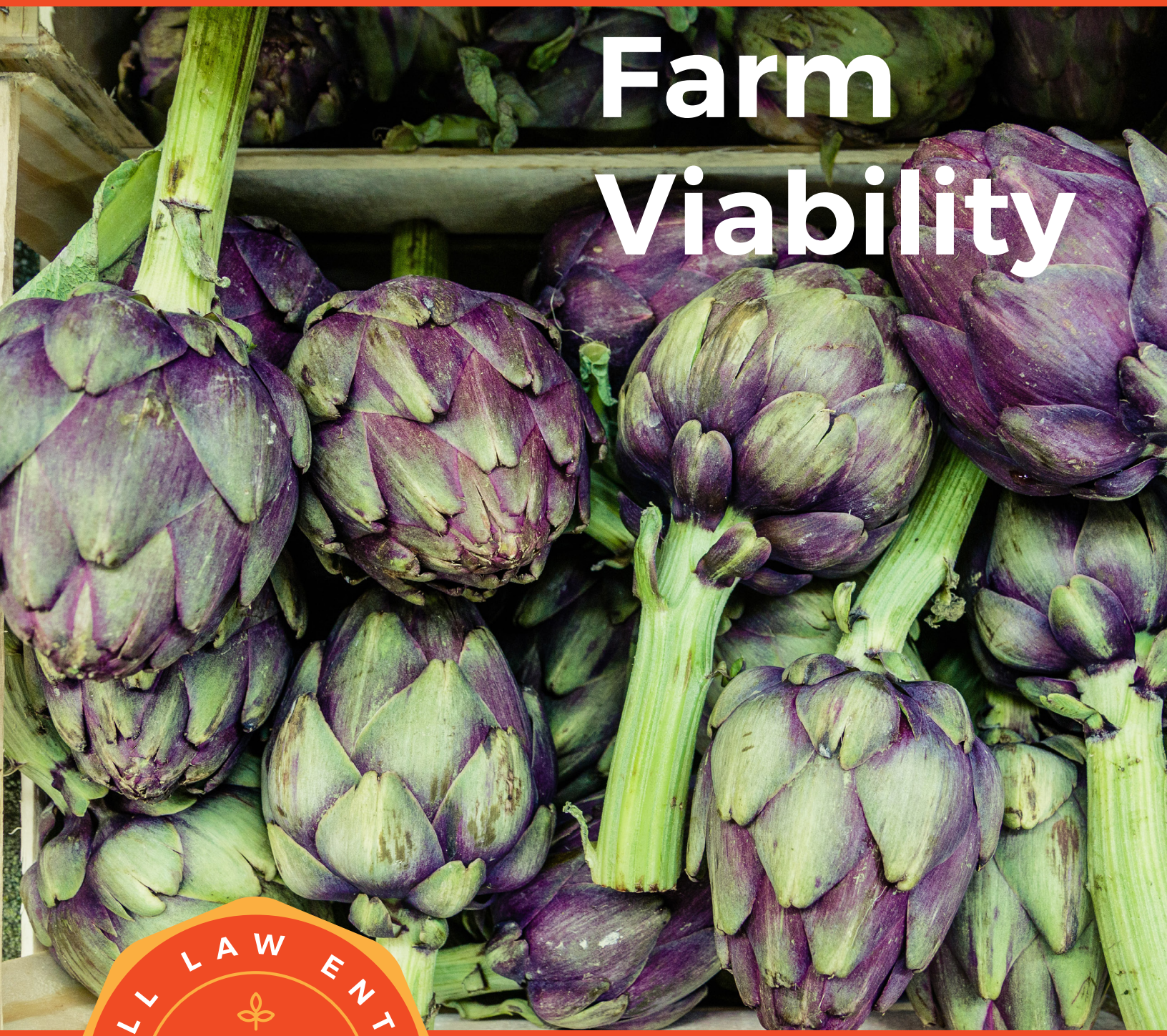
Farm Viability



FARM BILL LAW ENTERPRISE

FBLE

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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.

Table of Contents

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

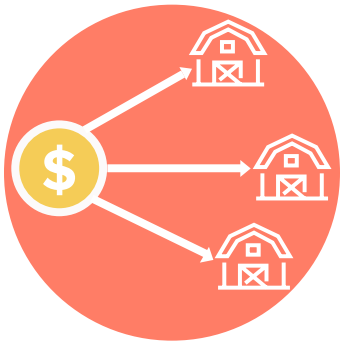
Support the Connection of Small and Mid-Sized Farmers to Local and Regional Market Opportunities

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 experience[26]—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 food[41] 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 economies[43] 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 services[52]—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 2019[60]—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-Lite[77]—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 program [91] 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 modification 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 farmers' 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 apace.[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 ranchers[149] 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 dollars[155] 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 Bill[159]), 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 Program[165]—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 USDA[178] 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 channels[210] 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 charge[212] 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 market[219]—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 FY2022 [254]) "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]

RSFP 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.

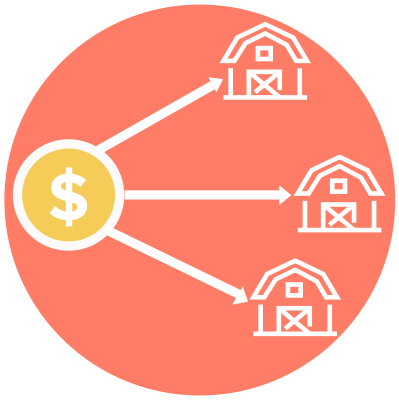
LEGISLATIVE OPPORTUNITY

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 billion[337] 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 farms[353] 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 statute[402] 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.

GOAL IV

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 livestock[419]—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 FTC[427]—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 orders[461]—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.

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[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/faq [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].

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[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].

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[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].

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[495] *See* RAFI – USA, Merger Guidelines Comment (Dkt. FTC-2022-0003-1527) (Apr. 21, 2022), https://www.regulations.gov/comment/FTC-2022-0003-1527.

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[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.


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