



March 15, 2022

Secretary Tom Vilsack  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC 20250

**Re: Public Comment on USDA Equity Commission (FR Doc. 2022–03074)**

The Farm Bill Law Enterprise (FBLE) appreciates the opportunity to comment on the charge and objectives of the USDA Equity Commission (Equity Commission or Commission). We applaud the recent developments toward improving access to programs and services as well as the expressed commitment to advancing racial equity at USDA. If you have any questions regarding our comment, please contact Francine Miller, Senior Staff Attorney/Adjunct Faculty, Vermont Law School, at [fmiller@vermontlaw.edu](mailto:fmiller@vermontlaw.edu) or 917.741.6244.

**Overview**

The Farm Bill Law Enterprise<sup>1</sup> (FBLE) is a consortium that brings together a variety of legal, academic, and clinical programs with expertise in food, agriculture, nutrition, and the environment to provide research and recommendations on the farm bill. In recognition of the complex, technical nature of the farm bill, FBLE draws from expertise across traditional boundaries in order to promote the ideas proposed by expert organizations as well as seek novel solutions. FBLE works towards 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; climate change mitigation and adaptation; public resources stewardship; and racial and socioeconomic justice. FBLE strives to achieve justice and equity in accomplishing each of these goals 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.

FBLE fully supports the charter of the Equity Commission to “advance racial justice and equity for underserved communities.”<sup>2</sup>

The long history of discrimination by USDA through its practices and programs against farmers of color has been well documented in numerous Congressional reports, USDA

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<sup>1</sup> For more information about the Farm Bill Law Enterprise, please visit <http://www.farmbilllaw.org>.

<sup>2</sup> USDA Equity Commission charter, at [https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t0000001Gqj1/.C7oECBNVK\\_xCvIAD9EjmxokYtMIXzGhWYJWRtcYkc0](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t0000001Gqj1/.C7oECBNVK_xCvIAD9EjmxokYtMIXzGhWYJWRtcYkc0).

civil rights investigations, and lawsuits.<sup>3</sup> The effects of this historical and ongoing discrimination are still prevalent today, with White farmers on average operating significantly larger farms and generating significantly more income than farmers of color.<sup>4</sup> While U.S. agricultural land has always been held mostly by White males, it has become much more concentrated over the past century.<sup>5</sup> Further, White farmers received the vast majority of funding made available through USDA's Coronavirus Food Assistance Program.<sup>6</sup>

Black farmers in particular have faced tremendous obstacles in receiving fair treatment and accessing USDA programs and services, as systemic racism was baked into USDA systems, policies, staff and agents. The enslavement of Black people forced into agricultural labor was followed by decades of discriminatory and exclusionary practices by USDA. As a result, the number of Black farmers has fallen from nearly 1 million in 1920 to fewer than 50,000 today.<sup>7</sup> Additionally, Black-owned farms are typically less than one-third the size and produce one-twelfth the income as compared to the average U.S. farm.<sup>8</sup> Finally, there is the oft-cited statistic regarding farm ownership; since 1920, the number of farms operated by Black producers has fallen from over 900,000, nearly 15 percent of all farm operations in the United States, to less than 2 percent of all farms today.<sup>9</sup>

Indigenous farmers and ranchers have also faced a long history of discrimination by USDA. Further, as tribal nations are sovereign, they are uniquely positioned as not just a racial or ethnic group but as political entities as well. In addition to direct discrimination by USDA, tribal nations have suffered the consequences of federal removal and outright theft of their land, U.S. disregard for treaties, and reservation

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<sup>3</sup> See generally *Civil Rights at the United States Department of Agriculture*, USDA (1997), <http://www.federationsoutherncoop.com/pigford/research/CRAT%20Report%201997.pdf>, USDA, BLACK FARMERS IN AMERICA, 1865-2000: THE PURSUIT OF INDEPENDENT FARMING AND THE ROLE OF COOPERATIVES, 4 (2002), <https://www.rd.usda.gov/files/RR194.pdf>; *Hearing on the Decline of Minority Farming in the U.S. Before the Subcommittee on Government Information, Justice, and Agriculture*, 101st Cong. 141–48 (1990); Tadlock Cowan & Jody Feder, Cong. Rsch. Serv., RS20430, *The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers* 3–4 (2013), <https://www.everycrsreport.com/reports/RS20430.html>.

<sup>4</sup> Abril Castro & Zoe Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, CTR. FOR AM. PROGRESS (Apr. 3, 2019), <https://www.americanprogress.org/issues/economy/reports/2019/04/03/467892/progressive-governance-can-turn-tide-black-farmers/>.

<sup>5</sup> *Bigger Farms, Bigger Problems: Farmland Consolidation is Harming US Rural Communities—and Better Policies Can Help*, UNION OF CONCERNED SCIENTISTS 5 (Apr 14, 2021), <https://www.ucsusa.org/resources/bigger-farms-bigger-problems>.

<sup>6</sup> Laura Reily, *Agriculture Secretary Tom Vilsack Says Only 0.1 Percent of Trump Administration's Covid Farm Relief Went to Black Farmers*, Wash. Post (Mar. 25, 2021), <https://www.washingtonpost.com/business/2021/03/25/vilsack-interview-usda-rescue-plan/>.

<sup>7</sup> Chuck Abbot, *'Justice' Bill Would Transfer up to 32 Million Acres to Black Farmers*, SUCCESSFUL FARMING (NOV. 20, 2020), <https://www.agriculture.com/news/business/justice-bill-would-transfer-up-to-32-million-acres-to-black-farmers>.

<sup>8</sup> *Id.*

<sup>9</sup> Abril Castro & Zoe Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, CTR. FOR AM. PROGRESS (Apr. 3, 2019, 9:03 AM), <https://www.americanprogress.org/issues/economy/reports/2019/04/03/467892/progressive-governance-can-turn-tide-black-farmers/>.

policies that have caused Indigenous communities to lose their land and the food systems that had supported them for centuries.<sup>10</sup>

In order to be accountable and begin to undo the damaging effects of decades of racial discrimination against communities of color, USDA must prioritize advancing racial equity in access to credit, agricultural land, technical support, and all other USDA programs and services.

The Equity Commission and its Subcommittee on Agriculture can play a vital role in addressing these issues by advising the Secretary of Agriculture and providing a thorough analysis of how to dismantle the USDA programs, policies, systems and practices that perpetuate disparities and contribute to systemic racial discrimination. The Commission's charge is to provide *actionable* recommendations to ameliorate the barriers to inclusion and access. As expressed in the Equity Commission's Charter, the recommendations should "center on the systems change necessary for USDA to effectively advance racial justice and equity for underserved communities."<sup>11</sup> At a minimum, the Equity Commission should:

1. Establish program accessibility and data collection directives for USDA;
2. Make a recommendation that the Secretary of Agriculture establish coordination between the Equity Commission and the Advisory Committee on Agricultural Statistics on the design and execution of the Census of Agriculture;
3. Develop strategies to embed meaningful coordination between USDA and diverse groups to solicit input on all aspects of USDA program design and implementation;
4. Make recommendations regarding the work of the Office of Budget Program Analysis;
5. Obtain and incorporate a formal response by USDA to the Equity Commission's recommendations into the Equity Commission's report;
6. Recommend that USDA incorporate a specific goal regarding equity into its 2022-2026 strategic plan;
7. Review and make recommendations regarding the civil rights complaint processes at USDA.

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<sup>10</sup> Janie Simms Hipp & Colby D. Duren, *Regaining Out Future: An Assessment of Risks and Opportunities for Native Communities in the 2018 Farm Bill*, Seeds of Native Health 9–10 (June 2017), [https://seedsofnativehealth.org/wp-content/uploads/2017/06/Farm-Bill-Report\\_WEB.pdf](https://seedsofnativehealth.org/wp-content/uploads/2017/06/Farm-Bill-Report_WEB.pdf).

<sup>11</sup> USDA Equity Commission charter, at [https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t0000001Gqj1/.C7oECBNVK\\_xCvIAD9EjmxokYTMIXzGhWYJWRteYkc0](https://gsa-geo.my.salesforce.com/sfc/p/#t0000000Gyj0/a/t0000001Gqj1/.C7oECBNVK_xCvIAD9EjmxokYTMIXzGhWYJWRteYkc0).

### **Recommendation 1: Establish program accessibility and data collection directives for USDA**

Data collection is crucial to ensuring transparency, understanding issues of discrimination, and developing solutions to make USDA programs equitable and accessible to underserved farmers and ranchers.

The EC should study data collection efforts by USDA to determine additional data that should be gathered to assist in making recommendations to repair the legacy and ongoing harm resulting from discrimination within USDA programs. Recommendations could include producing an annual report on recipients of USDA assistance broken down by race, ethnicity, and gender that is consolidated and publicly accessible. The Equity Commission should determine whether reviewing race, ethnicity, and compensation data for USDA employees is advisable. This data should be used to identify and recommend specific reforms to prevent further discrimination, including mechanisms to ensure transparency and accountability.

Finally, in coordination with a diverse group of producers, the Commission should review USDA's tracking and reporting of foreclosures and debt collections and recommend this data be broken down by race, ethnicity, and gender. The Commission should also examine USDA's partnerships with private lending institutions to require these private entities collect and disclose to USDA demographic data on foreclosures and debt collections. The Commission should then analyze this data to draft recommended revisions to the terms of the USDA-private entity partnership to identify gaps in data collection, along with existing barriers to accessing credit and loan services, and develop recommended strategies to eliminate inequities in lending within those private entities.

The Commission should identify where the gaps are in data collection and provide actionable recommendations for change, in order to develop strategies to improve accessibility and address systemic impediments to equity in USDA programs and the cumulative effect of USDA's historic discriminatory practices. In addition to the above, this should include reviewing retention policies to insure records are not destroyed, but rather archived and available for public access by request.

### **Recommendation 2: Make a recommendation that the Secretary of Agriculture establish coordination between the Equity Commission and the Advisory Committee on Agriculture Statistics on the design and execution of the Census of Agriculture**

The Advisory Committee on Agriculture Statistics (Advisory Committee) was established to advise the Secretary of Agriculture on the Census of Agriculture and its

scope, timing, and content as well as to prepare recommendations to ensure that the Census provides robust and relevant data.<sup>12</sup>

The Secretary of Agriculture, the Equity Commission and Advisory Committee should form a joint working group to collaborate on the design and implementation of the Census, a vital source of information regarding the agriculture sector and its demographic makeup, for opportunities to improve its data collection to better capture equity concerns. The group should work to design the Census to collect diverse agricultural characteristics (geography, size, scale, and type of production) and demographics, with special emphasis on the representation of Black, Indigenous and farmers of color, and smaller producers.<sup>13</sup> Additionally, the group should strategize methods for addressing non-response, especially among underrepresented producers, and form partnerships with organizations to increase Census coverage, especially with organizations such as Cooperative Extensions serving farmers of color,<sup>14</sup> and community-based organizations. Finally, the group should ensure that the data collection and analysis is transparent and that the demographic data aggregated at the census tract level as well as the data collection methods used are made publicly available.<sup>15</sup>

The working group should consider whether the current racial and ethnic groupings on the Census sufficiently capture the data needed to effectively conduct outreach, tailor technical assistance to the community, and inform policy. The working group should also ensure the Census survey is culturally appropriate and provided in relevant languages.<sup>16</sup> The working group should also explore and recommend other ways to increase participation in the Census from underrepresented groups, such as increasing funding for outreach and education, especially among producers who may face language, technical, or other barriers. This may include partnering with community-based organizations to increase awareness of, and trust in, USDA surveys. Further, the working group should evaluate strategies to make the Census more accessible. The Census can be a time-consuming, complicated process that may be especially burdensome on producers of color or underserved producers who may not see a direct benefit in participating in the survey. This may be especially true among Black farmers who have historically been undercounted by the Census.<sup>17</sup>

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<sup>12</sup> Advisory Committee on Agriculture Statistics: About the Committee, USDA (Aug. 11, 2021), [https://www.nass.usda.gov/About\\_NASS/Advisory\\_Committee\\_on\\_Agriculture\\_Statistics/index.php](https://www.nass.usda.gov/About_NASS/Advisory_Committee_on_Agriculture_Statistics/index.php).

<sup>13</sup> See *Improving Information About America's Farms & Ranches*, Council on Food, Agric., & Res. Econ. 2–6 (Mar. 2007).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See, e.g., *The Campaign to Include Ethnicity in the USDA Census of Agriculture*, CALI. CLIMATE & AGRIC. NETWORK (June 3, 2021), <https://calclimateag.org/the-campaign-to-include-ethnicity-in-the-usda-census-of-agriculture>.

<sup>17</sup> *Identifying Barriers in USDA Programs and Services; Advancing Racial Justice and Equity and Support for Underserved Communities at USDA*, AM. FARMLAND TRUST 7 (Aug. 4, 2021), [https://downloads.regulations.gov/USDA-2021-0006-0353/attachment\\_1.pdf](https://downloads.regulations.gov/USDA-2021-0006-0353/attachment_1.pdf).

Finally, the group should consider whether Census data should be disaggregated in order to obtain a better understanding of the barriers that particular groups face (i.e., how many Black women rely on rented land).<sup>18</sup> Additional opportunities for analysis through data disaggregation would help USDA identify and more effectively target its efforts to dismantle systemic discrimination in its programs.

### **Recommendation 3: Develop a process for meaningful input to USDA by a diverse group of farmers, ranchers, food system workers**

Without sufficient representation, the valuable perspectives of all producers cannot be used to shape and influence USDA programs and practices.<sup>19</sup> Nor can their input be utilized to address long-standing inequities and influence agricultural policy. USDA and its agencies should actively solicit input from diverse stakeholders in all aspects of USDA's program design, outreach, and implementation, especially those who have not had a voice.

Importantly, in developing strategies to increase participation from diverse participants to assist in the design, implementation, and evaluation of programs, the Commission must be aware of the disparate histories of discrimination experienced by different racial and ethnic groups. Redressing these past harms may require different approaches; different mechanisms may be required to eliminate discrimination against a particular group going forward.

The Commission should create opportunities for open dialogues with diverse groups in formal and informal capacities, and this should not be limited to requests for input on programs and policies that specifically target underserved producers.

First, the Commission should recommend guaranteeing meaningful agency coordination with a diverse constituency of stakeholders to promote inclusion across different races, ethnicities, genders, farm sizes, and types of crops or animals produced.

Second, the Commission should develop a framework for stakeholder engagement in all aspects of USDA programming which ensures that people of color and other underserved groups have adequate opportunity to engage in USDA's rulemaking process. USDA is already required to engage with Tribes in a timely manner and is required to engage in meaningful consultation on policies that have substantial direct effects on one or more Tribes. This directive describes consultation as encompassing three essential elements; (1) who can consult (those with delegated authority), (2) the qualities of process (timely, meaningful, substantive), and (3) the inclusiveness of communication (two-way dialogue between parties). Consultation is also distinguished from mere notification, technical communications, or outreach activities.

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<sup>18</sup> *Id.*

<sup>19</sup> See generally *USDA Racial Equity Comment*, Earthjustice (June 14, 2021), [https://earthjustice.org/sites/default/files/files/earthjustice\\_et\\_al\\_recommendations\\_ralequityeo.pdf](https://earthjustice.org/sites/default/files/files/earthjustice_et_al_recommendations_ralequityeo.pdf).

Importantly, this distinct process for consulting with Tribes must be preserved given their unique history of discrimination and political position as sovereign nations. However, the Commission should develop alternative procedures to guarantee engagement from underserved non-Tribal groups. For example, USDA could be required to solicit input from a specified portion of underserved stakeholders on proposed rules and program priorities, establishing evaluation criteria for competitive grant programs, conducting effective outreach, and developing service delivery models. This may include listening sessions with specific participation requirements to ensure that all stakeholders are represented, with some kind of formal response by USDA to recommendations suggested at the listening session. The Commission could consider modeling these efforts after California's Farmer Equity Act.<sup>20</sup> The Farmer Equity Act directs the California Department of Food and Agriculture to ensure that socially disadvantaged farmers and ranchers are included in the development, adoption, implementation, and enforcement of food and agriculture laws, regulations, and policies and programs.<sup>21</sup>

Finally, the Commission should create a budget recommending appropriate funding allocations necessary to fully implement the newly developed opportunities for USDA to incorporate diverse perspectives into all aspects of the department's work. By prioritizing this coordination, the interests of historically underrepresented stakeholders will be reflected and help shape USDA programs to be accessible and equitable. Creating mechanisms of increased participation from all producers, especially those who have been excluded, will allow USDA to harness this untapped experience and expertise and build an environment at USDA that values diversity and stakeholder engagement.

#### **Recommendation 4: Make recommendations regarding the work of the Office of Budget and Program Analysis**

The Equity Commission's recommendations should include reference to the work of USDA's Office of Budget and Program Analysis (OBPA). The Commission should make recommendations for OBPA to develop specific criteria in their budget analysis procedures and internal operations that incorporate an equity lens. These criteria should insure that going forward, all analysis and operations are reviewed to determine 1) whether they perpetuate racial discrimination, and 2) whether they actively dismantle systemic barriers to participation in USDA programs by Black, Indigenous and other farmers of color.

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<sup>20</sup> AB-1348, Farmer Equity Act of 2017, § 513(a), [https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill\\_id=201720180AB1348&version=20170AB134894CHP](https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=201720180AB1348&version=20170AB134894CHP). For more discussion on the Act, see *Farmer Equity Act of 2017*, Cal. Farmer Just. Collaborative (2017), <https://www.farmerjustice.com/work>.

<sup>21</sup> *Id.*

### **Recommendation 5: Obtain and incorporate USDA formal response into the Equity Commission's report**

The Equity Commission is set to deliver an interim report and provide actionable recommendations by September 2022, with a final report to be completed by the summer of 2023.<sup>22</sup>

Once the Commission has completed the interim report, the Commission should obtain and incorporate into the final report a response to each recommendation from the Secretary of Agriculture. This process could be modeled after one at the Commission of Internal Revenue. There, the National Taxpayer Advocate prepares a report identifying areas of improvement and recommendations to address deficiencies. The Commissioner is then required to formally respond to all recommendations within 3 months after submission.<sup>23</sup>

By requiring a response from the Secretary of Agriculture, the Commission will ensure that their recommendations are considered and responded to before the Commission finalizes the report.

### **Recommendation 6: Recommend that USDA incorporate a specific goal regarding equity into its 2022-2026 strategic plan**

USDA's 2018-2022 Strategic Plan, developed by OBPA, includes seven strategic goals; (1) ensure USDA programs are delivered efficiently, effectively, with integrity and a focus on customer service; (2) maximize the ability of American agricultural producers to prosper by feeding and clothing the world; (3) promote American agricultural products and exports; (4) facilitate rural prosperity and economic development; (5) strengthen the stewardship of private lands through technology and research; (6) ensure productive and sustainable use of our national forest system lands; and (7) provide all Americans access to a safe, nutritious, and secure food supply.<sup>24</sup> USDA's budget supports achievement of USDA's seven strategic goals. Each year, OBPA produces a publication that summarizes the fiscal year budget for USDA and highlights programs and initiatives in furtherance of each strategic goal.<sup>25</sup>

USDA should incorporate a goal regarding racial equity into its 2022-2026 strategic plan to ensure that USDA is accountable for its statements regarding equity and racial justice.

The Commission should recommend that any USDA plan to end systemic racial discrimination include specific, measurable goals and benchmarks to indicate progress

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<sup>22</sup> 87 Fed. Reg. 8227 (Feb. 14, 2022).

<sup>23</sup> 26 U.S.C. § 7803(c)(3).

<sup>24</sup> *USDA Strategic Plan: FY 2018–2022*, USDA (May 2018), <https://www.usda.gov/sites/default/files/documents/usda-strategic-plan-2018-2022.pdf>.

<sup>25</sup> See, e.g., *FY 2022 Budget Summary*, USDA, <https://www.usda.gov/sites/default/files/documents/2022-budget-summary.pdf> (last visited Oct. 26, 2021).



and increased participation by underserved producers, and specifically, by Black, Indigenous and other farmers of color, within a certain timeframe. These recommendations should outline steps to a) increase the number of farmers from each of these groups by a certain percentage (including farm operators and owners), b) increase the number of participants from each of these groups in most USDA grant and loan programs by certain percentages, and c) increase the median sum received by participants from each of these groups in USDA grant and loan programs by a certain percentage. These objectives will support efforts to advance equity within USDA by providing measurable indicators of progress and achievements.

### **Recommendation 7: Review and make recommendations regarding the civil rights complaint processes at USDA**

USDA's history of discrimination has been accompanied by an ineffective civil rights complaint process that has all but guaranteed that meritorious employee and program complaints go unaddressed. While some of this history can be attributed to poor leadership, structural issues abound that may be mitigated through changes in policy and/or the establishment of independent review mechanisms. In particular, the Office of the Assistant Secretary for Civil Rights (OASCR), the office responsible for leading and overseeing the agency's civil rights programs, should be a focal point for reform. The Issue Brief *Supporting Civil Rights at USDA: Opportunities to Reform the USDA Office of the Assistant Secretary for Civil Rights* outlines several avenues for improving OASCR's discrimination complaint process and calls upon USDA to establish an advisory committee to consult on and guide OASCR's reform efforts.<sup>26</sup> The Equity Commission can, in the near term, fill that role; it should review the critiques and recommendations included in that Issue Brief, conduct its own evaluation of USDA's discrimination complaint processes, and make recommendations for establishing effective, credible civil rights enforcement mechanisms at USDA.

We are happy to provide any additional information at your request.

Sincerely,

Farm Bill Law Enterprise  
[farmbilllaw.org](http://farmbilllaw.org)

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<sup>26</sup> See Harv. L. Sch. Food L. & Pol'y Clinic, *Supporting Civil Rights at USDA: Opportunities to Reform the USDA Office of the Assistant Secretary for Civil Rights* (2021), [https://chlp.org/wp-content/uploads/2013/12/FLPC\\_OASCR-Issue-Brief.pdf](https://chlp.org/wp-content/uploads/2013/12/FLPC_OASCR-Issue-Brief.pdf).