



Mr. Michael Poe
Office of Budget and Program Analysis
U.S. Department of Agriculture
Jamie L. Whitten Building, Room 101–A
1400 Independence Ave. SW Washington, DC 20250

Docket No. USDA-2017-0002

Re: Proposed Rule: Identifying Regulatory Reform Initiatives, 82 FR 32649–32650

Dear Mr. Poe:

We take this opportunity to comment in response to the United States Department of Agriculture’s (USDA) request for information on how to provide better customer service and remove unintended barriers to participation in its regulatory programs (Docket No. USDA-2017-0002), pursuant to Executive Order (E.O.) 13777—Enforcing the Regulatory Reform Agenda.

The Farm Bill Law Enterprise brings together a variety of academic and clinical programs with expertise in agriculture, nutrition, and the environment. Our mission is to work toward a farm bill that reflects a thoughtful consideration of the long-term needs of our society, including economic opportunity and stability, public health and nutrition, public resources stewardship, and fair access and equal protection. We accomplish this 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.

Through our research on the farm bill, we have developed expertise in many USDA programs and processes. As such, FBLE writes to identify critical institutional challenges faced by USDA and to recommend policy changes to make USDA a more accessible, transparent, and equitable agency. Our overarching recommendations are that USDA: (1) ensure that each program under its purview is operating efficiently, effectively, and fairly; (2) establish a responsive and accessible framework for reporting and investigating complaints; (3) strengthen its capacity to analyze and utilize technology; and (4) increase engagement with diverse stakeholders and underrepresented farmers. These recommendations are at the heart of the democratic participation to which USDA is striving because they assure not merely the opportunity to engage, but that USDA respects that engagement and implements policy and programs that reflect the values of all its constituents in the service of statutory goals.

Background

On February 24, 2017, President Trump signed E.O. 13777—Enforcing the Regulatory Reform Agenda, which established a federal policy to alleviate unnecessary regulatory burdens on the



American people.¹ The E.O. directs federal agencies to establish a Regulatory Reform Task Force (Task Force).² One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the USDA Secretary regarding their repeal, replacement, or modification.³ The E.O. further calls on the Task Force to seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations on regulations that meet some or all of the criteria above⁴.

USDA is a massive institution, with 29 agencies and offices working on a diverse set of issues as distinct as rural development and food safety.⁵ While the department often exemplifies good governance more clearly than other federal units—SNAP, for example, has one of the lowest fraud and error rates of any federal program⁶—there is still room to improve.

In 1993, USDA began to undergo a series of federally-mandated management reforms that one scholar referred to as the department’s “most massive restructuring” in its history.⁷ These reforms were designed to reduce the department’s expenditures and footprint, while improving its client services.⁸ While these management reforms did reduce USDA expenditures in some areas, external researchers have found that they largely failed to make the department more effective or efficient.⁹ Further, GAO has suggested that while USDA has made strides in streamlining administrative services, there are still opportunities for improvement.¹⁰ Specifically, GAO found that USDA must be more effective in monitoring progress, tracking benefits with transparent methodologies, and sharing information within the Department.¹¹ We applaud USDA for issuing this notice and taking the opportunity to right some of the deficiencies of the early-1990s restructuring and other lingering inefficiencies.

USDA has been striving to improve its services and responsiveness to the needs of its employees and stakeholders and has made significant gains in several areas. Its annual performance reports document the agency’s performance in previously identified goals.¹² The 2016 report, the most

¹ Exec. Order No. 13777, 82 Fed. Reg. 12285, (Feb. 24, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ U.S. DEPT. OF AGRIC., *About the U.S. Department of Agriculture*, www.usda.gov/our-agency/about-usda.

⁶ *USDA Releases New Report on Trafficking and Announces Additional Measures to Improve Integrity in the Supplemental Nutrition Assistance Program*, Food and Nutrition Services (Aug. 15, 2013), www.fns.usda.gov/pressrelease/2013/fns-001213.

⁷ Gene A. Brewer, *When Core Values and Missions Collide: Gut-Wrenching Change in the U.S. Department Of Agriculture* (2003).

⁸ *See id.*

⁹ *See id.*

¹⁰ U.S. GOV’T ACCOUNTABILITY OFFICE, *USDA ADMINISTRATIVE SERVICES: STREAMLINING EFFORTS ONGOING, BUT ACTIONS NEEDED TO MONITOR PROGRESS, IDENTIFY BENEFITS, AND SHARE LESSONS LEARNED* (Mar. 2016), <https://www.gao.gov/assets/680/675777.pdf>.

¹¹ *Id.*

¹² U.S. DEPT. OF AGRIC., *FY16 Annual Performance Report and FY18 Performance Plan*, 3, <https://www.usda.gov/sites/default/files/documents/usda-fy16-annual-performance-report-fy18-performance-plan.pdf>.



recent one for which data is available, reveals that many of USDA's goals for 2016 were met or exceeded. For example, the percentage of socially disadvantaged farmers financed by USDA was 15.9, over the agency's goal of 14.0 and an improvement on the 15 percent financed in 2015.¹³ Beyond successes in individual departments and performance goals, the fact that USDA publishes this information annually and in an easily-accessible format demonstrates the agency's commitment to transparency.

This recent record of progress should serve as motivation for USDA to continue to improve its governance practices. Only by building an open and equitable culture, and fostering trust in marginalized communities, can USDA advance effective performance. By encouraging USDA to prioritize transparency, responsiveness, and equity, these recommendations seek to solidify the department as one of the federal government's most respected and well-performing agencies.

Recommendations

Many of the recommendations within this comment address issues USDA is already considering. The purpose of this comment is to draw attention to those issues USDA should prioritize. We seek to identify critical institutional challenges faced by USDA and recommend policy changes to make USDA a more accessible, transparent, and equitable agency. Several of these recommendations are consistent with the above mentioned GAO report calling for greater transparency, evaluation, and information sharing.¹⁴ These recommendations will help to fulfill the ultimate goal of E.O. 13777. By ensuring that USDA establishes systems to assess programs, evaluate complaints, and engage with stakeholders, USDA will better more effectively identify which regulations or guidance documents should be repealed, replaced, or modified.

First, FBLE recommends rigorous evaluation of USDA's existing programs and the creation of a central evaluation office, both of which would ensure that each program is operating efficiently, effectively, and fairly. Second, the establishment of a responsive and accessible framework for reporting and investigating complaints would increase USDA's accountability to its employees, program participants, and the public at large. Third, USDA should strengthen its capacity to analyze and utilize technology by improving technology used in the delivery of existing programs and by creating an office of technology assessment. Finally, we recommend increased engagement with diverse stakeholders and underrepresented farmers, which USDA can achieve by improving the Outreach and Assistance to Socially Disadvantaged and Veteran Farmers and Ranchers Program.

A. USDA must ensure that each program under its purview is operating efficiently, effectively, and fairly.

¹³ *Id.* at 16.

¹⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, USDA ADMINISTRATIVE SERVICES: STREAMLINING EFFORTS ONGOING, BUT ACTIONS NEEDED TO MONITOR PROGRESS, IDENTIFY BENEFITS, AND SHARE LESSONS LEARNED (Mar. 2016), <https://www.gao.gov/assets/680/675777.pdf>.



USDA has an annual budget of \$144 billion and administers roughly 300 programs.¹⁵ Some of these programs are transparent, regularly reviewed, and effective;¹⁶ while other programs are either not reviewed or reviewed inaccurately.¹⁷ The most notable example of the latter is USDA’s alleged distortion of agricultural census data, which falsely inflated the department’s record on civil rights.¹⁸ This section highlights the need for more rigorous evaluation of USDA’s existing programs and recommends the creation of a central evaluation office, which would serve to further USDA’s commitment to efficient and effective programs.

a. Rigorously evaluate all programs, especially pilot programs and grants, and make the data public.

USDA has recognized the value of assessments, as it has conducted in-depth evaluations of many of its programs. In particular, the USDA has focused its evaluations on programs housed within the Food and Nutrition Service (FNS).¹⁹ For example, in 2012, USDA released a 190-page report on the outcomes of a pilot program called the Summer Electronic Benefits Transfer for Children (SEBTC).²⁰ The report lays out the policy context for the program, the purposes of the pilot program, the evaluation framework and research design, the process of implementing the program, and, finally, the impact of the program on children’s food security and nutritional status.²¹ This evaluation demonstrates the capacity of USDA to examine the details of important programs.

Moreover, many USDA offices maintain management guides on how to conduct evaluations of programs housed within those offices. FNS is statutorily directed to conduct “management evaluations” of its programs.²² A 2008 guide directs USDA officials on how to structure those

¹⁵ See U.S. DEPT. OF AGRIC., *FY 2020 Budget Summary* (Dec. 20, 2018), <https://www.obpa.usda.gov/budsum/fy2020budsum.pdf> (USDA budget authority was \$144 billion in FY 2019, with \$117 billion in mandatory funding and \$27 billion in discretionary funding.); U.S. Dept. of Agriculture, *USDA OIG—Management Challenges FY 2018*, 17 (August 2018), <https://www.usda.gov/oig/webdocs/MgmtChallenges2018.pdf>.

¹⁶ See EXECUTIVE OFFICE OF THE PRESIDENT OF THE U.S., *Long-term Benefits of the Supplemental Nutrition Assistance Program* (Dec. 2015), https://obamawhitehouse.archives.gov/sites/obamawhitehouse.archives.gov/files/documents/SNAP_report_final_no_nembargo.pdf.

¹⁷ See Nathan Rosenberg and Bryce Wilson Stucki, *How USDA distorted data to conceal decades of discrimination against black farmers*, NEW FOOD ECONOMY (June 26, 2019), <https://newfoodeconomy.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

¹⁸ *Id.*

¹⁹ See e.g., Ronette Briefel, et al., *Evaluation of the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables in the Fresh Fruit and Vegetable Program (FFVPCFD)*, MATHEMATICA POLICY RESEARCH for U.S. DEP’T OF AGRIC. (Jan. 2017), <https://fns-prod.azureedge.net/sites/default/files/ops/FFVP-CFD.pdf>; U.S. DEP’T OF AGRIC., *EVALUATION OF PILOT PROJECT FOR PROCUREMENT OF UNPROCESSED FRUITS AND VEGETABLES* (June 7, 2018), <https://www.fns.usda.gov/evaluation-pilot-project-procurement-unprocessed-fruits-and-vegetables>.

²⁰ Ann M. Collins, et al., *Summer Electronic Benefits Transfer for Children (SEBTC) Demonstration: Evaluation Findings for the Full Implementation Year*, U.S. DEP’T OF AGRIC. (2013), <https://fns-prod.azureedge.net/sites/default/files/SEBTC2012.pdf>.

²¹ *Id.*

²² U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERV., *NATIONAL MANAGEMENT EVALUATION GUIDANCE* (Aug. 2008), https://fns-prod.azureedge.net/sites/default/files/National_ME_Guidance_010809.pdf.



evaluations and explains that each program to be evaluated has a “review guide” that explains program-specific methodology.²³ Even beyond FNS management evaluations, the Foreign Agricultural Service has a 2013 “Monitoring and Evaluation Policy.”²⁴ This Policy explains that, “USDA is committed to ensuring a strong culture of evaluation and learning from experience.”²⁵ To that end, the Policy explores the rationale behind evaluating programs, writing, “[e]valuations are used to deepen the Agency’s understanding about how and why things work or do not work, to provide evidence of success, and to strengthen future programming and strategic planning.”²⁶ The guide goes on to explore the methods of evaluation, the role of staff and other stakeholders, and the way the resulting information will be used.²⁷

While these first steps are admirable, USDA could do more to evaluate its existing programs. In a 2017 survey, GAO found that 57 percent of program managers either did not know if their programs had ever been evaluated or knew that they had never been evaluated.²⁸ For example, the 2014 Farm Bill made a variety of changes to the Crop Insurance program to expand its coverage.²⁹ Despite the importance of the crop insurance program, USDA has not released an evaluation about how these changes have affected the program. USDA should ensure that all of its programs are regularly examined and data from those evaluations are released to enable the public to understand how USDA is administering the programs and advocate for change, if necessary.

Specifically, USDA should prioritize the rigorous evaluation of pilot programs and programs that receive USDA grant funding. Congress creates pilot programs to inform future policy. However, when agencies fail to evaluate these programs before bill reauthorization, Congress is forced to expand or maintain programs that either may not function well or meet their objectives. Similarly, if USDA does not regularly evaluate programs that receive USDA grant funding, the Department may be funding ineffective or inefficient programs at the expense of other grantees. To ensure the effective use of Department resources, USDA should prioritize evaluation of pilot and grant funded programs regularly and thoroughly.

b. Create a central evaluation office that runs evaluations and collects, houses, and releases data.

²³ U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERV., NATIONAL MANAGEMENT EVALUATION GUIDANCE, 9 (Aug. 2008), https://fns-prod.azureedge.net/sites/default/files/National_ME_Guidance_010809.pdf.

²⁴ U.S. DEP’T OF AGRIC. FOREIGN AGRIC. SERV., MONITORING AND EVALUATION POLICY (May 2013), <https://www.fas.usda.gov/sites/default/files/2014-03/evalpol.pdf>.

²⁵ U.S. DEP’T OF AGRIC. FOREIGN AGRIC. SERV., MONITORING AND EVALUATION POLICY, 2 (May 2013), <https://www.fas.usda.gov/sites/default/files/2014-03/evalpol.pdf>.

²⁶ U.S. DEP’T OF AGRIC. FOREIGN AGRIC. SERV., MONITORING AND EVALUATION POLICY, 4 (May 2013), <https://www.fas.usda.gov/sites/default/files/2014-03/evalpol.pdf>.

²⁷ U.S. DEP’T OF AGRIC. FOREIGN AGRIC. SERV., MONITORING AND EVALUATION POLICY, 2 (May 2013), <https://www.fas.usda.gov/sites/default/files/2014-03/evalpol.pdf>.

²⁸ U.S. GOV’T ACCOUNTABILITY OFFICE, PROGRAM EVALUATION: ANNUAL AGENCY-WIDE PLANS COULD ENHANCE LEADERSHIP SUPPORT FOR PROGRAM EVALUATIONS (Sept. 2017), <https://www.gao.gov/assets/690/687526.pdf>.

²⁹ DENNIS A. SHIELDS, CONG. RESEARCH SERV., R43494, CROP INSURANCE PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) (2014).



USDA, like other federal agencies, is required to conduct performance management and program evaluations. However, USDA evaluations do not occur consistently and are not easily accessible. The Government Performance and Results Act of 1993 (GPRAs), and its recent update, the GPRAs Modernization Act of 2010 (GRPAMA), require federal agencies to annually establish goals, develop plans for meeting those goals, and assess the degree to which those goals have been met.³⁰ Nonetheless, researchers have found that GPRAs has done little to change the behavior of federal agencies,³¹ and that its one-size-fits-all approach to performance management is ill-suited to the complicated and rapidly changing dynamics of federal agencies.³² USDA can remedy these shortfalls by creating a central evaluation office within the agency that creates consistent evaluation guidelines, oversees evaluations, and houses the relevant data. This office would have the expertise and independence to evaluate programs, promulgate best practices, and keep the public informed.

Some efforts at centralization have already been made. There are three major offices throughout government that have some authority to evaluate federal programs—the White House Office of Management and Budget (OMB), the Government Accountability Office (GAO), and USDA’s own Office of Inspector General (OIG). However, these oversight offices may not have authorization to thoroughly evaluate USDA programs, examine data and results, and promulgate best practices to make USDA a more accessible, transparent, and equitable agency.

Previous administrations have attempted to run program evaluations out of OMB, but USDA already has an Office of Budget and Program Analysis (OBPA), which coordinates and prepares budget estimates, legislative reports, and regulations.³³ OBPA is also responsible for the year’s performance report and performance plan. Unfortunately, neither OMB nor the current conception of OBPA satisfy the need for rigorous evaluation. And, although GAO has authority to investigate all matters related to the use of public funds, it does not have any implementation authority.³⁴ GAO has investigated USDA in some of these areas;³⁵ however, without implementation authority, GAO has no power to compel compliance with the recommendations. Finally, USDA houses the

³⁰ Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993); GPRAs Modernization Act of 2010, 124 Stat. 3866 (2011).

³¹ Victor J. Kimm, *GPRAs: Early Implementation*, 24 PUB. MANAGER 11 (1995); J. Christopher Mihm, *GPRAs and the New Dialogue*, 24 PUB. MANAGER 15 (1995); DAVID G. FREDERICKSON & H. GEORGE FREDERICKSON, MEASURING THE PERFORMANCE OF THE HOLLOW STATE (2006); see Ed Gerrish, *The Impact of Performance Management on Performance in Public Organizations: A Meta-Analysis*, 76 PUB. ADMIN. REV 48, 49 (2016).

³² Beryl A. Radin, *The Government Performance and Results Act (GPRAs): Hydra-Headed Monster or Flexible Management Tool?*, 58 PUB. ADMIN. REV 307 (1998); Beryl A. Radin, *The Government Performance and Results Act and the Tradition of Federal Management Reform: Square Pegs in Round Holes?*, 10 J. PUB. ADMIN. RES. & THEORY 111 (2000); Edward Long & Aimee L. Franklin, *The Paradox of Implementing the Government Performance and Results Act: Top-Down Direction for Bottom-Up Implementation*, 64 PUB. ADMIN. REV 309 (2004); see Ed Gerrish, *The Impact of Performance Management on Performance in Public Organizations: A Meta-Analysis*, 76 PUB. ADMIN. REV 48, 49 (2016).

³³ U.S. DEP’T OF AGRIC. OFFICE OF BUDGET AND PROGRAM ANALYSIS, ABOUT O.B.P.A., https://www.obpa.usda.gov/about_obpa.html.

³⁴ *What GAO Is*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, <https://www.gao.gov/about/what-gao-is/> (last visited Dec. 18, 2018).

³⁵ U.S. GOV’T ACCOUNTABILITY OFFICE, PROGRAM EVALUATION: ANNUAL AGENCY-WIDE PLANS COULD ENHANCE LEADERSHIP SUPPORT FOR PROGRAM EVALUATIONS (Sept. 2017), <https://www.gao.gov/assets/690/687526.pdf>.



Office of Inspector General, which conducts audits and investigations of USDA agricultural programs and makes recommendations to improve how these programs operate,³⁶ but typically only responds to wrongdoing.

Instead of these disparate offices, re-conceptualizing a central evaluation office within USDA could help with a variety of problems. USDA could keep the data more centralized, rather than relying on OMB to synthesize it and determine how the information is going to be used. This centralization would allow USDA to be more streamlined. For example, rather than relying on a Federal Crop Insurance Corporation program evaluation guide that has not been updated since 2005, this office would formalize the process of writing, releasing, and updating such handbooks.³⁷

Moreover, this office could house and release data related to USDA evaluations that are currently unavailable to the public. As mentioned above, OBPA organizes and releases the annual performance report and performance plan. Each year, that report presents a series of “key performance measures” for all of the different USDA mission areas.³⁸ However, the only information included in the report is whether that measure was “met” or “unmet.”³⁹ For evaluations to be truly effective, USDA should release the methodology, assumptions, data, and results for public and Congressional assessment. A central evaluation office could release information regarding these components of key performance measures so that outside parties could better understand USDA programs. A new office of evaluations at USDA would further its commitment to efficient and effective programs.

B. USDA should establish a responsive and accessible framework for reporting and investigating the complaints of employees, program participants, and the public at large.

Like all federal government agencies, USDA is ultimately responsible to elected members of the federal government and to the population at large. Increased accountability will better allow the public to address concerns about USDA and reward the agency for its positive actions. USDA recognizes the importance of accountability: its first strategic goal for fiscal years 2018 through 2022 is to deliver its programs “efficiently, effectively, and with integrity,” a goal that works towards greater accountability.⁴⁰

³⁶ U.S. Dep’t of Agric. Office of Inspector General, About OIG, <https://www.usda.gov/oig/about.htm>.

³⁷ See U.S. Dep’t of Agriculture, *Program Evaluation Handbook 2006 and Succeeding Crop Years* (Sept. 2, 2005), <https://www.rma.usda.gov/-/media/RMAweb/Handbooks/Program-Evaluations---22000/2006-22010-Program-Evaluation-Handbook.ashx>.

³⁸ U.S. DEP’T OF AGRIC., FY 2016 ANNUAL PERFORMANCE REPORT, FY 2018 ANNUAL PERFORMANCE PLAN, 6, <https://www.usda.gov/sites/default/files/documents/usda-fy16-annual-performance-report-fy18-performance-plan.pdf>

³⁹ U.S. DEP’T OF AGRIC., FY 2016 ANNUAL PERFORMANCE REPORT, FY 2018 ANNUAL PERFORMANCE PLAN, 6, <https://www.usda.gov/sites/default/files/documents/usda-fy16-annual-performance-report-fy18-performance-plan.pdf>.

⁴⁰ USDA Strategic Goals, www.usda.gov/our-agency/about-usda/strategic-goals.



USDA's history indicates some difficulties in accountability to employees, program participants, and the public at large. In 2000, the Senate Agriculture Committee held a hearing on USDA's Office of Civil Rights (CR) in response to discrimination complaints by minority farmers.⁴¹ The hearings revealed that issues identified by GAO and OIG were never corrected within USDA, due to a lack of accountability from top management to local officers.⁴² From February 1997 to March 2000, OIG issued a series of audit reports dealing with CR's handling of program-related civil rights complaints and one audit report on employment civil rights complaints.⁴³ In March 2000, OIG reported that the deficiencies outlined in OIG's prior audit reports had not been corrected.⁴⁴ The March 2000 report also noted that CR "did not reengineer its complaint resolution process, its database and file room remained poorly managed, and a large backlog of cases was stalled in the 'intend-to-file' category and/or may not have received due care."⁴⁵ When GAO investigated, it found the complaints system in total disarray: there was a significant backlog and no system to monitor the progress of complaints.⁴⁶ In fact, USDA had one of the worst records of all federal agencies examined by GAO in terms of timeliness of processing complaints.⁴⁷ There have not been significant improvements in the intervening years. In 2007, OIG observed that "because of the conditions the OIG had found [including a backlog of over a decade and lost complaints], public confidence in the USDA's ability to uphold civil rights might be lost."⁴⁸

Although USDA has committed in writing to being a workforce free of discrimination, retaliation, and harassment,⁴⁹ discrimination against minority customers and employees has long plagued the Department. Sexual harassment and assault have been a continuous problem in the U.S. Forest Service, an agency within USDA, for decades.⁵⁰ Congress held a December 2016 hearing to address this issue, but while congressional representatives on both sides of the aisle appeared sympathetic to the victims, there has been little follow-up.⁵¹ The Forest Service did introduce a new hotline through which employees can report assault, but according to female firefighters, it has done little to help. For example, firefighter Abby Bolt, who reported experiencing heightened harassment after filing an Equal Employment Opportunity discrimination complaint, never got a response from the complaints she made using the hotline.⁵² When she sent a Freedom of

⁴¹ Civil rights complaints are now heard by the Office of the Assistant Secretary for Civil Rights (OASCR).

⁴² CSPAN, *Farming and Civil Rights* at 4:10 (Sept. 12, 2000), www.c-span.org/video/?159192-1/farming-civil-rights.

⁴³ U.S. Dep't of Agric., Office of Inspector General, *Major USDA Management Challenges*, Aug. 2004, <https://www.usda.gov/oig/webdocs/Management%20Challenges%20Final%20083004.pdf>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ CSPAN, *Farming and Civil Rights* at 16:14 (Sept. 12, 2000), www.c-span.org/video/?159192-1/farming-civil-rights.

⁴⁷ *Id.* at 21:29.

⁴⁸ Stephen Carpenter, *The USDA Discrimination Cases: Pigford, In re Black Farmers, Keepseagle, Garcia, and Love*, 17 Drake J. Agric. L. 1, 10 (2012).

⁴⁹ Sonny Perdue, *USDA Anti Harassment Policy*, USDA Office of the Secretary (May 2018), www.usda.gov/sites/default/files/documents/usda-anti-harassment-policy.pdf.

⁵⁰ Elizabeth Flock and Joshua Barajas, *They reported sexual harassment. Then the retaliation began*, PBS NewsHour, Mar. 1, 2018, www.pbs.org/newshour/nation/they-reported-sexual-harassment-then-the-retaliation-began.

⁵¹ *Id.*

⁵² *Id.*



Information Act (FOIA) request to USDA to track down what happened to her complaints, Bolt received a letter from USDA indicating a FOIA request backlog.⁵³ As of March 2018, Bolt has not received any further correspondence.⁵⁴

Following the congressional hearing, OIG audited the Forest Service and produced an interim report in March 2018.⁵⁵ OIG found a general lack of trust in the Forest Service's reporting process, which could be exacerbated by the Forest Service's use of internal investigators to handle complaints.⁵⁶ To combat mistrust and make the agency accountable to its employees, OIG recommended that Forest Service stop using former Forest Service employees to conduct investigations. Instead, OIG recommended the agency use independent investigators whose hiring is subject to written guidelines requiring experience in sexual harassment investigations.⁵⁷

The Forest Service has indicated a willingness to improve its structure for filing complaints.⁵⁸ But the reality of sexual harassment within the Forest Service has not improved, according to female employees within the Service.⁵⁹ Rather than relying on individual agencies to develop effective procedures, USDA should establish a department-wide online database for employees and program participants to voice complaints. Additionally, the GAO could jointly monitor this database and periodically publish statistics about the speed at which the complaints are processed, the number of complaints found to have merit, and the number of pending complaints. The Forest Service largely agreed to follow OIG's March 2018 Audit Report suggestions, which is an encouraging step in the right direction.⁶⁰ The next step is for the entire agency to commit to efficient handling of complaints. In the absence of consistent policies and procedures, USDA has no assurance that complaints are being timely referred, independently adjudicated, and appropriately resolved.

C. USDA should strengthen its capacity to analyze and utilize technology.

Emerging technology presents USDA with dual challenges. In addition to understanding how rapidly evolving technology will shape the needs of its clients, whether they are farmers, recipients of entitlements, or educational institutions, USDA must use technology to improve its own internal processes and organization. This section makes two specific recommendations regarding implementation of new, evolving, and emerging technology.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ OFFICE OF INSPECTOR GEN., *Forest Service Initiatives to Address Workplace Misconduct—Interim Report*, Audit Report 08601-0008-41(1) (March 2018), [www.usda.gov/oig/webdocs/08601-0008-41\(1\).pdf](http://www.usda.gov/oig/webdocs/08601-0008-41(1).pdf).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *See, e.g.*, U.S. DEP'T OF AGRIC. FOREST SERV., *Anti-Harassment Policy*, www.fs.fed.us/about-agency/anti-harassment-policy (providing information and a telephone number for the Harassment Reporting Center, established November 2017).

⁵⁹ Elizabeth Flock and Joshua Barajas, *They reported sexual harassment. Then the retaliation began*, PBS NEWSHOUR, Mar. 1, 2018, www.pbs.org/newshour/nation/they-reported-sexual-harassment-then-the-retaliation-began.

⁶⁰ OFFICE OF INSPECTOR GEN., *Forest Service Initiatives to Address Workplace Misconduct—Interim Report*, Audit Report 08601-0008-41(1) (March 2018), 15-20, [www.usda.gov/oig/webdocs/08601-0008-41\(1\).pdf](http://www.usda.gov/oig/webdocs/08601-0008-41(1).pdf).



First, USDA should incorporate existing technology into the structures of its existing programs. This could save money, make the programs more convenient and accessible to program participants, and free up federal resources for other tasks. Second, the agency should create an Office of Technology Assessment to provide the department and the public with an objective source of information about technology's impact on agriculture and rural America.

a. USDA should improve technology used in the delivery of existing programs.

Many USDA programs could run more efficiently and conveniently if they incorporated existing technology. The increase of new technologies in the private sector in recent years gives the USDA ample pre-existing resources and means by which it can significantly improve its own programmatic implementation. USDA should undertake an in-depth examination of these technologies in order to determine how they could be used within existing USDA programs in order to benefit the agency's clients and save the agency time, money, and other resources.

For example, USDA could use emerging drone technology in a wide range of agriculture compliance contexts. The agency currently expends a significant amount of resources to conduct in-person evaluations of a number of physical events on land across the country. These inspections are limited not only by human capacity, but also by unexpected events such as weather. Using drone technology to complete, or at least preliminarily assess, these could support at least three areas over which the agency has jurisdiction: conservation compliance, crop insurance claims, and base acreage.

The USDA's Agricultural Research Service (ARS) is already using drones to test irrigation water for *E. coli*.⁶¹ Specifically, the ARS is exploring whether drones can be used to provide aerial coverage of irrigation ponds to find indicators of bacteria such as *E. coli*.⁶² Equipped with infrared cameras and cameras that capture different light wavelengths, drones can detect higher concentrations of bacteria.⁶³ If drones can detect areas of irrigation ponds with higher concentrations of *E. coli*, it will reduce sampling intensity and ultimately save money.⁶⁴ This sort of effort could, however, be expanded.

The potential of drones illustrates one of many opportunities for USDA to incorporate existing technology into its programs. This technology would allow USDA to conserve its own resources while making programs more accessible, convenient, and helpful for clients. Further ideas and specific implementation strategies should be developed by a team dedicated to just such questions: an office of technology assessment.

b. USDA should create its own Office of Technology Assessment.

⁶¹ Phil Goldstein, *Drones Take Flight for a variety of Missions in Government*, FED TECH, Dec. 20, 2018, <https://fedtechmagazine.com/article/2018/12/drones-take-flight-variety-missions-government>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*



Technological advancements are transforming agriculture and rural life in the United States. Technologies that utilize temporal and spatial data about fields, for instance, allow farmers to optimize fertilization, irrigation, pesticide application, and harvesting.⁶⁵ Meanwhile, increasingly sophisticated—and cost-effective—robots are conducting tasks that were once considered too delicate for machines, such as picking strawberries, pruning grape vines, and targeting individual weeds for elimination.⁶⁶ Rural residents are also using new technologies to respond to the challenges of contemporary rural life, such as limited access health care, social isolation, and decreasing population density.⁶⁷

As technology continues to evolve at rapid rates, USDA needs an Office of Technology Assessment to provide the department and the public with an objective source of information about technology’s impact on agriculture and rural America, as well as its potential to improve USDA programs. USDA has an Office of the Chief Information Officer (OCIO), which “develops, defends, and delivers” its information technologies (IT).⁶⁸ While centralizing its information technologies management is a good first step, OCIO lacks the budget or authorization to independently assess the department’s technological needs, much less those of its clients or the public.

In 1972, Congress created its own Office of Technology Assessment (OTA) in the legislative branch to analyze technological developments and technology’s impact on the environment and society.⁶⁹ The agency’s mission was to provide lawmakers with information on new or expanding technologies and objective information assessing impacts, policy proposals, and scientific expertise “to match that of the executive branch.”⁷⁰ The OTA provided Congress with objective analysis of complex technology issues from 1972 to 1995, when the non-partisan legislative branch agency was defunded.⁷¹

⁶⁵ Rattan Lal, *Preface*, SOIL-SPECIFIC FARMING: PRECISION AGRICULTURE vii (Rattan Lal & B.A. Stewart eds., CRC Press 2015).

⁶⁶ See Avital Bechar and Clément Vigneault, *Agricultural robots for field operations: Concepts and components*, *Biosystems Engineering* 149L 94-111 (Sept. 2016), <https://www.sciencedirect.com/science/article/pii/S1537511015301914>; Ilan Brat, *Robots Step Into New Planting, Harvesting Roles*, *The Wall Street Journal*, Apr. 23, 2015, <https://www.wsj.com/articles/robots-step-into-new-planting-harvesting-roles-1429781404>; Ludwig Burger and Tom Polansek, *Robots fight weeds in challenge to agrochemical giants*, *Reuters*, May 22, 2018, <https://www.reuters.com/article/us-farming-tech-chemicals-insight/robots-fight-weeds-in-challenge-to-agrochemical-giants-idUSKCN11N0IK>.

⁶⁷ See Stern, M. J., & Adams, A. E., *Do Rural Residents Really Use the Internet to Build Social Capital? An Empirical Investigation*, 53 *AMERICAN BEHAVIORAL SCIENTIST* 1389-1422 (2010), <https://doi.org/10.1177/0002764210361692>.

⁶⁸ *Office of the Chief Information Officer*, U.S. Dep’t of Agric.: Office of the Chief Info. Officer, <https://www.ocio.usda.gov/office-chief-information-officer> (last visited July 10, 2019).

⁶⁹ Office of Technology Assessment Act, Pub. L. No. 92-484 (Oct. 13, 1972).

⁷⁰ Katherine Tully-McManus, *House members call for Office of Technology Assessment revival*, *ROLL CALL*, Apr. 2, 2019, <https://www.rollcall.com/news/congress/house-members-call-office-technology-assessment-revival>.

⁷¹ *Id.*



Learning from this model, USDA should develop its own internal office of technology assessment, which could improve the agency's capacity to understand emerging technology and its social and policy implications. The new office should have four primary functions: (1) to evaluate emerging technologies and their impact on agricultural production, rural communities, and the environment; (2) to evaluate emerging technology and its potential to improve USDA's efficacy; (3) to promulgate best practices for technological systems and services within the agency; and (4) to develop program-specific recommendations. By objectively evaluating the evolving role of technology in agriculture and rural America, the USDA office of technology assessment could allow policymakers and rural communities to better understand the impacts of new technologies and to ensure that their benefits are distributed more widely.

D. USDA should increase engagement with diverse stakeholders and underrepresented farmers.

USDA has the opportunity to leverage its massive network of agencies and offices and unparalleled reach in rural America to create policies and tailor programs to work for everyone. To encourage and bolster inclusion of diverse stakeholders and underrepresented farm populations, USDA should improve the Outreach and Assistance to Socially Disadvantaged and Veteran Farmers and Ranchers Program, also known as the Section 2501 Program.

The 1993 USDA restructuring disproportionately affected female and minority growers. Specifically, by decreasing USDA's on-the-ground presence, departmental reforms made the agency less accessible.⁷² This had the largest impact on small-scale and minority farmers.⁷³ As the U.S. Government Accountability Office (GAO) warned in 1998, the closure of county offices—a major component of the reforms—“would increase USDA's distance from many farmers.”⁷⁴ This would “probably have the biggest impact on farmers who are a member of a minority and those with small farms.”⁷⁵ Female and minority employees of USDA were also negatively affected by these changes. They were often the first to be laid off as the department's workforce was reduced, and there was evidence that USDA's newly implemented performance rating system was riddled with bias, further marginalizing female and minority employees.⁷⁶ Because USDA makes important decisions about how federal farm programs are administered, more diverse representation is vital in providing input that better informs how USDA carries out its programs, especially those serving women and minority producers.

⁷² Gene A. Brewer, *When Core Values and Missions Collide: Gut-Wrenching Change in the U.S. Department Of Agriculture*, 17 (2003).

⁷³ *Id.*

⁷⁴ U.S. GEN. ACCOUNTABILITY OFFICE, *Farm Programs: Administrative Requirements Reduced and Further Program Delivery Changes Possible 7-8* (1998), quoted in Gene A. Brewer, *When Core Values and Missions Collide: Gut-Wrenching Change in the U.S. Department Of Agriculture* 17 (2003).

⁷⁵ U.S. GEN. ACCOUNTABILITY OFFICE, *Farm Programs: Administrative Requirements Reduced and Further Program Delivery Changes Possible 7-8* (1998), quoted in Gene A. Brewer, *When Core Values and Missions Collide: Gut-Wrenching Change in the U.S. Department Of Agriculture* 17 (2003).

⁷⁶ Brewer, *supra* note 72 at 18.



Executed by USDA’s Office of Advocacy and Outreach (OAO), the Section 2501 Program funds projects that provide technical assistance or conduct outreach to minority and women farmers.⁷⁷ Section 2501 has played a critical role in improving access to USDA programs. However, in 2014, the program was expanded to include veterans, even as mandatory funding was cut in half (from \$20 million to \$10 million annually).⁷⁸ As such, there were more groups competing for less money. The program had already struggled to meet the needs of socially disadvantaged farmers and ranchers (SDFR)—those who are members of racial, ethnic, or gender groups long subject to discrimination, limited resources, and inadequate outreach from USDA—prior to these cuts, and these changes have significantly set back USDA’s outreach efforts to SDFR; in addition, the funding cuts limit the program’s ability to connect with veterans.

Fortunately, the 2018 Farm Bill restored and provided long-sought permanent funding for Section 2501—\$15 million in mandatory funding for FY 2019, plus \$3 million in appropriations.⁷⁹ Congress also created the Farming Opportunities Training and Outreach (FOTO) program, which merges the 2501 Program with the Beginning Farmer and Rancher Development Program.⁸⁰ FOTO serves as a new umbrella program designed to coordinate USDA training and outreach to beginning, veteran, and socially disadvantaged farmers, as well as permanently protect beginning and socially disadvantaged farmers resources.⁸¹ In establishing FOTO, the 2018 Farm Bill made several changes to the underlying 2501 Program that increase the program’s transparency, accountability and responsiveness to stakeholders.⁸² The most significant of these changes is the requirement for USDA to administer the program using a “fair and efficient external peer review process.”⁸³ Historically, Section 2501 has relied on USDA staff to review and evaluate funded applications, which left farmers and organizations unable to provide feedback on effective strategies and approaches to best assist farmers of color.⁸⁴ Although this new peer review process has the potential to better serve 2501 Program constituencies, the process could be manipulated. It remains to be seen whether USDA’s Office of Partnerships and Public Engagement has the capacity to manage and administer an external peer review process.⁸⁵

⁷⁷ U.S. DEP’T OF AGRIC., *About the Office of Advocacy and Outreach*, <https://www.outreach.usda.gov/aboutus.htm>.

⁷⁸ NAT’L SUSTAINABLE AGRIC. COAL., *Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers (Section 2501)* (Jun. 2019), <http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/socially-disadvantaged-farmers-program/>. Approximately \$9.3 million has been distributed through the program in each of the last three years due to sequestration cuts. U.S. DEP’T OF AGRIC., OFFICE OF THE SECRETARY, *2018 President’s Budget 3–7*, <https://www.obpa.usda.gov/03oaoexnotes2018.pdf>.

⁷⁹ See Agriculture Improvement Act of 2018 §12301 (2018); NAT’L SUSTAINABLE AGRIC. COAL., *Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers (Section 2501)* (Jun. 2019), <http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/socially-disadvantaged-farmers-program/>.

⁸⁰ See Agriculture Improvement Act of 2018 §12301 (2018).

⁸¹ NAT’L SUSTAINABLE AGRIC. COAL., *A Closer Look at the 2018 Farm Bill: Farming Opportunities Training and Outreach Program* (Feb. 19, 2019), <http://sustainableagriculture.net/blog/closer-look-foto-2018-farmbill/>.

⁸² *Id.*

⁸³ Agriculture Improvement Act of 2018 §12301 (2018).

⁸⁴ NAT’L SUSTAINABLE AGRIC. COAL., *A Closer Look at the 2018 Farm Bill: Farming Opportunities Training and Outreach Program* (Feb. 19, 2019), <http://sustainableagriculture.net/blog/closer-look-foto-2018-farmbill/>.

⁸⁵ *Id.*



USDA should also prioritize expanding technical assistance and outreach to farmers of color. Although the 2501 Program enhances the coordination of outreach, technical assistance, and education efforts to reach SDFR, no program specifically addresses the needs of farmers of color.⁸⁶ USDA should provide funding for research dedicated to identifying challenges unique to black farmers and farmers of color more broadly, as well as quality solutions.

Further, USDA should work toward increasing representation of traditionally underrepresented groups in farm bill programs. Although local and federal boards and committees wield authority over issues that concern a wide range of agricultural stakeholders, representation does not reflect the diverse interests of these stakeholders.⁸⁷ Recognizing the need for fair representation, Congress mandated in the 2002 Farm Bill that county committees be “fairly representative” of producers within the area.⁸⁸ To that end, Congress authorized the Secretary of Agriculture to promulgate procedures to “ensure fair representation of disadvantaged groups” and to appoint a socially disadvantaged farmer or rancher to committees where no SDFR member was elected, and demographics of the county are such that one is needed to ensure fair representation.⁸⁹

While county-level inclusivity was an important first step, the approach fails to consider or correct the historical discrimination in agriculture that have impacted today’s demographic makeup of farmers.⁹⁰ This power of appointment should be based on demographics of the entire population of each county or state, thus ensuring that SDFR are adequately represented on boards and committees even when they have been largely excluded from agriculture.⁹¹ Beyond the local and state level, USDA should take similar steps to ensure racial and gender diversity on all federal advisory committees; including the National Organic Standards Board, the Plant Variety Protection Advisory Board, Technical Advisory Committees, and any other committee.

Conclusion

The Farm Bill Law Enterprise appreciates the opportunity to comment in response to USDA’s request for information on how to provide better customer service and remove unintended barriers to participation in its regulatory programs, pursuant to E.O. 13777. In order to become a more accessible, transparent, and equitable agency, USDA must: (1) ensure that each program under its purview is operating efficiently, effectively, and fairly; (2) establish a responsive and accessible framework for reporting and investigating complaints; (3) strengthen its capacity to analyze and utilize technology; and (4) increase engagement with and representation of diverse stakeholders and underrepresented farmers. We are hopeful that a concerted good-faith effort to address the issues discussed above will result in streamlined regulatory processes that will be efficient, fair, transparent, and effective. We look forward to working with you toward that goal.

⁸⁶ *Id.*

⁸⁷ Brian Fink, Alexandra Schluntz, and Joshua Galperin (2018) *Food Localization: Empowering Community Food System through the Farm Bill*, *Journal of Food Law & Policy*: Vol. 14: No. 1, Article 14. Available at: <https://scholarworks.uark.edu/jflp/vol14/iss1/14>.

⁸⁸ Farm Security and Rural Investment Act of 2002, Pub. L. 107-171 §10708, 116 Stat. 134, 522.

⁸⁹ *Id.*

⁹⁰ Fink et al., *supra* note 78, at 261.

⁹¹ *Id.*



Sincerely,

The Farm Bill Law Enterprise
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Health Law and Policy Clinic

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