CMTY. DEV. 111, 119 (2016) (examining barriers for beginning farmers transitioning from incubator programs to independent proprietorship); Liz Carlisle et al., *Securing the Future of US Agriculture: The Case for Investing in New Entry Sustainable Farmers*, 7 ELEMENTA: SCI. ANTHROPOCENE 17 (2019) (“Analysis of new farmer incubators have shown that farmers benefit from innovative land use and resource arrangements while enrolled, but then face high structural barriers upon exit.”); *Path to the 2018 Farm Bill: Beginning and Socially Disadvantaged Farmers*, NAT’L SUSTAINABLE AGRIC. COAL. (Nov. 14, 2017), <https://sustainableagriculture.net/blog/path-to-2018-farm-bill-bfr> [https://perma.cc/2242-YVFM] (“Aspiring farmers, particularly those considered young and/or socially disadvantaged, struggle with some very real challenges, including: the limited availability of affordable and desirable farmland, difficulty acquiring start-up capital and financing, and inadequate access to hands-on training and risk management tools.”); NAT’L YOUNG FARMERS COAL., FARM SERVICE AGENCY LOANS: THE INS AND OUTS OF GROWING A FARM WITH FEDERAL LOANS 38 (2018), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Outreach/pdfs/Publications/NYFC_FSA_Loans_Guidebook.pdf (noting that a recent survey found that “78% of young farmers ranked ‘lack of capital’ as a top challenge for new farmers, with another 40% ranking ‘access to credit’ as their biggest challenge”).
 139 Liz Carlisle et al., *Securing the Future of US Agriculture: The Case for Investing in New Entry Sustainable Farmers*, 7 ELEMENTA: SCI. ANTHROPOCENE 17 (2019) (presenting data that “the number of farmers reporting 6 to 10 years of operating” declined as compared to farmers operating for 5 years or fewer, suggesting that “while entry into agriculture poses huge barriers, hanging onto a farm is more challenging still”).



140 NEW ENTRY SUSTAINABLE FARMING PROJECT, 2019 INCUBATOR FARM PROJECTS (2019), https://www.nesfp.org/sites/default/files/resources/incubatorfarminfographic2019_final.pdf [https://perma.cc/D7UT-UTW6].

141 *Id.*

142 See NAT'L INCUBATOR FARM TRAINING INITIATIVE, FARM INCUBATOR CASE STUDIES (2013), https://nesfp.nutrition.tufts.edu/sites/default/files/resources/farm_incubator_case_studies_-_nifti_v2.pdf [https://perma.cc/LW8N-MK7L].

143 *Lansing Roots*, GREATER LANSING FOOD BANK, <https://greaterlansingfoodbank.org/wp-content/uploads/2013/10/LansingRootsFAQ.pdf> [https://perma.cc/U2DB-XKBP].

144 See, e.g., *Transitioning Off the Incubator*, NEW ENTRY SUSTAINABLE FARMING PROJECT, <https://nesfp.org/farmer-training/incubator-farm/transitioning-incubator> [https://perma.cc/NM4S-ENHQ] (summarizing the New Entry Transitioning Farmer Program that provides technical assistance related to farm business planning, land access, management, crop insurance, conservation planning, etc.).

145 *Beginning Farmer and Rancher Development Program (BFRDP)*, NAT'L INSTIT. FOOD & AGRIC., <https://nifa.usda.gov/funding-opportunity/beginning-farmer-and-rancher-development-program-bfrdp> [https://perma.cc/YV7E-WEGJ].

146 See NAT'L INST. FOOD & AGRIC., OUTCOMES BASED REPORTING GUIDE FOR BFRDP: FISCAL YEAR 2018 (2018), https://nifa.usda.gov/sites/default/files/resource/Outcomes%20Based%20Reporting%20Guide%2017_0.pdf [https://perma.cc/J7G8-J5QN]; NAT'L INST. FOOD & AGRIC., OUTCOMES BASED REPORTING GUIDE FOR BFRDP (2016), https://nifa.usda.gov/sites/default/files/resource/Outcomes%20Based%20Reporting%20Guide%20for%20BFRDP_2.pdf [https://perma.cc/L7K9-95JP].

147 JULI OBUDZINSKI, JAN PEREZ, & ANN WILLIAMS, NAT'L SUSTAINABLE AGRIC. COAL., CULTIVATING THE NEXT GENERATION AN EVALUATION OF THE BEGINNING FARMER & RANCHER DEVELOPMENT PROGRAM (2009 TO 2015) (2017), <http://sustainableagriculture.net/wp-content/uploads/2017/10/Cultivating-the-Next-Generation-Oct-2017.pdf> [https://perma.cc/3MYQ-G5NN].

148 NAT'L INSTIT. FOOD & AGRIC., BEGINNING FARMER AND RANCHER DEVELOPMENT PROGRAM: OUTCOMES REPORT 2011 (2012), https://nifa.usda.gov/sites/default/files/resources/Beginning%20Farmer%202011%20Outcomes_0.pdf [https://perma.cc/CVZ4-DFA8].

149 See also LINDSEY LUSHER SHUTE ET AL., *supra* note 28 at 14, 25 (2011), https://www.youngfarmers.org/reports/Building_A_Future_With_Farmers.pdf [https://perma.cc/78KZ-9VXF] (recommending USDA address racial disparities in farm programming through data collection to “allow for proper evaluation of program implementation and outcomes”).

150 2019 NASS Survey finds big gains for organic, NAT'L SUSTAINABLE AGRIC. COAL. (Nov. 12, 2020), <https://sustainableagriculture.net/blog/2019-organic-survey-finds-big-gains-for-organic/> [https://perma.cc/ZDV2-N88C]; Terry Matlock, *Organic: A thriving agriculture segment*, U.S. DEP'T OF AGRIC. (Jul. 29, 2021), <https://www.usda.gov/media/blog/2020/10/28/organic-thriving-agriculture-segment> [https://perma.cc/9GM2-HJUM]; Alexandra Jones, *Farmers still face barriers in their quest to becoming certified organic, including making it through an onerous three-year window when costs are higher*, THE COUNTER (Jan. 4, 2021), <https://thecounter.org/farmers-face-barriers-to-becoming-certified-organic-usda/> [https://perma.cc/ZN9S-ZE36].

151 Compare NAT'L AGRIC. STAT. SERV., 2019 ORGANIC SURVEY (2020), https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf with NAT'L AGRIC. STAT. SERV., CERTIFIED ORGANIC SURVEY 2016 SUMMARY (2017), https://downloads.usda.library.cornell.edu/usda-esmis/files/zg64tk92g/70795b52w/4m90dz33q/OrganicProduction-09-20-2017_correction.pdf.

152 Terry Matlock, *Organic: A thriving agriculture segment*, U.S. DEP'T OF AGRIC. (Jul. 29, 2021), <https://www.usda.gov/media/blog/2020/10/28/organic-thriving-agriculture-segment> [https://perma.cc/88VF-WFLF]. Compare NAT'L AGRIC. STAT. SERV., 2019 ORGANIC SURVEY (2020), https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf with NAT'L AGRIC. STAT. SERV., CERTIFIED ORGANIC SURVEY 2016 SUMMARY (2017), https://downloads.usda.library.cornell.edu/usda-esmis/files/zg64tk92g/70795b52w/4m90dz33q/OrganicProduction-09-20-2017_correction.pdf.

153 NAT'L AGRIC. STAT. SERV., 2019 ORGANIC SURVEY (2020), https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf.

154 *Becoming A Certified Operation*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/services/organic-certification/becoming-certified> [https://perma.cc/Y42R-PBVZ].

155 *Id.*

156 *Crager Hager Farm – Sharing Insight on USDA's Organic Certification Cost Share Program*, ORGANIC FARMING RSCH. FOUND. (Feb. 4, 2022), <https://ofrf.org/news/crager-hager-farm-sharing-insight-on-usdas-organic-certification-cost-share-program/> [https://perma.cc/V9CX-KUFZ]; See *generally Organic Certification Fees*, CAL. CERTIFIED ORGANIC FARMERS (CCOF), <https://www.ccof.org/page/organic-certification-fees> [https://perma.cc/PFE5-J89Q].

157 See *Becoming A Certified Operation*, *supra* note 154.; See Alexandra Jones, *supra* note 150.

158 7 U.S.C. § 6523(b); AGRIC. MKTG. SERV., ORGANIC CERTIFICATION COST SHARE FACT SHEET (2021), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/organics_fsa_fact_sheet_040221_final.pdf [https://perma.cc/PE9N-2EHR]; *Organic Certification Cost Share Program (OCCSP)*, U.S. DEP'T OF AGRIC., <https://www.fsa.usda.gov/programs-and-services/occs/index> (last visited Jan. 6, 2021) [https://perma.cc/C2R3-8KDB].

159 U.S. DEP'T OF AGRIC., 2014 FARM BILL HIGHLIGHTS (2014), <https://www.usda.gov/sites/default/files/documents/usda-2014-farm-bill-highlights.pdf> [https://perma.cc/KZ7G-PVDF].

160 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10105, 132 Stat. 4905.

161 See *2018 Farm Bill Drilldown: Organic Agriculture*, NAT'L SUSTAINABLE AGRIC. COAL. (Dec. 12, 2018), <https://sustainableagriculture.net/blog/2018-farm-bill-drilldown-organic-ag/> [https://perma.cc/8KUZ-A9CQ].

162 Notice of Funds Availability for the Organic Cost Share Program, 85 Fed. Reg. 48149 (Aug. 10, 2020).

163 \$20 Million Now Available for Organic Transition and Certification Cost-Share, NAT'L SUSTAINABLE AGRIC. COAL. (Nov. 19, 2021), <https://sustainableagriculture.net/blog/20-million-now-available-for-organic-transition-and-certification-cost-share/> [https://perma.cc/3KJE-8RHL].



164 *USDA Announces Additional Aid to Ag Producers and Businesses in Pandemic Assistance for Producers Initiative*, U.S. DEP'T OF AGRIC. (Jun. 15, 2021), <https://www.usda.gov/media/press-releases/2021/06/15/usda-announces-additional-aid-ag-producers-and-businesses-pandemic> [https://perma.cc/5GA8-97BZ].

165 16 U.S.C. § 3839aa-2(d)(4).

166 This is the case for some animal agriculture, including broiler chickens, turkey, and swine. NAT'L RSCH. COUNCIL OF THE NAT'L ACADS., *AIR EMISSIONS FROM ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS* 29 (2003), <https://www.nap.edu/read/10586/chapter/4#29> [https://perma.cc/WY58-9VG6].

167 See generally ECON. RSCH. SERV., *MANAGING RISK IN FARMING: CONCEPTS, RESEARCH AND ANALYSIS*, [https://www.ers.usda.gov/webdocs/publications/40946/51063_aer774e.pdf?v=4464#:~:text=In%20practice%2C%20vertical%20integration%20in,livestock%20sector%20\(table%204\)](https://www.ers.usda.gov/webdocs/publications/40946/51063_aer774e.pdf?v=4464#:~:text=In%20practice%2C%20vertical%20integration%20in,livestock%20sector%20(table%204)) [https://perma.cc/VSS9-XZG3].

168 NAT'L AGRIC. L. CTR., *DEVELOPMENTS IN HORIZONTAL CONSOLIDATION AND VERTICAL INTEGRATION* 1, <http://nationalaglawcenter.org/wp-content/uploads/assets/articles/antitrust.pdf> [https://perma.cc/C9HK-8D33].

169 *How Corporate Control Squeezes Out Small Farms*, THE PEW CHARITABLE TRUSTS (July 18, 2012), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2012/07/18/how-corporate-control-squeezes-out-small-farms> [https://perma.cc/5BNC-7239].

170 Leah Douglas, *Mapping COVID-19 outbreaks in the food system*, FOOD & ENV'T REPORTING NETWORK (Apr. 22, 2020), <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/> [https://perma.cc/3E7S-DY6Q].

171 *Id.*

172 Laura Reiley, *Meat processing plants are closing due to covid-19 outbreaks. Beef shortfalls may follow*, THE WASH. POST (Apr. 16, 2020), <https://www.washingtonpost.com/business/2020/04/16/meat-processing-plants-are-closing-due-covid-19-outbreaks-beef-shortfalls-may-follow/> [https://perma.cc/HC5G-CZ6W]; Ryan McCarthy & Sam Danley, *Map: COVID-19 meat plant closures*, MEAT+POULTRY (June 23, 2020), <https://www.meatpoultry.com/articles/22993-covid-19-meat-plant-map> [https://perma.cc/HG9Z-AT42].

173 Keith Loria, *Meat Prices on the Rise as Supply Declines During COVID-19 Pandemic*, FOOD QUALITY & SAFETY (June 5, 2020), <https://www.foodqualityandsafety.com/article/meat-prices-on-the-rise-as-supply-declines-during-covid-19-pandemic/> [https://perma.cc/46AT-38VM]; Robert Johansson, *Another Look at Availability and Prices of Food Amid the COVID-19 Pandemic*, U.S. DEP'T OF AGRIC. (July 29, 2021), <https://www.usda.gov/media/blog/2020/05/28/another-look-availability-and-prices-food-amid-covid-19-pandemic> [https://perma.cc/D28F-9NXW].

174 See Taylor Telford, *Meat Industry Hyped 'Baseless' Shortage to Keep Plants Open Amid Covid*, WASH. PO. (May 12, 2022), <https://www.washingtonpost.com/business/2022/05/12/meatpackers-covid-deaths-trump-industry/>.

175 Tim Mak, *Millions of Pigs Will be Euthanized As Pandemic Cripples Meatpacking Plants*, NAT'L PUB. RADIO (May 14, 2020), <https://www.npr.org/2020/05/14/855662494/millions-of-pigs-will-be-euthanized-as-pandemic-cripples-meatpacking-plants> [https://perma.cc/4W7U-Z5KX]; Walker Orenstein, *After COVID-related livestock kills, a push to diversify meat processing in Minnesota*, MINNPOST (Jan. 25, 2021), <https://www.minnpost.com/greater-minnesota/2021/01/after-covid-related-livestock-kills-a-push-to-diversify-meat-processing-in-minnesota/> [https://perma.cc/UX3Z-SQJL].

176 PEW COMM'N ON INDUSTRIAL FARM ANIMAL PROD., *PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA* 5–6, 41–42, 49, 93 (2008), http://www.pewtrusts.org/~media/legacy/uploadedfiles/phg/content_level_pages/reports/pcfifinalpdf.pdf [https://perma.cc/YUL8-KK67].

177 See Michael Ollinger & Danna Moore, *The Direct and Indirect Costs of Food-Safety Regulation*, 31 REV. OF AGRIC. ECON. 245, 261–2 (2016).

178 21 U.S.C. § 603; 21 U.S.C. §§ 452, 455.

179 21 U.S.C. § 661; 21 U.S.C. § 454.

180 Kara Slaughter et al., *Potential Impacts of State Meat and Poultry Inspection for the State of Nebraska*, UNIV. OF NEB. PUB. POLICY CTR. 1 (2001), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1096&context=publicpolicypublications> [https://perma.cc/ZCS7-4LD9].

181 Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 11015, 122 Stat. 923 (codified at 21 U.S.C. § 683(b)); *USDA Expands Cooperative Interstate Shipment Program for Meat Processors in Montana*, U.S. DEP'T OF AGRIC. (Mar. 21, 2022) <https://www.usda.gov/media/press-releases/2022/03/21/usda-expands-cooperative-interstate-shipment-program-meat> [https://perma.cc/A8CW-ZVED].

182 21 U.S.C. § 683(b); To be considered for the program, state-inspected establishments must employ fewer than 25 employees, have an adequate food safety system, and meet appropriate facilities standards. Once an establishment's application is accepted, it must comply with all requirements under the Federal Acts. See *Cooperative Interstate Shipping Program*, FOOD SAFETY INSPECTION SERV., <https://www.fsis.usda.gov/inspection/apply-grant-inspection/state-inspection-programs/cooperative-interstate-shipment-program> (last visited Apr. 6, 2022).

183 The states are Indiana, Iowa, Maine, Missouri, Montana, North Dakota, Ohio, South Dakota, Vermont and Wisconsin. See *Cooperative Interstate Shipping Program*, FOOD SAFETY INSPECTION SERV., <https://www.fsis.usda.gov/inspection/apply-grant-inspection/state-inspection-programs/cooperative-interstate-shipment-program> (last visited Apr. 6, 2022).

184 *Food Safety and Inspection Service (FSIS) Releases New Resources for Small Processors*, NAT'L SUSTAINABLE AGRIC. COAL. (Mar. 31 2022), <https://sustainableagriculture.net/blog/food-safety-and-inspection-service-fsis-releases-new-resources-for-small-processors/> [https://perma.cc/PV6E-QBTA].

185 U.S. DEP'T OF AGRIC., *OVERVIEW OF THE UNITED STATES SLAUGHTER INDUSTRY* 8 (2016), <https://downloads.usda.library.cornell.edu/usda-esmis/files/b5644r52v/jd473028z/7w62fc23r/SlauOverview-10-27-2016.pdf> [https://perma.cc/M4LZ-Z7VC].

186 21 U.S.C. § 623(a).

187 21 U.S.C. § 623(a).

188 U.S. DEP'T OF AGRIC., *FSIS GUIDELINE FOR DETERMINING WHETHER A LIVESTOCK SLAUGHTER OR PROCESSING FIRM IS EXEMPT FROM THE INSPECTION REQUIREMENTS OF THE FEDERAL MEAT INSPECTION ACT* 8 (2018), <https://www.fsis.usda.gov/sites/default/files/import/Compliance-Guideline-Livestock-Exemptions.pdf>.



189 Monica Nickelsburg, *The Pandemic Has the Potential to Finally Transform Meat Processing in the U.S.*, CIV. EATS (Oct. 19, 2020), <https://civileats.com/2020/10/19/the-pandemic-has-the-potential-to-finally-transform-meat-processing-in-the-u-s/> [https://perma.cc/3UNB-4LJ].

190 *Id.*

191 USDA Announces \$500 Million for Expanded Meat & Poultry Processing Capacity as Part of Efforts to Increase Competition, Level the Playing Field for Family Farmers and Ranchers, and Build a Better Food System, U.S. DEP'T OF AGRIC., (Jul. 9, 2021), <https://www.usda.gov/media/press-releases/2021/07/09/usda-announces-500-million-expanded-meat-poultry-processing> [https://perma.cc/XXW3-MCEN]; *USDA Invests \$55.2 million in Grants to Increase Capacity and Expand Access in Meat and Poultry Inspection Operations*, U.S. DEP'T OF AGRIC. (Jun. 21, 2021), <https://www.usda.gov/media/press-releases/2021/06/21/usda-invests-552-million-grants-increase-capacity-and-expand-access> [https://perma.cc/C7U9-63UQ].

192 *Id.*

193 Pingree, Fortenberry, Thune, Merkley Introduce Legislation to Expand & Strengthen Local Meat Processing Capabilities, CONGRESSWOMAN CHELLIE PINGREE (Feb. 23, 2021), <https://pingree.house.gov/news/documentsingle.aspx?DocumentID=3620> [https://perma.cc/7SST-LDX2]; H.R.1258 117th Congress (2021-2022).

194 *Id.*

195 *Id.*

196 *Id.*

197 William S. II Eubanks, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health Wins Our Nation's Tax Dollars*, 28 STAN. ENV'T. L. J. 213, 233 (2009).

198 See ALICIA HARVIE & HILDE STEFFEY, FARM AID, INC., *REBUILDING AMERICA'S ECONOMY WITH FAMILY FARM – CENTERED FOOD SYSTEMS* 6 (2010), https://www.farmaid.org/wp-content/uploads/2015/04/Farm_Aid-Rebuilding_Americas_Economy.pdf [https://perma.cc/7CBB-6VKP].

199 See U.S. DEP'T OF AGRIC., NAT. AGRIC. STATISTICS SERV., EXECUTIVE BRIEFING: 2015 LOCAL FOOD MARKETING PRACTICES SURVEY 19 (2016), https://agcensus.library.cornell.edu/wp-content/uploads/2012-2015-Local-Food-Marketing-Practices-Survey-LocalFoodsBriefingPresentation_FINAL.pdf [https://perma.cc/V46L-TFKH] (noting that 44% of direct-to-consumer sales value occurs at on farm stores and that more operations engage in on farm sales and farmers markets than other types of direct-to-consumer marketing).

200 SARAH A. LOW & STEPHEN VOGEL, ECON. RSCH. SERV., *DIRECT AND INTERMEDIATED MARKETING OF LOCAL FOODS IN THE UNITED STATES* 4 (2011), https://www.ers.usda.gov/webdocs/publications/44924/8276_err128_2_.pdf?v=0. [https://perma.cc/2T3B-33QM].

201 Elizabeth Henderson, *Fair from Farm to Retail, 2018 –2020*, NE. ORGANIC FARMING ASS'N (Feb. 3, 2021), <https://nofa.org/2021/02/03/fair-from-farm-to-retail-2018-2020/> [https://perma.cc/M844-2T8X].

202 *Id.*

203 See Stephen Vogel & Sarah A. Low, *Urban Areas Prove Profitable for Farmers Selling Directly to Consumers*, ECON. RSCH. SERV. (Sep. 1, 2010), <https://www.ers.usda.gov/amber-waves/2010/september/urban-areas-prove-profitable-for-farmers-selling-directly-to-consumers/> [https://perma.cc/STH3-FSR2]; NAT'L AGRIC. STAT. SERV., *DIRECT FARM SALES OF FOOD* 2 (2016) https://www.nass.usda.gov/Publications/Highlights/2016/LocalFoodsMarketingPractices_Highlights.pdf [https://perma.cc/X7QV-UXUA].

204 See NAT'L AGRIC. STATISTICS SERV., *supra note* 199 at 36.

205 See *generally Rural Hunger and Access to Healthy Food*, RURAL HEALTH HUB INFO., <https://www.ruralhealthinfo.org/topics/food-and-hunger> (last visited Jan. 25, 2022) [https://perma.cc/DR6Z-L9LW].

206 See ECON. RSCH. SERV., *ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES* (2009), https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf?v=5442.3 [https://perma.cc/9NG2-PURB].

207 *Food Access*, ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/> (last visited Jan. 25, 2022) [https://perma.cc/9HHH-2VZL]; Renee E. Walker, Christopher R. Keane, & Jessica G. Burke, *Disparities and Access to Healthy Food in the United States: A Review of Food Deserts Literature*, 16 HEALTH & PLACE 876 (2010), <https://pubmed.ncbi.nlm.nih.gov/20462784/> [https://perma.cc/HUU5-G38M]; Nina Sevilla, *Foot Apartheid: Racialized Access to Healthy Affordable Food*, NAT. RES. DEF. COUNCIL (April 2, 2021), <https://www.nrdc.org/experts/nina-sevilla/food-apartheid-racialized-access-healthy-affordable-food> [https://perma.cc/5BPM-5QL8].

208 Jack Healy, *Farm Country Feeds America. But Just Try Buying Groceries There.*, N.Y. TIMES (Nov. 5, 2019), <https://www.nytimes.com/2019/11/05/us/rural-farm-market.html> [https://perma.cc/B9TR-SYV7].

209 Margaret Milligan, *Rural Farmers Markets: A Vital Part of Rural Identity*, UNIV. OF NEB.-LINCOLN CTR. FOR AGRIC. PROFITABILITY (Aug. 27, 2021), <https://cap.unl.edu/rural/rural-farmers-markets-vital-part-rural-identity> [https://perma.cc/Q4EL-CG6A]; Richard Casey Sadler, *Strengthening the core, improving access*, 67 APPLIED GEOGRAPHY 119, 121 (2016).

210 Lauren Chenarides et al., *COVID-19 and Food Supply Chains*, 43 APPLIED ECON. PERSPS AND POL. 270, 270 (2021), <https://asu.pure.elsevier.com/en/publications/covid-19-and-food-supply-chains> [https://perma.cc/RNK2-L3AK].

211 See Elizabeth Henderson, *supra note* 201.

212 *Id.*

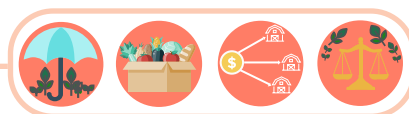
213 STEVE W. MARTINEZ & TIMOTHY PARK, ECON. RSCH. SERV., *MARKETING PRACTICES AND FINANCIAL PERFORMANCE OF LOCAL FOOD PRODUCERS* i (2021), <https://www.ers.usda.gov/webdocs/publications/101786/eib-225.pdf?v=5366.5> [https://perma.cc/YHP3-2ZRM].

214 *Id.* at 1.

215 Harvard T.H. Chan Sch. of Pub. Health, *Processed Foods and Health*, THE NUTRITION SOURCE, <https://www.hsph.harvard.edu/nutritionsource/processed-foods/> [https://perma.cc/P588-K9WM].

216 See U.S. DEP'T OF AGRIC., *supra note* 12 at 18 (2021).

217 *Ag and Food Sectors and the Economy*, ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/> [https://perma.cc/6CQP-9XA6].



218 See NAT'L AGRIC. STATISTICS SERV., *supra* note 199 at 36 (2016). (showing on chart titled "Distance To The Largest Grossing Marketplace by Practice, 2015" that more than half of largest grossing sales in all categories except sales to supermarkets occur within 20 miles of farms and that very low percentages of largest grossing sales occur more than 100 miles from farms); ECON. RSCH. SERV., AMERICA'S DIVERSE FAMILY FARMS 2020 EDITION (2020), <https://www.ers.usda.gov/webdocs/publications/100012/eib-220.pdf?v=142.8> [https://perma.cc/RH49-W3ZH].

219 7 U.S.C. § 1932 (g)(9)(A)(i).

220 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10102, 132 Stat. 4490, 4888.

221 *Regional Food System Partnership Program*, NAT'L AGRIC. SUSTAINABLE COAL., <https://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/regional-food-system-partnership-program/> [https://perma.cc/SE8R-5E7H].

222 7 U.S.C. § 1627c.

223 *A Closer Look at The 2018 Farm Bill: Local Agriculture Market Program*, NAT'L SUSTAINABLE AGRIC. COAL. (Jan. 22, 2019) <https://sustainableagriculture.net/blog/2018-farm-bill-local-agriculture-market-program/> [https://perma.cc/R7GE-Y7AA]; Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10102, 132 Stat. 4490, 4888.

224 See Agriculture Improvement Act of 2018, *supra* note 220.

225 *Farmers' Market Promotion Plan.*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/services/grants/fmpp> [https://perma.cc/4KDN-768Y].

226 *Id.*

227 See Agriculture Improvement Act of 2018, *supra* note 220.

228 U.S. DEP'T OF AGRIC., 2022 USDA EXPLANATORY NOTES – RURAL BUSINESS COOPERATIVE SERVICES 32-38 (2021), <https://www.usda.gov/sites/default/files/documents/32RBS2022Notes.pdf>.

229 7 U.S.C. § 1627c (i)(3)(C).

230 7 U.S.C. § 1627c (i)(3)(E).

231 RENÉE JOHNSON ET AL., CONG. RSCH. SERV., R46538, LOCAL AND URBAN FOOD SYSTEMS: SELECTED FARM BILL AND OTHER FEDERAL PROGRAMS (2020), <https://crsreports.congress.gov/product/pdf/R/R46538>.

232 AGRIC. MKTG. SERV., FARMERS MARKET PROMOTION PROGRAM, FISCAL YEAR 2020 REQUEST FOR APPLICATIONS, VERSION 2 (2020), https://www.ams.usda.gov/sites/default/files/media/2020_FMPP_RFA.pdf [https://perma.cc/XDL3-Q9M2].

233 *Id.*

234 *Id.*

235 *Id.*

236 See RENÉE JOHNSON ET AL., CONG. RSCH. SERV., *supra* note 231.

237 *USDA Invests \$92.2 Million in Grants for Local, Regional Food Producers Affected by the Pandemic*, U.S. DEP'T OF AGRIC. (May 5, 2021), <https://www.ams.usda.gov/press-release/usda-invests-922-million-grants-local-regional-food-producers-affected-pandemic> [https://perma.cc/ZBW3-S2HW].

238 U.S. DEP'T OF AGRIC., 2022 USDA EXPLANATORY NOTES – RURAL BUSINESS COOPERATIVE SERVICES (2021), <https://www.usda.gov/sites/default/files/documents/32RBS2022Notes.pdf>.

239 *Over \$61 Million Invested In Value-Added Agriculture Entrepreneurs*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/blog/61-million-invested-in-value-added-agriculture/> [https://perma.cc/JAL7-B335].

240 AGRIC. MKTG. SERV., REGIONAL FOOD SYSTEM PARTNERSHIPS, FISCAL YEAR 2021 REQUEST FOR APPLICATIONS 2 (2021), https://www.ams.usda.gov/sites/default/files/media/2021_RFSP_RFA.pdf [https://perma.cc/2F6T-XU4F].

241 Anil Rupasingha & John Pender, *Impacts of the Value-Added Producer Grant Program on Business Outcomes*, ECON. RSCH. SERV. (May 07, 2018), <https://www.ers.usda.gov/amber-waves/2018/may/impacts-of-the-value-added-producer-grant-program-on-business-outcomes/> [https://perma.cc/M3LL-XEMV].

242 The Justice for Black Farmers Act suggests an increase from \$50 million annually to \$500 million annually. Justice for Black Farmers Act, S. 300, 117th Cong. § 511 (2021).

243 *COVID-19 Economic Impact on Local Food Markets*, NAT'L SUSTAINABLE AGRIC. COAL. (Mar. 23, 2020), <https://sustainableagriculture.net/blog/covid-economic-impact-local-food/> [https://perma.cc/4Y2D-965E].

244 DIANA BROADWAY & EMILY SPENCER, LOCAL FOOD SYSTEM RESPONSE TO COVID: BUILDING BETTER BEYOND (2021), <https://ifscovid.localfoodeconomics.com/wp-content/uploads/2021/04/Alternative-Market-Models-IB-updated.pdf>.

245 *Farmers Market Coalition (FMC): May 2021 Impact Assessment II*, LOCAL FOOD SYSTEM RESPONSE TO COVID, https://ifscovid.localfoodeconomics.com/impact_assessments/farmers-market-coalition-fmc-may-2021/ [https://perma.cc/CJ8N-3X5K].

246 *North American Farmers Direct Marketing Association (NAFDMA) August 2020*, LOCAL FOOD SYSTEM RESPONSE TO COVID, https://ifscovid.localfoodeconomics.com/impact_assessments/north-american-farmers-direct-marketing-association-nafdma/ [https://perma.cc/XKD6-UGKA].

247 *Stores Accepting SNAP Online*, FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/online-purchasing-pilot> [https://perma.cc/6W8T-XKN7].

248 *Id.*

249 *Id.*

250 *Specialty Crop Block Grant Program*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/services/grants/scbgp> [https://perma.cc/JNC9-HZZS].

251 AGRIC. MKTG. SERV., USDA DEFINITION OF SPECIALTY CROP 1, https://www.ams.usda.gov/sites/default/files/media/USDA_Specialty_Crop_Definition.pdf [https://perma.cc/LCE3-B2PZ].

252 7 C.F.R. Part 1291.

253 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10107, 132 Stat. 4490, 4905; see *Specialty Crop Block Grants*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/specialty-crop-grants/>



[<https://perma.cc/37TX-434R>].

- 254 AGRIC. MKTG. SERV., SPECIALTY CROP BLOCK GRANT PROGRAM FISCAL YEAR 2022 REQUEST FOR APPLICATIONS 8 (2022), https://www.ams.usda.gov/sites/default/files/media/2022_SCBGP_RFA.pdf [<https://perma.cc/NJ5D-F5XH>].
- 255 See RENÉE JOHNSON ET AL., CONG. RSCH. SERV., *supra note* 231 at 17.
- 256 7 U.S.C. § 1621.
- 257 AGRIC. MKTG. SERV., SPECIALTY CROP BLOCK GRANT PROGRAM FISCAL YEAR 2020 DESCRIPTION OF FUNDED PROJECTS (2020), https://www.ams.usda.gov/sites/default/files/media/2020_SCBGP_GrantstotheStates_092420.pdf [<https://perma.cc/9JP3-2QXF>].
- 258 See RENÉE JOHNSON ET AL., CONG. RSCH. SERV., *supra note* 231 at 17.
- 259 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 10107, 132 Stat. 4490, 4906.
- 260 *Grant Performance Measures*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/services/grants/performance-measures> [<https://perma.cc/A8VU-4KCJ>].
- 261 See NAT. AGRIC. STATISTICS SERV., 2017 CENSUS OF AGRICULTURE 70, 76 (2019), https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/usv1.pdf [<https://perma.cc/8S6B-4GFY>].
- 262 See AGRIC. MKTG. SERV., SPECIALTY CROP BLOCK GRANT PROGRAM FISCAL YEAR 2022 REQUEST FOR APPLICATIONS 6 (2022), https://www.ams.usda.gov/sites/default/files/media/2022_SCBGP_RFA.pdf [<https://perma.cc/A3XS-9588>]; 7 U.S.C. § 1621.
- 263 7 U.S.C. § 2279.
- 264 See CONG. RSCH. SERV., DEFINING A SOCIALLY DISADVANTAGED FARMER OR RANCHER (SDFR): IN BRIEF (2021), <https://crsreports.congress.gov/product/pdf/R/R46727/7>.
- 265 *USDA Farmers to Families Food Box*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box> [<https://perma.cc/7DVU-TXT5>]; See EMILY BROAD LEIB, JOSEPH BECKMANN, ARIEL ARDURA ET AL., *supra note* 52.
- 266 *Id.*
- 267 See *Pre-Solicitation Announcement TEFAP Fresh Produce*, AGRIC. MKTG. SERV. (Apr. 9, 2021), <https://www.ams.usda.gov/content/pre-solicitation-announcement-tefap-fresh-produce> [<https://perma.cc/AA79-FLZL>]; *USDA to Invest \$1 Billion to Purchase Healthy Food for Food Insecure Americans & Build Food Bank Capacity*, U.S. DEP'T OF AGRIC. (Jun. 4, 2021), <https://www.usda.gov/media/press-releases/2021/06/04/usda-invest-1-billion-purchase-healthy-food-food-insecure-americans> [<https://perma.cc/DE4U-EH36>]; See *USDA Invests \$92.2 Million in Grants for Local, Regional Food Producers Affected by the Pandemic*, *supra note* 237.
- 268 *Local Food Purchase Assistance Cooperative Agreement Program*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/selling-food-to-usda/lfpacap> [<https://perma.cc/34XT-Z8MC>].
- 269 AGRIC. MKTG. SERV., LOCAL FOOD PURCHASE ASSISTANCE (LFPA) (2022), <https://www.ams.usda.gov/sites/default/files/media/LFPAProgramOverviewOne-Pager.pdf> [<https://perma.cc/P36Y-LLV9>].
- 270 Fresh Produce Procurement Reform Act of 2021, H.R. 5309, 117th Cong. (2021).
- 271 See generally EMILY M. BROAD LEIB, JOSEPH S. BECKMANN ET AL., OPPORTUNITIES TO REDUCE FOOD WASTE IN THE 2023 FARM BILL (2022), <https://chlp.org/wp-content/uploads/2022/04/2023-Farm-Bill-Food-Waste.pdf> [<https://perma.cc/FF9F-R38X>].
- 272 See generally EMILY M. BROAD LEIB & LAURIE BEYRANEVAND, THE URGENT CALL FOR A U.S. NATIONAL FOOD STRATEGY (2020), <https://foodstrategyblueprint.org/wp-content/uploads/2020/10/food-strategy-report-update-2020.pdf> [<https://perma.cc/GB46-6ZGX>].
- 273 See *Crosswalk*, HEALTHY FOOD POLICY PROJECT, <https://healthyfoodpolicyproject.org/crosswalk> [<https://perma.cc/B6QA-MJNZ>].
- 274 EMILY M. BROAD LEIB ET AL., BLUEPRINT FOR A NATIONAL FOOD STRATEGY (2017), http://www.chlpi.org/wp-content/uploads/2013/12/National-Food-Strategy-Blueprint_March-2017.pdf [<https://perma.cc/SQ4N-UWY3>].
- 275 *Id.* at 6–9.
- 276 *Farm to Plate Strategic Plan*, FARM TO PLATE, <https://www.vtfarmtoplate.com/plan/> [<https://perma.cc/Y376-JM9G>].
- 277 *The Farm to Plate Network*, FARM TO PLATE, <https://www.vtfarmtoplate.com/network> [<https://perma.cc/UW6P-85L3>].
- 278 FARM TO PLATE, VERMONT AGRICULTURE & FOOD SYSTEM STRATEGIC PLAN 2021-2030 16 (2021), <https://www.vtfarmtoplate.com/assets/resource/files/Vermont%20Agriculture%20and%20Food%20System%20Strategic%20Plan%202021-2030.pdf> [<https://perma.cc/LW4T-DVEL>].
- 279 *Id.*
- 280 *Id.* at 30.
- 281 LESLI HOEY ET AL., PARTICIPATORY STATE AND REGIONAL FOOD SYSTEM PLANS AND CHARTERS IN THE U.S. 3 (2021), <https://www.canr.msu.edu/foodsystems/uploads/files/National-Food-System-Plans-and-Charters-Report-Sept-2021.pdf> [<https://perma.cc/CBS6-YS9T>].
- 282 RICHARD PIROG ET AL., MICHIGAN STATE UNIVERSITY STATE FOOD SYSTEM PLANS: ARE THEY WORTH IT? (2021), <https://www.canr.msu.edu/resources/webinar-state-food-system-plans-are-they-worth-it> (see chat pod responses) [<https://perma.cc/F78J-5E9Q>].
- 283 *Id.*
- 284 7 U.S.C. § 1627c(e).
- 285 *Regional Food System Partnerships*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/services/grants/rfsp> [<https://perma.cc/SE8R-5E7H>].
- 286 *Regional Food System Partnership Program*, NAT'L AGRIC. SUSTAINABLE COAL. (Apr. 2020), <https://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/regional-food-system-partnership-program/> [<https://perma.cc/SE8R-5E7H>].
- 287 AGRIC. MKTG. SERV., REGIONAL FOOD SYSTEM PARTNERSHIPS: FISCAL YEAR 2021 REQUEST FOR APPLICATIONS 3 (2021), https://www.ams.usda.gov/sites/default/files/media/2021_RFSP_RFA.pdf [<https://perma.cc/2F6T-XU4F>].
- 288 *Id.* at 2.
- 289 See AGRIC. MKTG. SERV., REGIONAL FOOD SYSTEM PARTNERSHIPS PROGRAM: FISCAL YEAR 2021 DESCRIPTION OF FUNDED PROJECTS 1 (2021), <https://www.ams.usda.gov/sites/default/files/media/FY2021RFSPDescriptionofFundedProjects.pdf> [<https://perma.cc/YVT6-5GZ7>]; See AGRIC. MKTG. SERV., *supra note* 287 at 2.



290 U.S. DEP'T OF AGRIC., GRANT OPPORTUNITIES, REGIONAL FOOD SYSTEM PARTNERSHIPS PROGRAM 1, https://www.ams.usda.gov/sites/default/files/media/RFSP_FactSheet.pdf [https://perma.cc/TW4X-KPJK]; 7 U.S.C. § 1627c(e) (A), (B).

291 *Regional Food System Partnership Program*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/regional-food-system-partnership-program/> [https://perma.cc/SE8R-5E7H].

292 See CONG. RSCH. SERV., 2018 FARM BILL PRIMER: SUPPORT FOR URBAN AGRICULTURE (2019), <https://sgp.fas.org/crs/misc/IF11210.pdf> [https://perma.cc/JXB7-V9DA].

293 ALISON HAGEY ET AL., POLICY LINK, GROWING URBAN AGRICULTURE: EQUITABLE STRATEGIES & POLICIES FOR IMPROVING ACCESS TO HEALTHY FOOD & REVITALIZING COMMUNITIES (2012), https://www.policylink.org/sites/default/files/URBAN_AG_FULLREPORT.PDF [https://perma.cc/5ZWW-HQHJ]; *Urban Agriculture*, NAT'L AGRIC. LIBRARY, https://www.nal.usda.gov/legacy/aglaw/urban-agriculture#quicktabs-aglaw_pathfinder=1 [https://perma.cc/9SBQ-6WR2].

294 U.S. DEP'T OF AGRIC., URBAN AGRICULTURE TOOLKIT (2016), <https://www.usda.gov/sites/default/files/documents/urban-agriculture-toolkit.pdf> [https://perma.cc/4Y92-NGU4].

295 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 12302, 132 Stat. 4490, 4958.

296 *Id.*

297 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 12302, 132 Stat. 4490, 4961.

298 *Id.*

299 *Urban Agriculture Cooperative Agreements*, U.S. DEP'T OF AGRIC., <https://www.farmers.gov/your-business/urban/opportunities/coop-agreements> [https://perma.cc/7PCR-YJHL].

300 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 7212, 132 Stat. 4490, 4813.

301 *Id.*

302 See *Urban Agriculture Grants & Engagement Opportunities*, U.S. DEP'T OF AGRIC., <https://www.farmers.gov/your-business/urban/opportunities> [https://perma.cc/CC68-NZ4C].

303 *USDA Announces First-Ever Recipients of Urban Agriculture Grants & Cooperative Agreements*, U.S. DEP'T OF AGRIC. (Aug. 25, 2020), <https://www.usda.gov/media/press-releases/2020/08/25/usda-announces-first-ever-recipients-urban-agriculture-grants-and> [https://perma.cc/BJ8V-9NZJ]; *USDA Announces Recipients of Urban Agriculture Grants and Cooperative Agreements*, U.S. DEP'T OF AGRIC. (Oct. 5, 2021), <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/newsroom/releases/?cid=NRCSEPRD1833032> [https://perma.cc/U4RP-USHN].

304 *Id.*; *Community Compost and Food Waste Reduction Project FAQ*, U.S. DEP'T OF AGRIC., <https://www.farmers.gov/your-business/urban/opportunities/coop-agreements/faq> [https://perma.cc/V84D-CVA7]; 7 U.S.C. § 6923.

305 *2021 Farm Service Agency County Committee Elections Underway*, FARM SERV. AGENCY (Nov. 3, 2021), <https://www.fsa.usda.gov/news-room/news-releases/2021-farm-service-agency-county-committee-elections-underway> [https://perma.cc/KE3L-E94Z].

306 Solicitation of Stakeholder Input for Urban, Indoor, and Other Emerging Agricultural Production Research, Education, and Extension Initiative, 85 Fed. Reg. 22124 (Apr. 21, 2020), <https://www.federalregister.gov/documents/2020/04/21/2020-08402/solicitation-of-stakeholder-input-for-urban-indoor-and-other-emerging-agricultural-production> [https://perma.cc/ZR3P-FS87].

307 7 U.S.C. § 6923; *USDA Announces Inaugural Federal Advisory Committee on Urban Agriculture*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/media/press-releases/2022/02/01/usda-announces-inaugural-federal-advisory-committee-urban> [https://perma.cc/Y9QK-58ZJ].

308 U.S. DEP'T OF AGRIC., 2022 USDA EXPLANATORY NOTES – NATURAL RESOURCES CONSERVATION SERVICE (2021), <https://www.usda.gov/sites/default/files/documents/28NRCs2022Notes.pdf> [https://perma.cc/89C7-KXKH].

309 *Id.* at 79.

310 See California's Urban Agriculture Incentive Zones Act for an example of state action in this area. 2013 Cal ALS 406, 2013 Cal AB 551.

311 See *Urban Agriculture Grants*, U.S. DEP'T OF AGRIC., <https://www.farmers.gov/your-business/urban/opportunities/grants> [https://perma.cc/4RP4-XSQ4].

312 See NATURAL RES. CONSERVATION SERV., AGRICULTURAL CONSERVATION EASEMENT PROGRAM (ACEP): IS ACEP RIGHT FOR ME? (2021), https://www.nrcs.usda.gov/wps/PA_NRCsConsumption/download?cid=nrcseprd1840826&ext=pdf.

313 *Urban Agriculture and Community Food Security Act*, H.R. 5173, 117th Cong 1st. Sess. (2021).

314 *Id.*

315 Citing 7 U.S.C. § 1991(a) (“[A producer] who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years.”) and 7 U.S.C. § 2003(e) (defining ‘socially disadvantaged farmer or rancher’ as a farmer or rancher who is a member of a ‘socially disadvantaged whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities).

316 *Farm Bill Spending*, ECON RSCH. SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/farm-bill-spending/> [https://perma.cc/DL5P-LKAT].

317 See CONG. RSCH. SERV., *supra* note 57 at 2.; *Estimating Price Loss Coverage Benefits*, FARM BUREAU (Sep. 17, 2020), <https://www.fb.org/market-intel/estimating-price-loss-coverage-benefits> [https://perma.cc/CXG7-UQE2].

318 See Anne Schechinger, *supra* note 1.

319 *EWG's Farm Subsidy Database*, ENV'T WORKING GRP., https://farm.ewg.org/progdetail.php?fips=00000&progcode=total_mfp®ionname=theUnitedStates [https://perma.cc/7WSK-CUTB].

320 RANDY SCHNEPF & STEPHANIE ROSCH, CONG. RSCH. SERV., U.S. AGRICULTURAL AID IN RESPONSE TO COVID-19 2 (2021), <https://crsreports.congress.gov/product/pdf/IF/IF11764> (Approximate totals for CFAP AA, CFAP I and CFAP II); *2022 Farm Sector Income Forecast*, U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/farm-sector-income-forecast/> [https://perma.cc/BR45-8ANC].

321 U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-20-700R, USDA MARKET FACILITATION PROGRAM: INFORMATION ON PAYMENTS FOR 2019 (2020); Kit



Ramgopal & Andrew W. Lehren, *Small farmers left behind in Trump administration's COVID-19 relief package*, NBC NEWS (Aug. 9, 2020), <https://www.nbcnews.com/business/economy/small-farmers-left-behind-trump-administration-s-covid-19-relief-n1236158> [https://perma.cc/NGK4-QX7P].

322 *How Farm Subsidies Encourage the Big to Get Bigger*, NAT'L SUSTAINABLE AGRIC. COAL. (Dec. 21, 2017), <https://sustainableagriculture.net/blog/farm-subsidies-encourage-big-get-bigger/> [https://perma.cc/STL5-R7TX]; JONATHAN R. MCFADDEN & ROBERT A. HOPPE, ECON. RSCH. SERV., THE EVOLVING DISTRIBUTION OF PAYMENTS FROM COMMODITY, CONSERVATION AND FEDERAL CROP INSURANCE PROGRAMS 29–30 (2017), <https://www.ers.usda.gov/webdocs/publications/85834/eib-184.pdf?v=43068> [https://perma.cc/Z687-P6R8].

323 See RAFTER FERGUSON, *supra* note 10.

324 *Id.*

325 Kari Hamerschlag, *Fairness for Small Farmers: A Missing Ingredient in the U.S. Farm Bill*, FAIR WORLD PROJ. (2013), <https://fairworldproject.org/voices-of-fair-trade/fairness-for-small-farmers-a-missing-ingredient-in-the-u-s-farm-bill/> [https://perma.cc/YK8H-CCS8]; See *How Farm Subsidies Encourage the Big to Get Bigger*, *supra* note 322.

326 7 U.S.C. § 9015(a).

327 RANDY SCHNEPF, CONG. RSCH. SERV., 2018 FARM BILL PRIMER: TITLE I COMMODITY PROGRAMS 1 (2019), <https://crsreports.congress.gov/product/pdf/IF/IF11164>.

328 7 U.S.C. § 9016(a); see generally *Crop Commodity Programs*, ECON. RSCH. SERV., <https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/crop-commodity-programs/> (last visited Jan. 6, 2021) [https://perma.cc/N5LG-V3PS].

329 Gary Schnitkey et al., *The Price Loss Coverage (PLC) Option in the 2018 Farm Bill*, FARMDOC DAILY (Sep. 24, 2019), <https://farmdocdaily.illinois.edu/2019/09/weekly-farm-economics-the-price-loss-coverage-plc-option-in-the-2018-farm-bill.html> [https://perma.cc/6UQ3-PF8Y].

330 CONG. RSCH. SERV., THE 2018 FARM BILL (P.L. 115-334): SUMMARY AND SIDE-BY-SIDE COMPARISON 14 (2019), <https://crsreports.congress.gov/product/pdf/R/R45525>.

331 7 U.S.C. § 9011(8).

332 See CONG. RSCH. SERV., *supra* note 327 at 1.

333 See generally *Crop Commodity Programs*, ECON. RSCH. SERV., <https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/crop-commodity-programs/> (last visited Jan. 6, 2021) [https://perma.cc/N5LG-V3PS].

334 7 U.S.C. § 9017(d)(2).

335 DENNIS A. SHIELDS, CONG. RSCH. SERV., R43448, FARM COMMODITY PROVISIONS IN THE 2014 FARM BILL 6 (2015), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43448.pdf>.

336 See Anne Schechinger, *supra* note 1.

337 FARM SERV. AGENCY, TABLE 1. PLC, ARC-CO, AND ARC-IC PAYMENTS BY STATE AS OF JAN 21, 2021, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/arc-plc/2019/pdf/2019_arc_plc_payments.pdf [https://perma.cc/LHX6-BB8A]; see generally *ARC/PLC Program Data*, U.S. DEP'T OF AGRIC., https://www.fsa.usda.gov/programs-and-services/arplc_program/arplc-program-data/index [https://perma.cc/4VAP-8BPN].

338 *Id.*

339 See *How Farm Subsidies Encourage the Big to Get Bigger*, *supra* note 322; See JONATHAN R. MCFADDEN & ROBERT A. HOPPE, *supra* note 322 at 2930.

340 ROBERT A. HOPPE, ECON. RSCH. SERV., EIB-132, STRUCTURE AND FINANCES OF U.S. FARMS: FAMILY FARM REPORT (2014), <https://www.ers.usda.gov/publications/pub-details/?pubid=43916> [https://perma.cc/RKC4-87D3].

341 JAMES M. MACDONALD ET AL., ECON. RSCH. SERV., ERR-152, FARM SIZE AND THE ORGANIZATION OF U.S. CROP FARMING i (2013), https://www.ers.usda.gov/webdocs/publications/45108/39359_err152.pdf [https://perma.cc/QPQ5-MDGR].

342 *Risk Management Strategies*, ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/farm-practices-management/risk-management/risk-management-strategies/> (last visited Jul. 12, 2021) [https://perma.cc/Z4SU-TSW7].

343 Agriculture Reform, Food and Jobs Act of 2013, S. 954, 113th Congress, § 1605 (2013).

344 *Senate Farm Bill Offers Hope To Sustainable Agriculture Advocates*, NAT'L SUSTAINABLE AGRIC. COAL. (Jun. 29, 2018), <https://sustainableagriculture.net/blog/final-senate-farm-bill-2018/> [https://perma.cc/YFX7-4SVP].

345 Ron Durst & Robert Williams, *Farm Bill Income Cap for Program Payment Eligibility Affects Few Farms*, ECON. RSCH. SERV. (Aug. 1, 2016), <https://www.ers.usda.gov/amber-waves/2016/august/farm-bill-income-cap-for-program-payment-eligibility-affects-few-farms/> [https://perma.cc/22SQ-4ZQ2]; Sole proprietorships make up slightly below 90% of all farms. *State Facts Sheets*, ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/state-fact-sheets/> (last updated Feb.4, 2022) [https://perma.cc/L226-YL6L].

346 7 U.S.C. § 1308–3a(b).

347 7 U.S.C. § 9012.

348 7 U.S.C. § 1308-1(a)-(b).

349 7 U.S.C. § 1308-1(b)(2)(A).

350 CONG. RSCH. SERV., USDA'S ACTIVELY ENGAGED IN FARMING (AEF) REQUIREMENT 8 (2019), <https://sgp.fas.org/crs/misc/R44656.pdf>.

351 *USDA Removes Farm Program Payments to Managers Not Actively Engaged in Farming*, U.S. DEP'T OF AGRIC. (Dec. 15, 2015), <https://www.usda.gov/media/press-releases/2015/12/15/usda-removes-farm-program-payments-managers-not-actively-engaged> [https://perma.cc/2XNH-QXSX].

352 *Id.*

353 *Family Farms are the Focus of New Agriculture Census Data*, U.S. DEP'T OF AGRIC. (Mar. 17, 2015), <https://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2015/03/0066.xml&printable=true> [https://perma.cc/8U9Z-A8EE].

354 NAT'L AGRIC. STAT. SERV., 2017 CENSUS OF AGRIC. Tbl 74 (Summary by Legal Status For Tax Purposes: 2017), <https://www.nass.usda.gov/>



[Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/st99_1_0074_0074.pdf](#).

- 355 U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-781, CHANGES ARE NEEDED TO ELIGIBILITY REQUIREMENTS FOR BEING ACTIVELY INVOLVED IN FARMING 15 (2013), <http://www.gao.gov/assets/660/658208.pdf> [https://perma.cc/CWE4-TH8F].
- 356 U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-384R, FARM PROGRAMS: INFORMATION ON PAYMENTS (2018), <https://www.gao.gov/assets/gao-18-384r.pdf> [https://perma.cc/GL44-9Z8W].
- 357 S.Amdt. 3231 to S.Amdt. 3224, 115th Cong. (2018).
- 358 *Grassley and Fortenberry Insist Farmers Actually Set Foot on Soil*, TAXPAYERS FOR COMMON SENSE (Jun. 5, 2019), <https://www.taxpayer.net/agriculture/grassley-and-fortenberry-insist-so-called-farmers-actually-set-foot-on-soil/> [https://perma.cc/F38Y-7RXX].
- 359 See CONG. RSCH. SERV., *supra* note 330 at 15.
- 360 7 C.F.R. § 1400.3.
- 361 Payment Limitation and Payment Eligibility, 85 Fed. Reg. 73601 (Nov. 19, 2020), <https://www.federalregister.gov/documents/2020/11/19/2020-25456/payment-limitation-and-payment-eligibility#sectno-citation-1400.601> [https://perma.cc/TC3K-2VRR]; Chuck Abbott, *USDA Exempts Family Farms from Limit on Farm Subsidy* Recipients, SUCCESSFUL FARMING (Nov. 19, 2020), <https://www.agriculture.com/news/business/usda-exempts-family-farms-from-limit-on-farm-subsidy-recipients> [https://perma.cc/6FYT-5HCJ]; 7 C.F.R. § 1400.
- 362 Farm Program Integrity Act of 1985, S.281, 113th Cong. (Feb. 12, 2013), <https://www.govinfo.gov/content/pkg/BILLS-113s281is/pdf/BILLS-113s281is.pdf> [https://perma.cc/J94N-ZZ75].
- 363 *Final Actively Engaged Rule Preserves Unlimited Subsidies for the Biggest Farms*, NAT'L SUSTAINABLE AGRIC. COAL., (Dec.16, 2015), <http://sustainableagriculture.net/blog/final-actively-engaged-rule/> [https://perma.cc/V59M-LR97]. (“[A]ny mega farms that are currently organized as partnerships that might potentially be limited by the new rules can be fairly easily re-organized with extended family members taking the place of unrelated partners, thus negating the impact of the rule.”).
- 364 JOSEPH W. GLAUBER, TAXPAYERS FOR COMMON SENSE, CROP INSURANCE AND PRIVATE SECTOR DELIVERY: REASSESSING THE PUBLIC-PRIVATE PARTNERSHIP 5–8 (2016), https://www.taxpayer.net/wp-content/uploads/2017/12/Crop_Insurance_and_Private_Sector_Delivery_12.pdf [https://perma.cc/9AQD-6J26].
- 365 FEDERAL CROP INSURANCE: PROGRAM OVERVIEW FOR THE 115TH CONGRESS 14 (2018), <https://crsreports.congress.gov/product/pdf/R/R45193/4>.
- 366 *Id.*
- 367 *Id.*
- 368 See CONG. RSCH. SERV., *supra* note 57 at 3.
- 369 *Id.* at 23; *Reduce Subsidies in the Crop Insurance Program*, CONG. BUDGET OFF. (Dec. 9, 2020), <https://www.cbo.gov/budget-options/56815> [https://perma.cc/4FS7-R2B3].
- 370 See CONG. RSCH. SERV., *supra* note 57 at 25.
- 371 *Crop Year Government Cost of Federal Crop Insurance Program*, RISK MGMT. AGENCY (Mar. 18, 2020), <https://www.rma.usda.gov/-/media/RMA/AboutRMA/Program-Budget/19cygovcost.ashx?la=en> [https://perma.cc/7B5B-QMB4].
- 372 See generally ANTON Bekkerman, ERIC J. BELASCO, VINCENT H. SMITH, WHERE THE MONEY GOES, THE DISTRIBUTION OF CROP INSURANCE AND OTHER FARM SUBSIDY PAYMENTS (2018), <https://aei.org/wp-content/uploads/2018/01/Where-the-Money-Goes.pdf>.
- 373 See CONG. RSCH. SERV., *supra* note 57 at 2.
- 374 *Id.* at 3.
- 375 Anton Bekkerman, Eric J Belasco, & Vincent H. Smith., *Does Farm Size Matter? Distribution of Crop Insurance Subsidies and Government Program Payments Across U.S. Farms*, 41 APPLIED ECON. PERSPS. & POL'Y 498, 498 (2019).
- 376 See CONG. RSCH. SERV., *supra* note 57 at 2.
- 377 CONG. BUDGET OFF., OPTIONS TO REDUCE THE BUDGETARY COSTS OF THE FEDERAL CROP INSURANCE PROGRAM 13 (2018), <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53375-federalcropinsuranceprogram.pdf>.
- 378 CROP INSURANCE & REINSURANCE BUREAU, MEANS TESTING AND CROP INSURANCE (2021), https://cropinsurance.org/wp-content/uploads/2021/02/Means-Testing-and-Crop-Insurance-2020_Updated.pdf [https://perma.cc/6ZQG-BCAY].
- 379 Bruce A. Babcock & Chad E. Hart, *Crop Insurance: A Good Deal for Taxpayers?*, CTR. FOR AGRIC. & RURAL DEV. (Summer 2006), https://www.card.iastate.edu/iowa_ag_review/summer_06/article1.aspx [https://perma.cc/VVN8-6428].
- 380 See CONG. RSCH. SERV., *supra* note 57 at 1.
- 381 ERIK J. O'DONOGHUE ET AL., ECON. RSCH. SERV., THE 2014 FARM ACT AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND SUPPLEMENTAL COVERAGE OPTION PROGRAMS' EFFECTS ON CROP REVENUE 1 (2016), https://www.ers.usda.gov/webdocs/publications/45512/56417_err-204_summary.pdf?v=0 [https://perma.cc/4Y2E-9MJ4].
- 382 Barry K. Goodwin & Vincent H. Smith, *What Harm Is Done By Subsidizing Crop Insurance?* 95(2) AM. J. OF AGRIC. ECON. 492–94 (2013).
- 383 See CONG. RSCH. SERV., *supra* note 57 at 12.
- 384 Jisang Yu, Daniel A. Sumner, *Effects of Subsidized Crop Insurance on Crop Choices*, 49 AGRIC. ECON. 533 (2018).
- 385 See *Crop Insurance Rules Challenge Organic and Sustainable Farming Practices*, NAT'L SUSTAINABLE AGRIC. COAL. (Sep. 30, 2021), <https://sustainableagriculture.net/blog/crop-insurance-rules-challenge-organic-and-sustainable-farming-practices/> [https://perma.cc/L69R-3G4V].
- 386 See CONG. RSCH. SERV., *supra* note 57 at 3.
- 387 See Anton Bekkerman, Eric J Belasco, & Vincent H. Smith., *supra* note 375. see generally ANTON BEKKERMAN, ERIC J. BELASCO, VINCENT H. SMITH, *supra* note 372.
- 388 DENNIS A. SHIELDS, CONG. RSCH. SERV., R43494, CROP INSURANCE PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) 3, at 12 (2014) <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43494.pdf> [https://perma.cc/ML2N-ZQNN].



389 S. AMDT 953 TO S. 954, 113TH CONGRESS (2013-2014).

390 H. AMDT. 216 TO H.R.1947, 113TH CONGRESS (2013-2014).

391 FARM BILL L. ENTER., PRODUCTIVITY & RISK MANAGEMENT 8 (2018), http://www.farmbilllaw.org/wp-content/uploads/2018/03/FBLE_Productivity-and-Risk-Management_Final.pdf.

392 JOSEPH W. GLAUBER, TAXPAYERS FOR COMMON SENSE, CROP INSURANCE AND PRIVATE SECTOR DELIVERY: REASSESSING THE PUBLIC-PRIVATE PARTNERSHIP 5–8 (2016), https://www.taxpayer.net/wp-content/uploads/2017/12/Crop_Insurance_and_Private_Sector_Delivery_12.pdf [https://perma.cc/9AQD-6J26].

393 *USDA Builds on Record of Crop Insurance Success for America’s Farmers and Ranchers*, RISK MGMT. AGENCY (Jul. 7, 2016), <https://www.rma.usda.gov/en/News-Room/Press/National-News-Archive/2016-News/2016-News/USDA-Builds-on-Record-of-Crop-Insurance-Success-for-Americas-Farmers-and-Ranchers> [https://perma.cc/HLJ3-MLL8].

394 DENNIS A. SHIELDS, CONG. RSCH. SERV., R40532, FEDERAL CROP INSURANCE: BACKGROUND 1, 18 (2015), <https://sgp.fas.org/crs/misc/R40532.pdf> [https://perma.cc/QJ3M-E4YG].

395 Agricultural Act of 2014, Pub. L. No. 113-79, § 11012, 128 Stat. 961 (2014); See FEDERAL CROP INSURANCE: PROGRAM OVERVIEW FOR THE 115TH CONGRESS, *supra* note 365 at 14.

396 See JOSEPH W. GLAUBER, CROP INSURANCE AND PRIVATE SECTOR DELIVERY, REASSESSING THE PUBLIC-PRIVATE PARTNERSHIP, TAXPAYERS FOR COMMONSENSE 2 (2016), https://www.taxpayer.net/wp-content/uploads/2017/12/Crop_Insurance_and_Private_Sector_Delivery_12.pdf [https://perma.cc/9AQD-6J26].

397 See U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-501, CROP INSURANCE: OPPORTUNITIES EXIST TO IMPROVE PROGRAM DELIVERY AND REDUCE COSTS 25 (2017), <https://www.gao.gov/assets/690/686145.pdf> [https://perma.cc/WBH5-Y6JU].

398 See FEDERAL CROP INSURANCE: PROGRAM OVERVIEW FOR THE 115TH CONGRESS, *supra* note 365 at 21.

399 *Id.*

400 See U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-501, CROP INSURANCE: OPPORTUNITIES EXIST TO IMPROVE PROGRAM DELIVERY AND REDUCE COSTS 25 (2017), <https://www.gao.gov/assets/690/686145.pdf> [https://perma.cc/WBH5-Y6JU].

401 *Id.*

402 7 U.S.C. § 1508(k)(3).

403 See Nathan Rosenberg & Bryce W. Stucki, *supra* note 37; *Native American Agriculture Fund Is Helping Empower Farmers*, FOOD TANK (Jan. 2020), <https://foodtank.com/news/2020/01/native-american-agriculture-fund-is-helping-empower-farmers/> [https://perma.cc/6MGG-UM45]. On defining SDFR, see Nigel Key & Jessica Todd, *Socially Disadvantaged, Beginning, Limited Resource, and Female Farmers and Ranchers*, ECON. RSCH. SERV. (May 20, 2021), <https://www.ers.usda.gov/topics/farm-economy/socially-disadvantaged-beginning-limited-resource-and-female-farmers-and-ranchers/> [https://perma.cc/337C-8DLT]; *Frequently Asked Questions 2501 Program*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/partnerships/frequently-asked-questions-2501-program> [https://perma.cc/YLK4-W4GF] (discussing the 2501 grant program’s application of the definition “socially disadvantaged,” which is also available to Socially Disadvantaged and Veteran Farmers and Ranchers).

404 See Nathan Rosenberg & Bryce W. Stucki, *supra* note 37.

405 See John Boyd & Scott Faber, *Op-ed: The Farm Bureau Says it Wants to Fight Racism. Here’s Where to Start*, CIV. EATS (Jul. 3, 2020), <https://civileats.com/2020/07/03/op-ed-the-farm-bureau-says-it-wants-to-fight-racism-heres-where-to-start/> [https://perma.cc/N54T-U3YX]; See Anne Schechinger, *supra* note 1.

406 13 C.F.R. § 124.103 (Defines socially disadvantaged individuals as “those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.”).

407 Todd Davis, *Farming in the South riskier than the Midwest*, FARM PROGRESS (Apr. 13, 2016), <https://www.farmprogress.com/soybeans/farming-south-riskier-midwest> [https://perma.cc/QXT9-2E8M]; Mark Weinraub, *Midwest Farmers Receive Record Federal Aid, Crop Insurance Payments under Trump*, INSURANCE J. (Oct. 20, 2020), <https://www.insurancejournal.com/news/midwest/2020/10/20/587182.htm> [https://perma.cc/6MBB-DPA3].

408 See generally NAT’L AGRIC. STAT. SERV., BLACK PRODUCERS, 2017 CENSUS OF AGRICULTURE, *supra* note 34; NAT’L AGRIC. STAT. SERV., ASIAN PRODUCERS, 2017 CENSUS OF AGRICULTURE, *supra* note 35; NAT’L AGRIC. STAT. SERV., HISPANIC PRODUCERS, 2017 CENSUS OF AGRICULTURE, *supra* note 35; NAT’L AGRIC. STAT. SERV., AMERICAN INDIAN/ALASKA NATIVE PRODUCERS, 2017 CENSUS OF AGRICULTURE, *supra* note 36.

409 See JAMES M. MACDONALD ET AL., *supra* note 6 at 32–39; see generally JAMES M. MACDONALD ET AL., *supra* note 341.

410 See JAMES M. MACDONALD ET AL., *supra* note 6 at iv; JAMES M. MACDONALD & WILLIAM D. MCBRIDE, ECON. RSCH. SERV., ERR-159, U.S. HOG PRODUCTION FROM 1992 TO 2009: TECHNOLOGY, RESTRUCTURING, AND PRODUCTIVITY GROWTH i, 10 (2013), https://www.ers.usda.gov/webdocs/publications/45148/40364_err158.pdf [https://perma.cc/V8DQ-AQK6]; JAMES M. MACDONALD & WILLIAM D. MCBRIDE, ECON. RSCH. SERV., EIB-43, THE TRANSFORMATION OF U.S. LIVESTOCK AGRICULTURE: SCALE, EFFICIENCY, AND RISKS 7–8 (2009), https://www.ers.usda.gov/webdocs/publications/44292/10992_eib43.pdf?v=7879.3 [https://perma.cc/Y8LC-2E6A]; JAMES M. MACDONALD ET AL., ECON. RSCH. SERV., ERR-274, CONSOLIDATION IN U.S. DAIRY FARMING iii, 1 (2020), <https://www.ers.usda.gov/webdocs/publications/98901/err-274.pdf?v=2175.7> [https://perma.cc/Q5TA-C2BB].

411 See JAMES M. MACDONALD ET AL., *supra* note 341 at 16–45.

412 See JAMES M. MACDONALD ET AL., *supra* note 341 at 22 – 31; See JAMES M. MACDONALD ET AL., *supra* note 6 at 40.

413 See JAMES M. MACDONALD ET AL., *supra* note 341 at 22, 38–45.

414 See *Farmers Trapped In Unsustainable Cycle By Biotechnology, Seed Consolidation*, NAT’L SUSTAINABLE AGRIC. COAL., (Jul. 9, 2021), <https://sustainableagriculture.net/blog/farmers-trapped-in-unsustainable-cycle-by-biotechnology-seed-consolidation/> [https://perma.cc/774W-6WQH]; MARY K. HENDRICKSON ET AL, THE FOOD SYSTEM: CONCENTRATION AND ITS IMPACTS, A SPECIAL REPORT TO THE FAMILY FARM ACTION ALLIANCE



4 (2020), <https://farmaction.us/wp-content/uploads/2020/11/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts-FINAL.pdf> [https://perma.cc/7RS6-2L28].

415 *Id.* at 3.

416 See JAMES M. MACDONALD & WILLIAM D. MCBRIDE, ECON. RSCH. SERV., *supra* note 410 at 20; Rob Dongoski, *How vertical integration is impacting food and agribusiness*, ERNST & YOUNG GLOBAL LTD., https://www.ey.com/en_us/consumer-products-retail/how-vertical-integration-is-impacting-food-and-agribusiness (last visited Feb. 19, 2022) [https://perma.cc/H5U2-QWAG].

417 See James M. MacDonald et al., *supra* note 6 at 40 – 41; Doug Gurian-Sherman, *CAFOs Uncovered, The Untold Costs of Confined Animal Feeding Operations*, UNION OF CONCERNED SCIENTISTS 1 (2008), <https://www.ucsusa.org/sites/default/files/2019-10/cafos-uncovered-executive-summary.pdf> [https://perma.cc/6PK9-HJNC].

418 Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92566, 92575 (Dec. 20, 2016); AGRIC. MKTG. SERV., PACKERS AND STOCKYARDS DIVISION: ANNUAL REPORT 2018 9 (2018), <https://www.ams.usda.gov/sites/default/files/media/PSDAnnualReport2018.pdf> [https://perma.cc/NZ9B-UD5V].

419 *Farm Structure and Contracting*, U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization/farm-structure-and-contracting/> [https://perma.cc/J7ZH-55H9].

420 See JAMES M. MACDONALD & WILLIAM D. MCBRIDE, ECON. RSCH. SERV., *supra* note 410 at 20.

421 See U.S. DEP'T OF JUST. & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES 3 (1997), <https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/hmg.pdf> [https://perma.cc/HH86-A76Y]; U.S. DEP'T OF JUST. & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES 2, 32–33 (2010), <https://www.justice.gov/atr/file/810276/download> [https://perma.cc/2QY4-8H9Y].

422 JAMES M. MACDONALD, ECON. RSCH. SERV., ERR-126, TECHNOLOGY, ORGANIZATION, AND FINANCIAL PERFORMANCE IN U.S. BROILER PRODUCTION 29 (2013), https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=3027.5 [https://perma.cc/EB72-76TY].

423 *Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll, PLLC Announce a \$181 Million Settlement for Consumers Who Purchased Chicken Products*, PRNEWswire (Sep. 10, 2021), <https://www.prnewswire.com/news-releases/hagens-berman-sobol-shapiro-llp-and-cohen-milstein-sellers-toll-llc-announce-a-181-million-settlement-for-consumers-who-purchased-chicken-products-301373612.html> [https://perma.cc/WX35-ZXNF]; see also Jacob Bunge, *Tyson, Pilgrim's Agree to Settle Some Chicken Price-Fixing Claims*, WALL ST. J. (Jan. 11, 2021), <https://www.wsj.com/articles/pilgrims-pride-agrees-to-settle-some-chicken-price-fixing-claims-11610375897#:~:text=Pilgrim's%20settlement%20was%20announced%20in,billion%20in%20sales%20for%202019> [https://perma.cc/YL62-DTTT].

424 See *Broiler Chicken Grower Antitrust Litigation (No. II)*, Dkt. No. 6:20-md-02977 (E.D. Okla.); *In re Broiler Chicken Grower Antitrust Litigation No. II*, BROILER GROWERS ANTITRUST LITIGATION, <https://www.broilergrowersantitrustsettlement.com/> [https://perma.cc/XP2E-D6K3].

425 15 U.S.C. § 12; See *Antitrust Laws*, *supra* note 17.

426 *Id.*; U.S. DEP'T OF JUSTICE, ANTITRUST ENFORCEMENT AND AGRICULTURE (2007), <https://www.justice.gov/atr/file/519371/download> [https://perma.cc/P9QE-L9C7].

427 *Antitrust Laws and You*, DEP'T OF JUST., <https://www.justice.gov/atr/antitrust-laws-and-you> [https://perma.cc/4A5G-6PE2]; *Federal Trade Commission Act*, FED. TRADE COMM'N, <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act> [https://perma.cc/5Z7U-QYMK].

428 See *About the Packers and Stockyards Act*, *supra* note 16.

429 AGRIC. MKTG. SERV., PACKERS AND STOCKYARDS ACT FACTSHEET (2020), <https://www.ams.usda.gov/sites/default/files/media/PSActFactSheet.pdf> [https://perma.cc/L2QS-5ZQM].

430 7 U.S.C. § 227; *Packers and Stockyards Act*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/statutes/packers-and-stockyards-act> [https://perma.cc/E46N-FL9F].

431 See AGRIC. MKTG. SERV., PACKERS AND STOCKYARDS ACT FACTSHEET, *supra* note 429.

432 See *Latest Biden appointees could signal greater antitrust enforcement in agriculture*, THE COUNTER (Apr. 4, 2021), <https://thecounter.org/biden-appointees-antitrust-enforcement-agriculture-ftc/> [https://perma.cc/LR27-Z9DP].

433 *Fact Sheet: Executive Order on Promoting Competition in the American Economy*, THE WHITE HOUSE (July 09, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (last visited Aug. 31, 2021) [https://perma.cc/XZ6Y-FED8]; *Livestock and Poultry Competition Reform on the Horizon*, NAT'L SUSTAINABLE AGRIC. COAL. (Aug. 27, 2021), <https://sustainableagriculture.net/blog/livestock-and-poultry-competition-reform-on-the-horizon/> [https://perma.cc/7AVB-DS8F].

434 *Fact Sheet: Executive Order on Promoting Competition in the American Economy*, THE WHITE HOUSE (July 09, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (last visited Aug. 31, 2021) [https://perma.cc/XZ6Y-FED8].

435 Remarks by President Biden During a Virtual Meeting to Discuss Boosting Competition and Reducing Prices in the Meat-Processing Industry, THE WHITE HOUSE, (Jan. 3, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/03/remarks-by-president-biden-during-a-virtual-meeting-to-discuss-boosting-competition-and-reducing-prices-in-the-meat-processing-industry/> [https://perma.cc/5A9H-RXNQ].

436 *USDA Celebrates Landmark Agricultural Legislation's Century of Service by Committing to Maximum Enforcement of the Packers and Stockyards Act*, AGRIC. MKTG. SERV. (Aug. 24, 2021), <https://www.ams.usda.gov/press-release/usda-celebrates-landmark-agricultural-legislation%E2%80%99s-century-service-committing> [https://perma.cc/BH5Z-MWFR].

437 See AGRIC. MKTG. SERV., PACKERS AND STOCKYARDS ACT FACTSHEET, *supra* note 429.

438 Packers and Stockyards Act, 1921 § 202(a); 7 U.S.C. § 192(a).



439 *Id.* § 202(b); *Id.* § 192(b).
440 *Id.* § 308(a); *Id.* § 209(a).
441 *Id.* § 308(b)(2); *Id.* § 209(b)(2).
442 *Id.* § 308(b)(1); *Id.* § 209(b)(1).
443 *Id.* §§ 202(a)–(b), 308(a)(2); *Id.* §§ 192(a)–(b), 209(a)(2).
444 *Id.* § 202(c)–(g), *Id.* § 192(c)–(g); see Sherman Antitrust Act §§ 1–3, 15 U.S.C. §§ 1–3; Clayton Act §§ 2–3, 15 U.S.C. §§ 13–14.
445 See *London v. Fieldale Farms Corp.*, 410 F.3d 1295, 1305 (11th Cir. 2005) (holding that “in order to prevail under the PSA, a plaintiff must show that the defendant’s deceptive or unfair practice adversely affects competition or is likely to adversely affect competition.”); *Been v. O.K. Industries*, 495 F.3d 1217, 1230 (10th Cir. 2007) (explaining that “a plaintiff who challenges a practice under § 202(a) [must] show that the practice injures or is likely to injury competition.”); *Wheeler v. Pilgrim’s Pride Corp.*, 591 F.3d 355, 363 (5th Cir. 2009) (holding that “[t]o support a claim that a practice violates Section (a) or (b) of [Section 202] there must be proof of injury, or likelihood of injury, to competition.”); *Terry v. Tyson Farms, Inc.*, 604 F.3d 272, 277, 279 (6th Cir. 2010) (explaining that it is “a matter of settled law” that Sections 202(a) and (b) require a showing of “anticompetitive effect.”).

446 Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, 75 Fed. Reg. 35338, 35341 (proposed June 22, 2010) (to be codified at 9 C.F.R. pt. 201); Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92566, 92594 (Dec. 20, 2016) (codified at 9 C.F.R. pt. 201); Revision of Delegations of Authority, 83 Fed. Reg. 61309 (Nov. 29, 2018).

447 *E.g.*, H.R. 6718, 116th Cong. § 202(a)(2) (2020); S. 3221, 116th Cong. § 202(a)(2) (2020); H.R. 2135, 110th § 202 Cong. (2007); S. 622, 110th Cong. § 202 (2007).

448 Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92566, 92594 (Dec. 20, 2016) (codified at 9 C.F.R. pt. 201).

449 Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 82 Fed. Reg. 48594 (Oct. 18, 2017) (codified at 9 C.F.R. pt. 201);

450 *Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/fag> [<https://perma.cc/Q6CC-U54X>].

451 Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234 § 11006(1), 122 Stat. 923, 1358 (2008).

452 Undue and Unreasonable Preferences and Advantages under the Packers and Stockyards Act, 85 Fed. Reg. 79779 (Dec. 11, 2020) (codified at 9 C.F.R. pt. 201).

453 9 C.F.R. § 201.211 (2021).

454 See *Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act*, *supra* note 450.

455 *Thinly sliced: USDA eliminates the agency responsible for antitrust enforcement in meat packing*, THE COUNTER (Nov. 30, 2018), <https://thecounter.org/usda-gipsa-agency-meatpacking-antitrust/> [<https://perma.cc/Q6CC-U54X>]; Revision of Delegations of Authority, 83 Fed. Reg. 61309 (Nov. 29, 2018).

456 *Our Mission*, AGRIC. MKTG. SERV., <https://www.ams.usda.gov/about-ams> (last visited Mar. 12, 2021) [<https://perma.cc/JL5J-XSEK>].

457 See R-CALF USA, R-CALF USA Comments on Improving Customer Service 3–4 (Oct. 7, 2017), <https://www.r-calfusa.com/wp-content/uploads/2017/10/171007-R-CALF-USAs-Comments-Re-Improving-Customer-Service.doc>.

458 Packers and Stockyards Act, 1921 § 202(a)–(b), 7 U.S.C. § 192(a)–(b).

459 *Id.* § 203(a)–(b); *Id.* § 193(a)–(b); see Packers and Stockyards Act, 1921 § 301(d), 7 U.S.C. § 201(d) (defining “dealer” as “any person, not a market agency, engaged in the business of buying or selling in commerce livestock,” excluding live poultry dealers.).

460 *Id.* § 404; *Id.* § 224; see *Id.* § 203(a)–(b); *Id.* § 193(a)–(b) (authorizing USDA to proceed against packers and swine contractors by administrative action.); Packers and Stockyards Act, 1921 § 301(d); 7 U.S.C. § 201(d) (defining “dealer” as “any person, not a market agency, engaged in the business of buying or selling in commerce livestock,” excluding live poultry dealers).

461 See AGRIC. MKTG. SERV., PACKERS AND STOCKYARDS ACT FACTSHEET, *supra* note 429.

462 Meat and Poultry Special Investigator Act, H.R.4103, 117th Cong. (2021-2022); Meat and Poultry Special Investigator Act of 2022, S. 3870, 117th Cong. (2022).

463 U.S. DEP’T OF JUST., COMPETITION AND AGRICULTURE: VOICES FROM THE WORKSHOPS ON AGRICULTURE AND ANTITRUST ENFORCEMENT IN OUR 21ST CENTURY ECONOMY AND THOUGHTS ON THE WAY FORWARD 2 (2012), <https://www.justice.gov/sites/default/files/atr/legacy/2012/05/16/283291.pdf> [<https://perma.cc/U68B-TM5J>].

464 *Id.*

465 *Tester, Grassley, Rounds, Unveil Bill to Combat Anti-Competitive Practices in Meat Processing Industry that Threaten Nation’s Food Supply*, SENATOR JON TESTER (Jun. 11, 2021), <https://www.grassley.senate.gov/news/news-releases/grassley-tester-rounds-unveil-bill-to-combat-anti-competitive-practices-in-meat-processing-industry-that-threaten-nations-food-supply> [<https://perma.cc/98F2-AFAB>].

466 *Id.*

467 Meat and Poultry Special Investigator Act, H.R.4103, 117th Cong. (2021-2022); Meat and Poultry Special Investigator Act of 2022, S. 3870, 117th Cong. (2022).

468 See *Tester, Grassley, Rounds, Unveil Bill to Combat Anti-Competitive Practices in Meat Processing Industry that Threaten Nation’s Food Supply*, *supra* note 465; Douglas Ross, Special Couns. for Agric., Antitrust Div., U.S. Dep’t of Just., Address to the R-CALF USA Annual Convention, at 2 (Jan. 19, 2007), <https://www.justice.gov/atr/file/519371/download> [<https://perma.cc/WQ6B-WLV2>].

469 James MacDonald, *Mergers and Competition in Seed and Agricultural Chemical Markets*, AMBER WAVES (Apr. 3, 2017), <https://www.ers.usda.gov/amber-waves/2017/april/mergers-and-competition-in-seed-and-agricultural-chemical-markets/> [<https://perma.cc/YV4A-9V6Z>].



470 *Id.*
471 Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92566, 92575 (Dec. 20, 2016).
472 MICHAEL K. ADJEMIAN ET AL., ECON. RSCH. SERV., EIB-148, THINNING MARKETS IN U.S. AGRICULTURE 4 (2016), https://www.ers.usda.gov/webdocs/publications/44034/56926_eib148.pdf?v=6349.3 [https://perma.cc/BMD6-R42P].
473 Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92566, 92575 (Dec. 20, 2016).
474 *Id.* at 6.
475 ZOE WILLINGHAM & ANDY GREEN, CTR. FOR AM. PROGRESS, A FAIR DEAL FOR FARMERS 1 (2019), <https://www.americanprogress.org/article/fair-deal-farmers/> [https://perma.cc/X76D-YE6N].
476 15 U.S.C. § 18.
477 See Douglas Ross, Special Counsel for Agriculture, *Antitrust Enforcement & Agriculture*, U.S. DEP'T OF JUSTICE (Aug. 20, 2002), https://www.justice.gov/atr/speech/antitrust-enforcement-and-agriculture-2#N_1_ [https://perma.cc/KXG5-5WEE].
478 *Id.*
479 James MacDonald, *Mergers in Seeds and Agricultural Chemicals: What Happened?*, AMBER WAVES (Feb. 15, 2019), <https://www.ers.usda.gov/amber-waves/2019/february/mergers-in-seeds-and-agricultural-chemicals-what-happened/> [https://perma.cc/2Q4D-42K6]; see Brian Fung and Caitlin Dewey, *Justice Department approves Bayer-Monsanto merger in landmark settlement*, WASH. POST (May 29, 2018), https://www.washingtonpost.com/business/economy/justice-department-approves-bayer-monsanto-merger-in-landmark-settlement/2018/05/29/25d56ec8-6358-11e8-a69c-b944de66d9e7_story.html [https://perma.cc/7SYD-P8NJ]; Gil Gullickson, *U.S. DOJ Approval Means Bayer's Buyout of Monsanto Likely in Two Months*, SUCCESSFUL FARMING (May 29, 2018), <https://www.agriculture.com/news/business/u-s-department-of-justice-approval-means-bayer-s-buyout-of-monsanto-likely-in-two> [https://perma.cc/X7C5-L4FP].
480 See 15 U.S.C. *supra* note 476.
481 U.S. DEP'T OF JUST., COMPETITION AND AGRICULTURE 8, 18 (2012), <https://www.justice.gov/sites/default/files/atr/legacy/2012/05/16/283291.pdf> [https://perma.cc/9BZD-7BR4].
482 *Id.*; Douglas Ross, Special Couns. for Agric., Antitrust Div., U.S. Dep't of Just., Address to the R-CALF USA Annual Convention, at 2 (Jan. 19, 2007), <https://www.justice.gov/atr/file/519371/download> [https://perma.cc/8RWV-FSNJ].
483 See U.S. DEP'T OF JUST., *supra* note 481 at 8, 18.
484 See Reiter v. Sonotone Corp., 442 U.S. 330, 343 (1979) (describing the Sherman Act as merely a “consumer welfare prescription.”).
485 See Sheelah Kolhatkar, *Lina Khan's Battle to Rein in Big Tech*, THE NEW YORKER (Nov. 29, 2021), <https://www.newyorker.com/magazine/2021/12/06/lina-khans-battle-to-rein-in-big-tech> [https://perma.cc/29QD-MCV5].
486 See, e.g., Julie Creswell & Madeleine Ngo, *Baby Formula Shortage Has an Aggravating Factor: Few Producers*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/2022/05/20/business/economy/baby-formula-shortage-market.html>?
487 See generally U.S. DEPT' OF TREASURY, THE STATE OF LABOR MARKET COMPETITION (2022), <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf> [https://perma.cc/BDU9-J5WH].
488 *Fed. Trade Comm'n v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001) (quoting *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 363 (1963)); *Fed. Trade Comm'n v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001) (quoting *United States v. Baker Hughes Inc.*, 908 F.2d 981, 982 (D.C. Cir. 1990)).
489 *Fed. Trade Comm'n v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001) (quoting *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 120 (1975)).
490 *United States v. Baker Hughes Inc.*, 908 F.2d 981, 992 (D.C. Cir. 1990) (“Imposing a heavy burden of production on a defendant would be particularly anomalous where, as here, it is easy to establish a prima facie case.”); Herbert Hovenkamp & Carl Shapiro, *Horizontal Mergers, Market Structure, and Burdens of Proof*, 127 YALE L.J. 1996, 2008–13 (2018).
491 See *Fed. Trade Comm'n v. H.J. Heinz Co.*, *supra* note 488. (quoting *United States v. Baker Hughes Inc.*, 908 F.2d 981, 983 (D.C. Cir. 1990)).
492 See Prohibiting Anticompetitive Mergers Act of 2022, H.R.7101, 117th Congress (2021-2022); Rep. Mondaire Jones, Sen. Elizabeth Warren Introduce Bicameral Legislation To Ban Anticompetitive Mergers, Restore Competition, And Bring Down Prices For Consumers, CONGRESSMAN MONDAIRE JONES (Mar. 16, 2022), <https://jones.house.gov/media/press-releases/rep-mondaire-jones-sen-elizabeth-warren-introduce-bicameral-legislation-ban> [https://perma.cc/LA8C-KAXA].
493 FTC and DOJ Extend Deadline for Public Comment on Ways to Strengthen Enforcement Against Illegal Mergers, FED. TRADE COMM'N (Mar. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-doj-extend-deadline-public-comment-ways-strengthen-enforcement-against-illegal-mergers> [https://perma.cc/W9Z3-D5TS].
494 Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers, FED. TRADE COMM'N (Jan. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers> [https://perma.cc/BJ2S-8JCT].
495 See RAFI – USA, Merger Guidelines Comment (Dkt. FTC-2022-0003-1527) (Apr. 21, 2022), <https://www.regulations.gov/comment/FTC-2022-0003-1527>.
496 *Id.*
497 Open Markets, Response by the Open Markets Institution to the Request by the Federal Trade Commission and the Antitrust Division of the Department of Justice for Information on Merger Enforcement (Apr. 21, 2022), <https://www.regulations.gov/comment/FTC-2022-0003-1123>.



