



April 29, 2021

Office of the Chief Economist
U.S. Department of Agriculture

Docket No. USDA-2021-0003

Re: USDA Response to the Executive Order on Tackling the Climate Crisis at Home and Abroad

We appreciate this opportunity to respond to the United States Department of Agriculture's (USDA's) request for comment on climate-smart agriculture and forestry practices and systems. This response will address the agency's Climate-Smart Agriculture and Forestry Questions and Environmental Justice and Disadvantaged Communities Questions.

The Farm Bill Law Enterprise brings together faculty, staff, and students from programs at several law schools with expertise in agriculture, nutrition, and the environment.¹ Our mission is to work toward a farm bill that reflects a thoughtful consideration of the long-term needs of our society, including economic opportunity and stability, public health and nutrition, public resources stewardship, and fair access and equal protection. We accomplish this mission through joint research, analysis, and advocacy and by drawing on the experience of our members, collaboratively building deeper knowledge, and equipping the next generation of legal practitioners to engage with the farm bill.

A. Climate-Smart Agriculture and Forestry

USDA has a number of different programs and tools that can be used to support the voluntary adoption of climate-smart agriculture among producers. The recommendations in this section cut across the issue areas for which USDA solicited comments and are thus organized by programmatic area rather than by question posed. The recommendations that follow identify opportunities to support USDA's present objectives through (1) the Forest Legacy Program, (2) Conservation Compliance, (3) Crop Insurance, (4) Carbon Markets, (5) the Conservation Reserve Program, (6) the Working Lands Programs, and (7) Research and Grants Programs.²

1. Forest Legacy Program

The Forest Legacy Program (FLP) was created in 1990 within the Cooperative Forestry Assistance Act of 1978 as a response to growing concern around the conversion of forest lands in the Northeast.³ The 1990 Farm Bill amended the FLP statutory authority and "direct[ed] the Secretary to establish the FLP to

¹ Our member institutions include: the Harvard Law School Food Law & Policy Clinic, Emmett Environmental Law & Policy Clinic, and Health Law & Policy Clinic; Pace University Elisabeth Haub School of Law, Food Law Initiative; Duke Environmental Law & Policy Clinic; Vermont Law School, Center for Agriculture and Food Systems; UCLA School of Law, Resnick Program for Food Law and Policy; and Joshua Galperin Visiting Associate Professor at University of Pittsburgh School of Law. Key individuals from each school may be found on the FBLE website under "Our Members," <http://www.farbilllaw.org/about/#members>.

² These recommendations were prepared with the assistance of Tori Oto, Harvard Law School J.D. 2022, and Brianna Johnson-King, Harvard Law School J.D. 2021.

³ U.S. DEP'T OF AGRIC., FOREST LEGACY PROGRAM IMPLEMENTATION GUIDELINES 7, 9 (2017) https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/15541-forest-service-legacy-program-508.pdf.

protect environmentally important forest areas that are threatened by conversion to nonforest uses.”⁴ FLP’s statutory authorization from the 1990 Farm Bill “continues indefinitely.”⁵

FLP operates primarily through the “State grant option,” under which USDA provides “grants to States for acquisition and allows States to hold the title to the lands or interests in lands acquired with those funds.”⁶ FLP accepts both conservation easements, which permanently limit property uses to protect land conservation, and full fee property sales and donations. Each year, FLP projects are selected through a joint federal-state process. Project proponents first bring their proposals to the states, which review and rank them according to the criteria identified in their State Forest Action Plans.⁷ All proposals are then subject to a National Panel Review, which evaluates projects based on three national core criteria.⁸

Revise the Forest Legacy Program to Focus More Directly on Carbon Sequestration

As a program that protects forests from conversion to non-forest uses and that can be used to encourage reforestation, FLP has the potential to promote terrestrial carbon sequestration. Yet the program, as currently designed, does not prioritize carbon sequestration in project selection. In addition, USDA does not currently track FLP’s effectiveness in sequestering carbon. We therefore recommend that USDA:

- Make carbon sequestration a central goal of FLP project selection, by explicitly incorporating it into the national core criteria and into the required elements for State Forest Action Plans.
- Explore placing a greater emphasis on reforestation projects, which can offer greater carbon sequestration benefits than projects that protect mature forests.
- Measure and publish information on FLP’s success in sequestering carbon. This assessment should evaluate what land is protected, who the landowners are, how the land is managed, the level of carbon stocking, and whether the conservation easement’s land management and land use terms are conducive toward sequestering carbon and/or protecting existing carbon storage.
- Measure and publish information on FLP’s success in identifying and protecting forest land actually threatened by conversion to non-forest uses. States often incorporate State-specific conversion threats into the State selection criteria, but do not appear to measure or publish information on whether those criteria successfully prioritize threatened land. USDA should fill this gap.
- Conduct research and fund pilot programs on easement terms and forest management practices that will maximize carbon sequestration, including on working lands. (For example, Apple’s conservation of Reed Forest in Maine encourages sequestration through an initial “rest period” to promote forest regrowth and then limits subsequent harvest to a set proportion of annual growth.⁹ In some regions, the use of a “rest period” might also support sequestration via harvesting for durable wood products, rather than for paper and pulp.)

⁴ *Id.* at 10.

⁵ *Id.*; see 16 U.S.C. § 2103c.

⁶ FOREST LEGACY PROGRAM IMPLEMENTATION GUIDELINES, *supra* note 3, at 15.

⁷ Although states have some flexibility in developing their State Forest Action Plans, the federal government requires that the plans address an extensive list of considerations, including: “forest resources and benefits, including [a]esthetic and scenic values, [f]ish and wildlife habitat, [p]ublic recreation opportunities, [s]oil productivity, [f]orest products and timber management opportunities, and [w]atershed values including water-quality protection[;] . . . the present and future threat . . . of conversion of forest areas to nonforest uses; . . . current ownership patterns and size of tracts, and trends and projected future ownership patterns.” *Id.* at 19.

⁸ These criteria are Importance (“The public benefits gained from the protection and management of the property, including environmental values and the economic and social benefits”), Threatened (“Conversion to nonforest uses is imminent or likely and will result in a loss of forest values and public benefits”), and Strategic (“Contributes to larger conservation plans, strategies, and initiatives, complements existing Federal land and other protected areas, and enhances previous conservation investments”). *Id.* at 33.

⁹ *Apple and the Conservation Fund Advance Forest Protection Efforts*, APPLE (Nov. 14, 2016),

<https://www.apple.com/newsroom/2016/11/apple-and-the-conservation-fund-advance-forest-protection-efforts/>.

- Engage in stakeholder outreach to identify projects that have the greatest carbon sequestration benefits and provide increased technical support for the implementation of forest management practices that maximize carbon sequestration.

2. Conservation Compliance

Agricultural producers must adhere to certain conservation measures in order to receive support from many of USDA's programs, including commodity payment programs, marketing assistance loans, disaster payments, and subsidized crop insurance.¹⁰ This requirement is known as "conservation compliance."¹¹ Conservation compliance requires that producers do not "produce an agricultural commodity on highly erodible land without an adequate conservation system," and do not convert or plant on wetlands.¹² While these minimal requirements are insufficient, on their own, to combat climate change, they still reflect baseline standards that must be enforced. Among their many environmental benefits, soil conservation and wetland preservation prevent needless carbon emissions and help store carbon.¹³ Unfortunately, as described further below, current requirements and enforcement practices prevent the compliance standard from being as effective as it could be.

Revise the 2T Standard Erosion Rate

Even when producers follow conservation compliance requirements, significant soil erosion can still occur. USDA defines T as "the maximum rate of annual soil loss that will permit crop productivity to be sustained economically and indefinitely on a given soil."¹⁴ In other words, erosion that occurs at a rate faster than T is unsustainable. Yet on highly erodible lands (HEL) that were used for crop production before December 23, 1985, the standard that NRCS applies to measure a substantial reduction in soil erosion in general is 2T. The 2T standard essentially allows producers who farm on these lands to meet HEL compliance standards while depleting soil at twice the rate it is replenished. Much has changed since NRCS set the "tolerable" erosion level at twice the rate of replenishment, particularly technological advancements that include the development of precision agriculture and the analytical power of big data. USDA should therefore revise the allowable tolerance rates to achieve a zero net loss of soils.

Improve Monitoring, Enforcement, and Technical Assistance

NRCS must implement effective monitoring to ensure that conservation compliance achieves the desired environmental outcomes. NRCS has grappled with ineffective monitoring for a number of years. A 2003 audit of NRCS's conservation compliance implementation found that almost half of the NRCS field offices were not implementing the provisions as required due to lack of staff, lack of training, de-emphasis by management, and/or discomfort with enforcement, all compounded by weak NRCS oversight and guidance.¹⁵ USDA's Office of Inspector General (OIG) reached similar findings in 2016, noting "inadequate guidance [from NRCS] for consistently applying standards in conducting compliance and quality control reviews" of the highly erodible lands and "inconsistent approaches" in reviewing

¹⁰ 16 U.S.C. § 3811.

¹¹ See MEGAN STUBBS, CONG. RSCH. SERV., R42459, CONSERVATION COMPLIANCE AND U.S. FARM POLICY (2016), <https://crsreports.congress.gov/product/pdf/R/R42459/27>.

¹² *Conservation Compliance Change & USDA Programs*, NAT. RES. CONSERVATION SERV., U.S. DEP'T OF AGRIC., <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=nrcseprd1542016>.

¹³ See, e.g., THE RAMSAR CONVENTION, WETLAND RESTORATION FOR CLIMATE CHANGE RESILIENCE (2018), https://www.ramsar.org/sites/default/files/documents/library/bn10_restoration_climate_change_e.pdf; D.A. Bossio et al., *The Role of Soil Carbon in Natural Climate Solutions*, 3 NATURE SUST. 391 (2020), <https://doi.org/10.1038/s41893-020-0491-z>.

¹⁴ 7 C.F.R. § 12.21(a).

¹⁵ U.S. GEN. ACCOUNTING OFFICE, GAO-03-418, AGRICULTURE CONSERVATION: NEEDS TO BETTER ENSURE PROTECTION OF HIGHLY ERODIBLE CROPLAND AND WETLANDS 23–24 (2003), <https://www.gao.gov/assets/240/237878.pdf>.

wetland conservation compliance.¹⁶ As a result, NRCS state offices had issued inconsistent guidance on interpreting compliance requirements such that a violation in one state might not count as noncompliance in a neighboring state.¹⁷ The 2016 report also found that employees conducting compliance reviews of farmland did not always review the entire tract of land, even when violations had been found in the areas reviewed.¹⁸ These deficiencies in NRCS monitoring must be corrected for conservation compliance requirements to be effective.

On top of inadequate monitoring, the current conservation compliance enforcement scheme creates little deterrence to noncompliance. Conservation compliance reporting is limited to a self-certification process in which farmers submit a two-page form and check boxes to indicate they are compliant.¹⁹ The minimal effort required to mark oneself as compliant is not a great barrier. Then, unless already on NRCS's radar for enforcement (e.g., subject of a whistleblower complaint), a tract will only receive a compliance review if selected as part of a random sample, which NRCS has also struggled to do properly.²⁰ If NRCS determines that a farmer did not comply, yet certified compliance, the farmer is just considered ineligible for payments in that year.²¹ This system effectively sets the penalty level at a return of any payments received, which may not be high enough to disincentivize false certifications.

USDA could better enforce the existing conservation compliance scheme to protect soils and wetlands. In doing so, the agency could also leverage this system to promote climate-smart agriculture and support producers in moving beyond compliance toward adoption of climate-smart practices. We therefore recommend that USDA do the following:

- Coordinate consistent guidance between state NRCS offices that upholds the conservation compliance objectives and, to the extent permitted by law, goes beyond to equip NRCS officials to evaluate and provide guidance on climate-smart agricultural practices.
- Strengthen compliance review and enforcement protocols to ensure effective monitoring and to better achieve program goals.
- Provide robust technical assistance to support producers in meeting and exceeding conservation standards.
- Incorporate education and support for climate-smart agricultural practices in the technical assistance provided for conservation compliance so that producers evaluating or implementing a conservation plan on their land go beyond the minimum conservation requirements and incorporate practices that promote carbon sequestration or have other climate-related benefits.

¹⁶ See OFF. OF INSPECTOR GEN., U.S. DEP'T OF AGRIC., AUDIT REP. 50601-0005-31, USDA MONITORING OF HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION VIOLATIONS (2016), <https://www.usda.gov/sites/default/files/50601-0005-31.pdf>.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 10–11.

¹⁹ U.S. DEP'T OF AGRIC., CONSERVATION FACT SHEET: CONSERVATION COMPLIANCE AND CROP INSURANCE 1 (2017), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2017/conservation_compliance_highly_erosion_land_and_wetlands_dec2017.pdf (requiring “producers and affiliated persons [to] fill-out and sign form AD-1026 certifying they will not” violate the compliance requirements); FARM SERV. AGENCY, AD-1026, HIGHLY ERODIBLE LAND CONSERVATION (HELIC) AND WETLAND CONSERVATION (WC) CERTIFICATION), <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/AD1026.PDF>.

²⁰ See USDA MONITORING OF HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION VIOLATIONS, *supra* note 16, at 2, 18–21.

²¹ CONSERVATION FACT SHEET, *supra* note 19, at 2–3.

3. Crop Insurance

Congress established the Federal Crop Insurance Corporation (FCIC) in 1938 to “insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under one or more plans of insurance determined by the Corporation to be adapted to the agricultural commodity concerned.”²² Today, USDA’s Risk Management Agency (RMA) administers FCIC programs by paying premium subsidies and working directly with private insurance companies to provide federal crop insurance to producers.²³ Producers pay a portion of the policy’s premium and RMA pays the remainder (the “premium subsidy”), which, on average, comprises about 62%.²⁴ RMA and FCIC set these insurance premium subsidy rates and develop the specific contracts to be used by private insurers.²⁵ Additionally, RMA reinsures the insurance companies during times of high payouts and pays overhead and administrative costs for companies that sell and service RMA policies.²⁶ As of 2017, federal crop insurance policies covered over 312 million eligible acres²⁷ and 122 different crops,²⁸ which include fruits and vegetables (“specialty crops”) and commodity crops such as corn, soy, wheat, and cotton.²⁹ Over 1.12 million individual federal policies—with some producers purchasing multiple policies—were issued in 2017 alone.³⁰

A crop insurance system that fails to address the growing risks of climate change will continue to incentivize unsustainable practices. Current schemes encourage farmers to maximize yields, even when that means planting on marginal lands or choosing not to implement practices or crops that would mitigate risk long term.³¹ Despite the availability of Whole Farm Revenue Protection for diversified farms, crop insurance continues to be much more attainable for monoculture cropping.³² USDA should start viewing crop insurance as a tool for mitigating long-term climate risks and incentivizing climate-smart agricultural practices.

Revise Crop Insurance “Good Farming Practices” to Include Climate-Smart Practices

RMA should encourage climate-friendly practices and diversification through its influence over crop insurance contracts. Such practices conserve resources and improve resiliency, a proven risk management strategy that farmers can use to adapt to climate change challenges. Yet some of these practices do not align with the terms of crop insurance contracts that require farmers to follow “good farming practices.”³³

²² 7 U.S.C. § 1508(a)(1).

²³ DENNIS A. SHIELDS, CONG. RSCH. SERV., R40532, FEDERAL CROP INSURANCE: BACKGROUND 3 (2015), <https://fas.org/sgp/crs/misc/R40532.pdf>.

²⁴ *Id.*

²⁵ *History of the Crop Insurance Program*, RISK MGMT. AGENCY, U.S. DEP’T OF AGRIC., <https://www.rma.usda.gov/About-RMA/History-of-RMA>.

²⁶ *Id.*

²⁷ ISABEL ROSA, CONG. RSCH. SERV., IF10980, FARM BILL PRIMER: FEDERAL CROP INSURANCE 1 (2018), <https://fas.org/sgp/crs/misc/IF10980.pdf>.

²⁸ OFF. OF INSPECTOR GEN., U.S. DEP’T OF AGRIC., AUDIT REPORT 05401-0010-11, FEDERAL CROP INSURANCE CORPORATION/RISK MANAGEMENT AGENCY FINANCIAL STATEMENTS FOR FISCAL YEARS 2018 AND 2017, Exhibit C 17 (2018), <https://www.usda.gov/sites/default/files/05401-0010-11.pdf>.

²⁹ RANDY SCHNEPF, CONG. RSCH. SERV., IF11163, 2018 FARM BILL PRIMER: THE FARM SAFETY NET 2 (2019), <https://fas.org/sgp/crs/misc/IF11163.pdf>.

³⁰ FEDERAL CROP INSURANCE CORPORATION/RISK MANAGEMENT AGENCY FINANCIAL STATEMENTS FOR FISCAL YEARS 2018 AND 2017, *supra* note 28, at Exhibit C 16.

³¹ *See* NAT. RES. DEF. COUNCIL, COVERING CROPS: HOW FEDERAL CROP INSURANCE PROGRAM REFORMS CAN REDUCE COSTS, EMPOWER FARMERS, AND PROTECT NATURAL RESOURCES 3 (2017), <https://www.nrdc.org/sites/default/files/federal-crop-insurance-program-reforms-ip.pdf>.

³² *See id.* at 4.

³³ Gabrielle Roesch-McNally, et al., *The trouble with cover crops: Farmers’ experiences with overcoming barriers to adoption*, 33 RENEWABLE AGRIC. & FOOD SYSTEMS 322, 330 (2017).

These standards can interfere with a farmer's ability to use conservation and climate-friendly practices like alley-cropping, cover cropping, and integrated crop-livestock systems.³⁴ As a first step, RMA recently updated its Good Farming Practice Determination Standards Handbook to recognize NRCS conservation activities.³⁵ More recently, the 2019 Handbook includes cover cropping as a good farming practice.³⁶ However, insurance companies still retain the power to proscribe certain practices in their policies' terms and conditions.³⁷ Insurers have a narrow interest in dictating practices that maximize intra-year yields, rather than in practices that offer long-term conservation and risk management benefits. Although adding cover crops to the list of good farming practices is a step in the right direction, more practices should be included. Thus, RMA should update the handbook to ensure that any NRCS-approved conservation activity shall qualify as a "good farming practice" and prohibit private insurance companies from undermining this determination.

Increase Whole Farm Revenue Protection's Accessibility and Diversification Incentives

Diversified farms historically struggle to access insurance products that protect their livelihoods when bad weather or other mishaps threaten their production or marketability. The system has historically focused on single-commodity policies and lacked coverage opportunities for many fruits and vegetable crops.³⁸ Whole Farm Revenue Protection (WFRP) insurance policies allow farmers to avoid applying for coverage separately for each crop they plant, which can be logistically difficult and still leave portions of a farmer's harvest uninsured.³⁹ Under whole-farm policies, farms can purchase subsidized insurance for their total farm revenue regardless of what they produce.

WFRP has important implications for supporting diversified production systems that enhance natural resources. Diversified production systems improve resilience by using a variety of crops to reduce vulnerability to risk.⁴⁰ The system boosts environmental sustainability by using the biology of different crops and livestock to reduce erosion, keep nutrients in the soil, and reduce the need for ecologically damaging inputs like pesticides and fertilizers.⁴¹

To better promote these benefits, USDA can do more to ensure that WFRP is accessible. Paperwork, recordkeeping, and certain accounting requirements prevent broader participation in WFRP.⁴² These

³⁴ Peter Lehner & Nathan A. Rosenberg, *Legal Pathways to Carbon-Neutral Agriculture*, 47 ENVTL. L. REP. NEWS & ANALYSIS 10845, 10862 (2017).

³⁵ RISK MANAGEMENT AGENCY, U.S. DEP'T OF AGRIC., GOOD FARMING PRACTICE DETERMINATION STANDARDS HANDBOOK 33–34 (2021), <https://www.rma.usda.gov/-/media/RMA/Handbooks/Program-Administration--14000/Good-Farming-Practice/2021-14060-Good-Farming-Practice-Determination-Standards.ashx>.

³⁶ *Id.* at 13; *see also* U.S. DEP'T OF AGRIC., NRCS COVER CROP TERMINATION GUIDELINES 1 (2019), https://sustainableagriculture.net/wp-content/uploads/2019/07/Termination_Guidelines_Designed_6.28_10.24am_002-2.pdf.

³⁷ *See Legal Pathways to Carbon-Neutral Agriculture*, *supra* note 34, at 10876 n. 223.

³⁸ *New Pilot Program Offers Coverage for Fruits & Vegetables, Organic & Diversified Farms*, U.S. DEP'T OF AGRIC. (May 21, 2014), <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2014/05/0100.xml>.

³⁹ *Whole Farm Revenue Protection for Diversified Farms*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/whole-farm-revenue-protection-for-diversified-farms>.

⁴⁰ P. A. Matson et al., *Agricultural Intensification and Ecosystem Properties*, 277 SCIENCE 504, 506–07 (1997); Lauren Ponisio & Paul Ehrlich, *Diversification, Yield and a New Agricultural Revolution: Problems and Prospects*, 8 SUSTAINABILITY 1118 (2016); Brenda Lin, *Resilience in Agriculture through Crop Diversification: Adaptive Management for Environmental Change*, 61 BIOSCIENCE 183, 184–88 (2011); OLIVIER DE SCHUTTER, REPORT SUBMITTED BY THE SPECIAL RAPporteur ON THE RIGHT TO FOOD, U.N. HUMAN RIGHTS COUNCIL, U.N. DOC A/HRC/16/49 1, 6 (2010), <https://www2.ohchr.org/english/issues/food/docs/a-hrc-16-49.pdf>.

⁴¹ Matson et al., *supra* note 40, at 505; *see* Lin, *supra* note 40, at 184–88; DE SCHUTTER, *supra* note 40, at 1, 6.

⁴² *See* CARA FRAVER, SCOTT MARLOW, & JONATHAN COPPESS, AGREE, SPECIALTY CROP RISK MANAGEMENT: AN ISSUE PAPER ON THE NONINSURED CROP DISASTER ASSISTANCE PROGRAM AND WHOLE FARM REVENUE

hurdles are particularly acute for small and mid-sized farms, and beginning farmers, that need the comprehensive and affordable risk management most.⁴³ RMA should study these barriers and take immediate steps to ameliorate them. In particular:

- RMA should develop a simplified WFRP policy for small and mid-sized farms, which USDA defines as farms with under \$1 million in annual revenue.⁴⁴
- RMA should also further relax the production and revenue history requirement for beginning farmers and ranchers.⁴⁵ RMA should find better ways to predict new farms' revenues rather than offering benefits exclusively to those with revenue history.

USDA should also use WFRP to create much more ambitious incentives for diversification. WFRP provides an ideal platform for paying participants who diversify production and thus reduce vulnerability to risk. Specifically, RMA should recognize finer gradations of diversification in setting coverage and subsidy rates under WFRP. At present, farms with three or more species have access to coverage levels of 80 and 85 percent.⁴⁶ Rather than this binary “whole-farm” subsidy rate, a diversification subsidy should be meaningfully stepped up with each additional crop or with the adoption of more beneficial crop rotations. These reforms would recognize and reward true diversification.

Run Pilot Programs that Incorporate Climate-Smart Practices and Soil Quality in Crop Insurance Premium Rates and Subsidies

A growing body of research suggests that many climate-smart farming practices can significantly improve long-term productivity and conservation outcomes. These practices include no-tillage or conservation tillage, cover cropping, diversified crop rotations, the use of riparian buffers, and agroforestry. Research connects these practices to significant increases in soil health, reductions in erosion, retention of soil moisture, better drought resistance, reductions in greenhouse gas emissions, and increased carbon sequestration.⁴⁷ Of particular significance to the federal crop insurance program, there is evidence that these practices also can, at least in the long run, reduce the frequency and magnitude of indemnity payments to farmers.⁴⁸

PROTECTION INSURANCE 9 (2019), <https://www.youngfarmers.org/wp-content/uploads/2019/08/Issue-Paper-Specialty-Crop-Risk-Management.pdf> (identifying accrual accounting, in place of cash accounting, as a barrier); ANNA JOHNSON & GLEN READY, CTR. FOR RURAL AFFAIRS, NEW OPTION FOR RISK MANAGEMENT: WHOLE FARM REVENUE PROTECTION USAGE IN NEBRASKA 10 (2017), <https://www.cfra.org/sites/www.cfra.org/files/publications/WFRP%20Report.pdf>.

⁴³ HOSSEIN AYAZI & ELSADIG ELSHEIKH, HAAS INST. FOR A FAIR AND INCLUSIVE SOC. AT UNIV. OF CAL., BERKELEY, THE U.S. FARM BILL: CORPORATE POWER AND STRUCTURAL RACIALIZATION IN THE U.S. FOOD SYSTEM 57 (2015), http://haasinstitute.berkeley.edu/sites/default/files/haasinstitutefarmbillreport_publish_0.pdf.

⁴⁴ *Distribution of farms and value of production varies by farm type*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58288>.

⁴⁵ See *Whole-Farm Revenue Protection Plan*, U.S. DEP'T OF AGRIC., RISK MGMT. AGENCY, <https://www.rma.usda.gov/en/News-Room/Frequently-Asked-Questions/Whole-Farm-Revenue-Protection-Plan-2020> (“Is WFRP available to Beginning Farmers and Ranchers?”).

⁴⁶ RISK MGMT. AGENCY, U.S. DEP'T OF AGRIC., WHOLE-FARM REVENUE PROTECTION (2019), <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Whole-Farm-Revenue-Protection-2020>. Producing only one commodity is the norm on U.S. farms, with only about 2 percent of cropland planted with more than one crop and 11 to 26 percent combining one crop with livestock grazing. An additional 1 to 2 percent of farmland uses cover crops. See ALLISON BORCHERS ET AL., U.S. DEP'T OF AGRIC., MULTI-CROPPING PRACTICES: RECENT TRENDS IN DOUBLE-CROPPING 1 (2014), https://www.ers.usda.gov/webdocs/publications/43862/46870_eib125_summary.pdf?v=41787.

⁴⁷ See, e.g., DANIEL KANE, NAT'L SUSTAINABLE AG. COAL., CARBON SEQUESTRATION POTENTIAL ON AGRICULTURAL LANDS: A REVIEW OF CURRENT SCIENCE AND AVAILABLE PRACTICES 11 (2015), http://sustainableagriculture.net/wp-content/uploads/2015/12/Soil_C_review_Kane_Dec_4-final-v4.pdf.

⁴⁸ For example, “in 2010, corn farmers who used no-till were 30 percent less likely than their conventional-tilling peers to receive an indemnity payment under the federal crop insurance program” and in the 2012 drought, corn

USDA should create a pilot program that links insurance premiums to implementation of climate-friendly practices. Such a program would help producers overcome the FCIC's complex administrative requirements and incentive structure that typically slow adoption of ecologically desirable practices.⁴⁹ The system could be tested through section 1523(d) of the Federal Crop Insurance Act, which allows the FCIC to pilot premium rate reductions.⁵⁰ Existing data limitations have slowed the empirical identification of practices that reduce risk,⁵¹ so USDA should partner with insurers and agricultural researchers to identify farming practices that protect against yield loss while also benefiting the climate. The results could then be used to develop a pilot program that increases premium subsidies or discounts premiums for producers who implement evidence-based management practices. Soil quality data could also be incorporated into the pilot to test ways soil health outcomes might be integrated into the system. A successful pilot program would help create tiered payment rates that adjust premiums and provide a more equitable return on the public's investment. Rewarding climate-friendly practices with reduced premiums would pay for itself via fewer indemnity payouts.⁵²

4. Carbon Markets

Rebuilding soil carbon on natural and working lands is an important strategy for mitigating climate change.⁵³ Paying farmers for increases in soil carbon on their farms has the potential to help meet our national climate goals, while generating additional revenue for producers from emerging carbon markets. The "voluntary" carbon market provides credits to entities, such as Google and Microsoft, that are not required by law to reduce their greenhouse gas emissions but choose to do so. Today, demand for carbon credits in the voluntary market is increasing due to the acceleration of corporate commitments to become carbon-neutral or carbon-negative over the coming years. This trend, together with the launch of the United Nation's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA),⁵⁴ is expected to drive increased demand for carbon credits in the voluntary market over the coming decade.⁵⁵

farmers who used cover crops harvested on average 79 percent of typical yields, compared to 68 percent for farmers who did not have cover crops. CLAIRE O'CONNOR, NAT. RES. DEF. COUNCIL, SOIL MATTERS 10 (2013), <https://www.nrdc.org/sites/default/files/soil-matters-IP.pdf>; see also Mahdi M. Al-Kaisi et al., *Drought Impact on Crop Production and the Soil Environment: 2012 Experiences from Iowa*, 68 J. SOIL & WATER CONSERVATION 19A, 20A (2013).

⁴⁹ Kristin Ohlson, *This Kansas Farmer Fought a Government Program to Keep His Farm Sustainable*, ENSIA (2016), <https://ensia.com/features/sustainable-farm-crop-insurance/>; see Francis Annan & Wolfram Schlenker, *Federal Crop Insurance and the Disincentive to Adapt to Extreme Heat*, 105 AM. ECON. REV.: PAPERS & PROC. 262, 264–66 (2015); Joshua D. Woodard, et al., *Government Insurance Program Design, Incentive Effects, and Technology Adoption: The Case of Skip-Row Crop Insurance*, 94 AM. J. AGRIC. ECON. 823 (2012).

⁵⁰ 7 U.S.C. §1523(d) (2019).

⁵¹ Jacqui Fatka, *Making crop insurance conservation-friendly: Part two in a series*, FARM FUTURES (2016), <http://www.farmfutures.com/story-making-crop-insurance-conservation-friendly-part-two-series-17-139131>.

⁵² In 2010, corn farmers practicing no-till farming were 30% less likely to receive federal crop insurance program indemnities. If all farmers had done so, around \$224 million in indemnities could have been avoided. CLAIRE O'CONNOR, NAT. RES. DEF. COUNCIL, SOIL MATTERS 10 n.74, 75 (2013), <https://www.nrdc.org/sites/default/files/soil-matters-IP.pdf>.

⁵³ While this section of FBLE's comments primarily addresses Question 1.C, the issues discussed in this section are relevant to most of the other questions posed under Question 1.

⁵⁴ CORSIA has authorized the use of carbon credits from voluntary standards organizations, such as American Carbon Registry, Verra, and the Climate Action Reserve.

⁵⁵ Some sectors that may demonstrate increased participation in the voluntary market include food and beverage, technology, oil and gas. Frank Watson, *Global carbon offsets market could be worth \$200 billion by 2050*: Berenberg, S&P GLOBAL (May 13, 2020), <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/051320-global-carbon-offsets-market-could-be-worth-200-bil-by-2050-berenberg>; *Tightening Climate Policy to Drive Carbon Offsetting and Emissions Trading*, FITCH RATINGS (Sept. 9, 2020),

There are already several companies and non-profit organizations that provide carbon credits for agricultural soil carbon sequestration in the voluntary market. Carbon credit projects in the voluntary market are developed based on protocols that are maintained by third-party standards organizations. The most common standards for U.S.-based voluntary carbon projects include: the Climate Action Reserve (“CAR”),⁵⁶ the American Carbon Registry (“ACR”),⁵⁷ and the Verified Carbon Standard (“Verra”).⁵⁸ Indigo Ag⁵⁹ is a start-up that supports development of projects through CAR and Verra. Separately, there are new entrants in this area that are working to develop their own standards and approaches specific to agriculture. These include: Nori,⁶⁰ the Soil and Water Outcomes Fund,⁶¹ and the Ecosystem Market Consortium (“ESMC”).⁶² Additionally, several states, such as California and Massachusetts, either already have programs or are contemplating how to support carbon sequestration markets to help meet their climate goals.⁶³ At least initially, federal efforts should build on these emerging efforts in the voluntary market and at the state level.

Pilot the Development of a Federal Carbon Bank and Other Supporting Activities to Encourage Greater Carbon Sequestration in Natural and Working Lands

We agree with Secretary Vilsack that a federal carbon bank has a role to play at this time, particularly to provide price support and stability in these nascent markets.⁶⁴ At the same time, we believe that USDA efforts in this area should be carefully designed to:

- primarily benefit farmers, as opposed to middlemen such as project developers, third-party verifiers, and brokers;
- ensure equitable access to carbon markets for smaller farms, farmers of non-commodity crops, and socially disadvantaged farmers; and
- support development of high-quality carbon credits, in which each credit is real, additional, permanent, quantifiable and verifiable, and enforceable.⁶⁵

USDA’s efforts must also recognize that considerable uncertainties remain regarding the magnitude of the actual carbon sequestration benefits of different farming practices—particularly at greater soil depths and over longer periods of time.⁶⁶ Moreover, there are currently significant challenges for cost-effective monitoring and verification of outcomes on individual farms. Given these uncertainties, the federal

<https://www.fitchratings.com/research/infrastructure-project-finance/tightening-climate-policy-to-drive-carbon-offsetting-emissions-trading-09-09-2020>.

⁵⁶ CLIMATE ACTION RESERVE, <https://www.climateactionreserve.org/> (last visited April 16, 2021).

⁵⁷ AMERICAN CARBON REGISTRY, <https://americancarbonregistry.org/> (last visited April 16, 2021).

⁵⁸ VERRA, <https://verra.org/> (last visited April 16, 2021).

⁵⁹ INDIGO AG, INC., <https://www.indigoag.com/> (last visited March 28, 2021).

⁶⁰ NORI LLC, <https://nori.com/> (last visited March 28, 2021).

⁶¹ SOIL AND WATER OUTCOMES FUND, <https://www.theoutcomesfund.com/> (last visited March 28, 2021).

⁶² ECOSYSTEM SERVICES MARKET CONSORTIUM, <https://ecosystemservicesmarket.org/> (last visited March 28, 2021).

⁶³ See *California Compliance Offset Program*, <https://ww2.arb.ca.gov/our-work/programs/compliance-offset-program>; MASS. EXEC. OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS, MASSACHUSETTS 2050 DECARBONIZATION ROADMAP 78–80 (2020); MASS. EXEC. OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS INTERIM CLEAN ENERGY AND CLIMATE PLAN FOR 2030 51–52 (Dec. 30, 2020).

⁶⁴ Bill Tomson, *Vilsack: U.S. Carbon Market Needs a Focus on Farmers*, AGRI-PULSE (Mar. 22, 2021), <https://www.agri-pulse.com/articles/15565-vilsack-us-carbon-market-needs-a-focus-on-farmers>.

⁶⁵ All carbon credits must meet these five criteria for legitimacy. See WORLD RES. INST. & WORLD BUS. COUNCIL FOR SUSTAINABLE DEV., THE GREENHOUSE GAS PROTOCOL: A CORPORATE ACCOUNTING AND REPORTING STANDARD (2015).

⁶⁶ Mark A. Bradford et al, *Soil Carbon Science for Policy and Practice*, 2 NATURE SUST. 1070–1072 (2019), <https://www.nature.com/articles/s41893-019-0431-y>.

government should act cautiously through pilot projects, research, and technical support; otherwise, it risks spending large sums of money on carbon sequestration that is not real or permanent.

We therefore recommend that initial USDA efforts focus on:

- Piloting a proof of concept for a federal carbon bank that aims to create price supports for agricultural carbon credits by purchasing a small number of credits from farmers in a few states, focused on the practices that have the best-established benefits;
- Supporting the development of new protocols, and improvements to existing protocols, to allow other types of producers to participate in carbon markets (e.g., those growing non-commodity crops) and to support more transformational changes in farming practices (e.g., agroforestry and other perennial agriculture practices);
- Providing price forecasting of the carbon market with information specific to American farmers and agricultural carbon credit projects to support greater price transparency and predictability for American producers;
- Supporting the development of new technologies and data products related to soil carbon monitoring that reduce project monitoring and development costs. These efforts could include working with partners to develop a national soil carbon database that is regularly updated and can be used to support soil carbon sequestration measurement and verification;
- Piloting new approaches, particularly for monitoring and verification, that reduce barriers to carbon market participation by small and socially-disadvantaged producers; and
- Supporting additional research into the quantification of long-term sequestration benefits of different farming practices.

5. Conservation Reserve Program

Some land should avoid production. The role of retirement programs, like CRP, is to enable producers to keep the most environmentally sensitive land out of production for a period of years. Unfortunately, when CRP contracts expire and land re-enters production, conservation benefits such as carbon sequestration are lost.⁶⁷ Between 2006 and 2014, sixteen million acres exited the program and most of those acres re-entered production.⁶⁸

Focus Resources on Long-Term CRP Participation and Carbon Sequestration Goals

USDA just announced that CRP enrollment will open “with higher payment rates, new incentives, and a more targeted focus on the program’s role in climate change mitigation.”⁶⁹ Though the move was touted for its climate benefits, any such benefits will be short-lived and illusory if land that enters the program later goes back into production.

⁶⁷ *Legal Pathways to Carbon-Neutral Agriculture*, *supra* note 34, at 10864, citing Soren Rundquist & Craig Cox, ENVTL. WORKING GRP., FOOLING OURSELVES: EXECUTIVE SUMMARY (2016); Tyler Lark et al., *Cropland Expansion Outpaces Agricultural and Biofuel Policies in the United States*, 10 ENVTL. RES. LETTERS 9 (2015) (finding that up to 42% of all land converted to cropland came from land exiting the CRP).

⁶⁸ See ANNE WEIR SCHECHINGER & CRAIG COX, ENVTL. WORKING GRP., ‘RETIRED’ SENSITIVE CROPLAND: HERE TODAY, GONE TOMORROW? 3 (2017), https://cdn3.ewg.org/sites/default/files/u352/EWG_ParadiseLostReport_C03.pdf?ga=2.50975019.347754171.1516926949-371085394.1516926948; Ronald A. Wirtz, *Conservation Reserve Program seeing steep decline*, FEDERAL RESERVE BANK OF MINNEAPOLIS (2018), <https://www.minneapolisfed.org/publications/fedgazette/conservation-reserve-program-seeing-steep-decline>.

⁶⁹ *Readout of the Third National Climate Task Force Meeting*, WHITEHOUSE (Apr. 21, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/21/readout-of-the-third-national-climate-task-force-meeting/>.

While major changes to the program will fall to Congress, we recommend that USDA work toward securing carbon sequestration benefits beyond the end of a CRP contract. USDA could:

- Provide incentives for landowners to re-enroll in CRP at the end of a contract, such as by increasing rental payments⁷⁰ or prioritizing the landowner for other USDA programs.
- Provide support and coordination to encourage and enable producers exiting CRP to adopt appropriate conservation plans and enroll in CSP or EQIP, or protect their land by enrolling in an easement program supported by NRCS's Agricultural Conservation Easement Program.⁷¹

As USDA launches its new Climate-Smart Practice Incentive program in CRP, the agency should also revisit the Environmental Benefits Index and either increase the weighted score for carbon sequestration under the "air quality" factors or, preferably, create a new benefit category for carbon sequestration and/or climate benefits more generally.⁷²

6. Working Lands Programs

NRCS administers the Conservation Stewardship Program (CSP) and the Environmental Quality Incentives Program (EQIP), the two main programs among the agency's "working lands" programs. CSP and EQIP help farmers and ranchers adopt, or bolster existing, conservation practices. Although the programs accomplish their goals in different ways, their aims are the same: to increase rates of conservation and sustainability of farmers and ranchers through technical and financial assistance.⁷³ Because these programs are already designed to encourage the voluntary adoption of conservation practices, they offer a clear opportunity for USDA to incentivize uptake of climate-smart agricultural practices.

Promote the Adoption of Climate-Smart Practices in EQIP

EQIP provides cost-share funds through contracts with producers who "plan and install structural, vegetative, and land management practices... to alleviate natural resource problems."⁷⁴ Although the program has a relatively large budget (\$1.8 billion in FY2021), it is also in high demand; in FY2019, NRCS funded only 27.7% of the EQIP applications received.⁷⁵ It is critical that NRCS use the money available to fund EQIP contracts wisely, and can do so by promoting climate-smart agricultural practices. We therefore recommend that USDA, through NRCS:

- Make climate resilience and carbon sequestration their own priority categories in NRCS's list of national priorities for EQIP.⁷⁶
- Add carbon sequestration or climate change mitigation as an evaluation factor in ranking EQIP applications.⁷⁷

⁷⁰ See 16 U.S.C. § 3834.

⁷¹ See *Agricultural Conservation Easement Program*, NAT'L RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/>.

⁷² See FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., CONSERVATION RESERVE PROGRAM: 56TH GEN. ENROLLMENT PERIOD, ENVIRONMENT BENEFITS INDEX (EBI) (2021), <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2020/crp-56th-ebi-fact-sheet-12-31-2020.pdf>.

⁷³ CONG. RSCH. SERV., THE 2018 FARM BILL (P.L. 1115-334): SUMMARY AND SIDE-BY-SIDE COMPARISON 17 (2019), <https://crsreports.congress.gov/product/pdf/R/R45525>.

⁷⁴ MEGAN STUBBS, CONG. RESEARCH SERV., R43504, CONSERVATION PROGRAMS IN THE 2014 FARM BILL (P.L. 113-79) 12 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43504.pdf>.

⁷⁵ CONG. RSCH. SERV., AGRICULTURAL CONSERVATION: A GUIDE TO PROGRAMS (2019), <https://fas.org/sgp/crs/misc/R40763.pdf>.

⁷⁶ See 7 C.F.R. § 1466.4.

⁷⁷ See 7 C.F.R. § 1466.20.

- Encourage states to include carbon sequestering activities, particularly the adoption of perennial crop systems such as agroforestry, in their list of top ten practices eligible for higher payments and as an option for incentive contracts.⁷⁸

One challenge EQIP poses for climate change mitigation is that the program also subsidizes large concentrated animal feeding operations (CAFOs).⁷⁹ Congress sets aside 50 percent of EQIP funding for livestock production.⁸⁰ Through these cost-sharing payments, EQIP has contributed to the expansion of CAFOs by reducing the cost of infrastructure,⁸¹ such as waste storage facilities, waste facility covers, animal mortality facilities, and manure transfer.⁸² This support is problematic because emissions from livestock production operations—primarily, CAFOs⁸³—comprise nearly half of agriculture’s total contribution to U.S. greenhouse gas emissions.⁸⁴

Despite this requirement, NRCS can still promote practices that are climate friendly. Funds reserved for livestock production could be used, for instance, to support rotational grazing⁸⁵ and to support forage for livestock in silvopasture systems.⁸⁶ USDA should channel EQIP dollars toward these types of practices rather than subsidize the expansion of climate-harming CAFOs.

Leverage the Conservation Stewardship Program to Encourage Climate-Smart Agricultural Practices

CSP is used on over 70 million farmed acres to provide technical and financial assistance in order to improve existing conservation systems and implement new conservation techniques.⁸⁷ Unlike EQIP, which funds particular practices, CSP contracts are for five years and support comprehensive plans for an entire operation.⁸⁸ Producers who adopt or continue resource-conserving crop rotations can also receive supplemental payment rates on their contracts.⁸⁹ These rotations contribute to soil health, increase

⁷⁸ See 7 C.F.R. § 1466.23.

⁷⁹ Large CAFOs are animal production facilities that confine and feed, for at least 45 days a year, over 1,000 “animal units” (e.g. 1,000 veal calves or 125,000 broiler chickens) in a space that does not support “crops, vegetation or forage growth.” 40 C.F.R. § 122.23.

⁸⁰ 16 U.S.C. § 3839aa-2(f)(1) (2019).

⁸¹ Tara Ritter, *Conservation, Climate, and CAFOs*, INST. FOR AGRIC. & TRADE POL’Y (Feb. 12, 2015)

<https://www.iatp.org/blog/201502/conservation-climate-and-cafos>.

⁸² *Cover Crops and CAFOs: An Analysis of 2016 EQIP Spending*, NAT’L SUSTAINABLE AGRIC. COAL. (Jan. 12, 2017), <http://sustainableagriculture.net/blog/eqip-fy2016-analysis/>.

⁸³ See Peter Lehner & Nathan Rosenberg, Chapter 30: Agriculture, in Michael B. Gerrard & John Dernbach, eds., *LEGAL PATHWAYS TO DEEP DECARBONIZATION IN THE UNITED STATES* 775 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361393. It is difficult to isolate CAFOs’ contributions to these numbers due to an extreme lack of data on the number of CAFOs operating in the United States and their size, type, location, pollution controls, waste storage and disposals practices, etc. See D. LEE MILLER & GREGORY MUREN, NRDC, *CAFOS: WHAT WE DON’T KNOW IS HURTING US* (2019), <https://www.nrdc.org/sites/default/files/cafos-dont-know-hurting-us-report.pdf>.

⁸⁴ CARRIE HRIBAR, NAT. ASS. OF LOCAL BOARDS OF HEALTH, *UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES* 7 (2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

⁸⁵ *Managing Grazing to Improve Climate Resilience*, U.S. DEP’T OF AGRIC.,

<https://www.climatehubs.usda.gov/hubs/northeast/topic/managing-grazing-improve-climate-resilience>.

⁸⁶ *Silvopasture*, U.S. DEP’T OF AGRIC., NAT’L AGROFORESTRY CTR., <https://www.fs.usda.gov/nac/practices/silvopasture.php>.

⁸⁷ NAT. RES. CONSERVATION SERV., U.S. DEP’T OF AGRIC., *CONSERVATION STEWARDSHIP PROGRAM 1* (2016), https://www.nrcs.usda.gov/wps/PA_NRCSCconsumption/download?cid=nrcseprd1288534&ext=pdf.

⁸⁸ CONG. RSCH. SERV., *AGRICULTURAL CONSERVATION: A GUIDE TO PROGRAMS* (2020), <https://fas.org/sgp/crs/misc/R40763.pdf>.

⁸⁹ 16 U.S.C. § 3839aa-24.

biomass in the soil, and reduce soil erosion.⁹⁰ As a result, they help sequester carbon and decrease greenhouse gas emissions. Other current climate-smart CSP activities include planting for high carbon sequestration rates and management intensive rotational grazing.

USDA should use flexibilities within CSP to encourage producers to incorporate climate-smart activities in their conservation plans. We recommend that USDA, through NRCS:

- More expressly define climate change mitigation and/or carbon sequestration as priority resource concerns in CSP.
- Incorporate climate change mitigation into the ranking criteria for evaluating proposed stewardship contracts.⁹¹
- Increase payments for climate-smart practices by factoring climate change mitigation potential into the annual payment amount, which is based, in part, on expected conservation benefits and the extent to which priority resource concerns will be addressed through the proposed stewardship contract.⁹²
- Enhance coordination with the Conservation Reserve Program to enroll expiring CRP acres into CSP to better ensure that the carbon sequestration benefits of CRP are not lost once land goes back into production.

Better Support NRCS Technical Assistance Activities

As producers incorporate climate-smart practices on their land, it will be important to support their understanding, proper implementation, and maintenance of such practices to ensure high yields and maximum climate change mitigation. NRCS should issue guidance outlining how to implement the practices and establish clear compliance standards.⁹³ This will require an increase in resources to support NRCS technical assistance activities. NRCS's ability to provide producers with the necessary technical assistance capacity has seriously eroded as the number of financial assistance programs it administers has ballooned and resources have shifted to meet program administration needs.⁹⁴ In fiscal year 2018 alone, NRCS administered nearly 43,000 EQIP contracts⁹⁵ and over 10,500 active CSP contracts.⁹⁶ As administrative duties have risen, there has not been a concurrent investment in NRCS technical staff, such as scientists, engineers, and planners. NRCS has admitted that it has struggled to administer its programs in a manner that allows its agents to adequately respond to producers' needs for assistance.⁹⁷ Additional funding and personnel should be devoted to increase technical assistance capacity so USDA can best enable producers to adopt climate-smart practices.

⁹⁰ See DANIEL KANE, NAT'L SUSTAINABLE AG. COAL., CARBON SEQUESTRATION POTENTIAL ON AGRICULTURAL LANDS: A REVIEW OF CURRENT SCIENCE AND AVAILABLE PRACTICES 14–15 (2015), http://sustainableagriculture.net/wp-content/uploads/2015/12/Soil_C_review_Kane_Dec_4-final-v4.pdf.

⁹¹ See 16 U.S.C. § 3839aa-23(b).

⁹² See 16 U.S.C. § 3839aa-24(c)(2).

⁹³ Cf. USDA MONITORING OF HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION VIOLATIONS, *supra* note 16.

⁹⁴ Laurie Ristino & Gabriela Steier, *Losing Ground: A Clarion Call for Farm Bill Reform to Ensure a Food Secure Future*, 42 COLUM. J. ENVTL. L. 1, 109–10 (2016).

⁹⁵ NRCS Conservation Programs: Environmental Quality Incentives Program (EQIP), U.S. DEP'T OF AGRIC., NAT. RES. CONSERVATION SERV., https://www.nrcs.usda.gov/Internet/NRCS_RCA/reports/fb08_cp_eqip.html#contracts (last visited Nov. 19, 2019) (Table: EQIP Contract Data by State and Fiscal Year).

⁹⁶ *Id.*

⁹⁷ See generally, MEGAN STUBBS, CONG. RES. SERV., RL34069, TECHNICAL ASSISTANCE FOR AGRICULTURE CONSERVATION (2010), <http://www.nationalaglawcenter.org/wp-content/uploads/assets/crs/RL34069.pdf>.

7. Research & Grant Programs

USDA has a number of existing research and grant programs that could be used to fund climate-smart agricultural research and further advance the field.

Prioritize Climate-Smart Agriculture Across USDA Research & Grant Programs

USDA is already beginning to build climate-smart agriculture into its research and grant priorities. Secretary Vilsack recently announced increased investments in the Regional Conservation Partnership Program and the On-Farm Conservation Innovation Trials to support climate-smart agriculture.⁹⁸ To further support the voluntary adoption of climate-smart agricultural practices, USDA should:

- Continue to identify climate-smart agriculture as a research priority across NRCS programs, as well as in grants administered by the National Institute of Food and Agriculture.
- Study the barriers and/or challenges to uptake that producers encounter in adopting climate-smart practices so that the agency can develop tools to support producers in making the transition. Studies should consider regional and cultural variations in adoption and barriers as well.

Additionally, USDA should prioritize research into perennial agriculture. Three types of perennial crops are particularly important to this endeavor: perennial forage crops, used in pasture and grazing systems; tree crops integrated into agroforestry including alley cropping, silvopasture, forest farming, and multi-story cropping; and emerging perennial grain crops.⁹⁹ Experts estimate that agroforestry systems, for instance, implemented nationwide, could sequester 530 million metric tons of carbon dioxide-equivalent a year.¹⁰⁰ This would offset 33 percent of domestic fossil fuel emissions.¹⁰¹ The agroforestry practices of “silvopasture,” the incorporation of trees in pastures,¹⁰² and “alley cropping,”¹⁰³ the side-by-side cultivation of rows of trees with rows of non-woody plants like cereal crops or vegetables, show particular promise.¹⁰⁴ Farmers could use these two practices alone to sequester more than 516 million metric tons of carbon dioxide-equivalent per year.¹⁰⁵ USDA should support a broad transition to agroforestry systems by prioritizing perennial agriculture and agroforestry research across its programs.

Leverage Climate Hubs to Share Information and Build Networks

The USDA Climate Hubs, a collaboration of USDA sub-agencies established in 2014, play a vital role in the federal government’s broad effort to support producers and other stakeholders in making climate-

⁹⁸ *Readout of the Third National Climate Task Force Meeting*, *supra* note 69.

⁹⁹ *See, e.g., Perennial Crops: New Hardware for Agriculture*, THE LAND INST., <https://landinstitute.org/our-work/perennial-crops/>; J.D. Glover, et al., *Increased Food and Ecosystem Security via Perennial Grains*, 328 *Science* 1638, 1638 (2010); Thomas S. Cox, et al., *Prospects for Developing Perennial Grain Crops*, 56 *BioScience* 649, 649 (2006); Lingxi Chenyang et al., *Farming with Trees: Reforming U.S. Farm Policy to Expand Agroforestry & Mitigate Climate Change*, 48 *ECOLOGY L. QUARTERLY* (2021).

¹⁰⁰ Ranjith P. Udawatta & Shibu Jose, *Agroforestry Strategies to Sequester Carbon in Temperate North America*, 86 *AGROFORESTRY SYSTEMS* 225, 239 (2012).

¹⁰¹ *Id.*

¹⁰² Philip K. Thornton & Mario Herrero, *Potential for reduced methane and carbon dioxide emissions from livestock and pasture management in the tropics*, 107 *PNAS* 19667 (2010), <https://doi.org/10.1073/pnas.0912890107>; S.H. SHARROW, ET AL., *NORTH AMERICAN AGROFORESTRY: AN INTEGRATED SCIENCE AND PRACTICE 2ND EDITION* 105–31 (H.E. Garrett 2nd ed. 2009), <https://doi.org/10.2134/2009.northamericanagroforestry.2ed.c6>.

¹⁰³ H.E. GARRETT, ET AL., *NORTH AMERICAN AGROFORESTRY: AN INTEGRATED SCIENCE AND PRACTICE 2ND EDITION* 133–62 (H.E. Garrett 2nd ed. 2009), <https://doi.org/10.2134/2009.northamericanagroforestry.2ed.c7>.

¹⁰⁴ P.K.R. Nair, *Climate Change Mitigation: A Low-Hanging Fruit of Agroforestry*, in *AGROFORESTRY—THE FUTURE OF GLOBAL LAND USE* 31–67 (P.K. Ramachandran Nair & D. Garrity eds., 2012), https://doi.org/10.1007/978-94-007-4676-3_7.

¹⁰⁵ Udawatta & Jose, *supra* note 100.

informed decisions.¹⁰⁶ Climate Hubs provide numerous services in pursuit of their mission, which is strengthening agricultural production, natural resource management, and rural economic development under increasing climate variability.¹⁰⁷ Among their key activities is facilitating coordination between stakeholders and government institutions, acting as a principal point of contact between agency services and the constituencies they are meant to serve.¹⁰⁸ This coordination also extends to other entities including land grant universities, the private sector, non-profits, and regional climate experts.¹⁰⁹ This role helps ensure that producers can connect to the appropriate network to find the science and technical support they need to adapt to climate-related challenges.

Additionally, the Hubs themselves provide a host of informational services that can be used to manage climate-related risks and opportunities. They translate climate projections into impacts on the agriculture sector, conduct regional vulnerability assessments, sift through and maintain a database of peer-reviewed journal articles, and provide newsletters and workshops.¹¹⁰ They also provide a variety of land management tools, including special calculators, maps, models, and datasets that are used to estimate anything from crop production to seasonal drought outlooks.¹¹¹

Since funding for the Climate Hubs is discretionary, USDA should seek increased funding from Congress—and channel existing available funds—to maintain and expand the Climate Hubs to meet the Administration’s climate objectives. In addition to the tools and resources noted above, USDA can use Climate Hubs to:

- Disseminate information on climate-smart practices and benefits, in coordination with Extension and NRCS Technical Assistance.
- Disseminate information on drought-resistant crops and more generally on the crops and livestock breeds appropriate to the changing climate in a particular region.
- Create regional networks of farmers and avenues for farmers to connect and share experiences with implementing climate-smart practices. Studies show that connections to agencies or local networks of farmers can dramatically increase the adoption of practices.¹¹² Peer-to-peer information and experience sharing may encourage uptake, diminish perceived risk, and validate the promise of transitioning to new systems and practices.
- Set regional targets, such as widespread adoption of certain practices measured by producer uptake or target acreage. Regions achieving their target could be eligible for additional grant funding or other benefit to incentivize participation.

¹⁰⁶ Climate Hubs are a part of a broader federal effort to address climate variability. Counterpart programs in other agencies include Regional Climate Centers (National Oceanic and Atmospheric Administration), Climate Science Centers and Landscape Conservation Cooperatives (Department of the Interior), the Climate and Environmental Sciences Division (Department of Energy), and the Air, Climate and Energy Research Program (EPA).

¹⁰⁷ U.S. DEP’T OF AGRIC., USDA REGIONAL CLIMATE HUBS FACTSHEET (2016), <https://www.climatehubs.oce.usda.gov/sites/default/files/USDA%20Regional%20Climate%20Hubs%20Factsheet%202016.pdf>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See U.S. DEP’T OF AGRIC., USDA CLIMATE HUBS QUARTERLY REPORT FY 2017, <https://www.climatehubs.oce.usda.gov/sites/default/files/Climate%20Hubs%20Update%20-%20April%202015.pdf>.

¹¹¹ These tools include the Climate Tool Shed, which allows users to search over 100 web tools; the Climate Resilience Toolkit, which includes various climate data and tools, adaption guidelines, and references to other resources; and AgroClimate.org, which includes tools and data on climate and crops.

¹¹² ANITA WREFORD ET AL., OVERCOMING BARRIERS TO THE ADOPTION OF CLIMATE-FRIENDLY PRACTICES IN AGRICULTURE, OECD FOOD, AGRICULTURE AND FISHERIES PAPERS NO. 101 19-20 (Apr. 2017), <https://www.oecd-ilibrary.org/docserver/97767de8-en.pdf?expires=1617223636&id=id&accname=guest&checksum=288587090A2B7372F35F1FDF7B0FFF34>.

- Coordinate between stakeholders to establish and communicate standardized terminology, metrics, and protocols to better facilitate data sharing and research.¹¹³

B. Environmental Justice & Disadvantaged Communities

This section responds to the agency's questions regarding environmental justice and disadvantaged communities, Questions 4.A–C.¹¹⁴ The recommendations herein draw primarily from lessons learned through implementation of the working lands programs overseen by NRCS. As noted above, the working lands programs (primarily through EQIP and CSP) aim to increase rates of conservation and sustainability of farmers and ranchers through technical and financial assistance.¹¹⁵ Currently, several structural features of the working lands programs act as barriers to participation that prevent all communities from accessing the programs. These barriers limit access to both technical assistance and financial support. The types of changes described below will, if implemented, better ensure that the agency expands climate-smart agriculture in an equitable manner, while also improving the operation of the existing working lands programs.

Producers and advocates have continuously pointed to residual and ongoing inequities that prevent producers of color from accessing the benefits from USDA's conservation programs.¹¹⁶ These barriers include (1) lack of trust due to the agency's history of discrimination, (2) wealth gaps that persist due to discrimination and compound challenges for both seasoned and beginning farmers and ranchers, (3) power dynamics between landowners and tenant-farmers, (4) insufficient support for organizations that assist farmers of color, and (5) poor communication between NRCS and farmers.¹¹⁷ Although many other barriers exist, this section describes these five in the context of working lands programs and then provide recommendations to address each.

1. Historical Distrust

USDA has a well-documented history of discrimination against producers of color. Discriminatory lending practices by the Farm Service Agency (FSA) led to separate lawsuits filed by Black, Native American, Hispanic, and women farmers and ranchers.¹¹⁸ Black farmers in particular have brought renewed attention to this fraught history through advocacy during the Democratic presidential primary and their work with Senate leaders to introduce the Justice for Black Farmers Act. Still, discrimination against producers of color in the administration of USDA programs, including conservation programs, has left palpable distrust that contributes to the disparities in conservation program participation and funding support among recipients.

¹¹³ U.S. FARMERS & RANCHERS IN ACTION, TRANSFORMATIVE INVESTMENT IN CLIMATE-SMART AGRICULTURE 21, 30 (Feb. 2021), <https://usfarmersandranchers.org/wp-content/uploads/2021/02/USFRA-Transformative-Investment-Report.pdf>.

¹¹⁴ These recommendations were prepared with the assistance of Madison Shaff, Elisabeth Haub School of Law at Pace University J.D. 2022, and Lily Colburn, Yale School of the Environment MEM 2021.

¹¹⁵ THE 2018 FARM BILL, *supra* note 73, at 17.

¹¹⁶ *Racial Equity in the Farm Bill: Barriers for Farmers of Color*, NAT'L SUSTAINABLE AGRIC. COAL. (Dec. 18, 2017), <https://sustainableagriculture.net/blog/racial-equity-in-farm-bill-barriers/>; Letter from Over 70 Black Farmers, Advocates, Researchers, & Organizations to Sen. Elizabeth Warren re: Justice for Black Farmers (Aug. 31, 2019), https://www.agriculturaljusticeproject.org/media/uploads/2019/09/19/Justice_for_Black_farmers_letter_2019.pdf.

¹¹⁷ *Racial Equity in the Farm Bill: Barriers for Farmers of Color*, *supra* note 116.

¹¹⁸ See CONG. RSCH. SERV., RS20430, THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATIONS SUITS BY BLACK FARMERS (2013); Stephen Carpenter, *The USDA Discrimination Case: Pigford, In re Black Farmers, Keepseagle, Garcia, and Love*, 17 DRAKE J. AGRIC. L. 1 (2012).

Create a USDA Truth Commission Forum

One way to begin to account for these enduring legacies of discrimination is to fully pull back the curtain on the damage done. Truth Commissions have been implemented by numerous countries,¹¹⁹ and are used to hold public hearings where residual or unresolved historic injustices can be received and translated into calls to action.¹²⁰ They are used to “determine the facts, root causes, and societal consequences” of past wrongdoing.¹²¹ They offer an opportunity for reconciliation and trust building.

Although some of USDA’s history of civil rights violations has been aired through reports and Congressional hearings, a Truth Commission could provide a more expansive forum for unearthing the full extent of past and current inequities and their impacts. Exposing unresolved issues and then creating action plans could begin to break down continued distrust. While USDA already holds forums for farmers and policy makers, these forums tend to center around current programs or regulations, and are not for addressing historic inequities.¹²² USDA should, as it establishes a new equity commission, implement a Truth Commission style forum, focused solely on unresolved injustices stemming from USDA actions. The Commission should ensure that it hears from producers of color of various backgrounds, races, and ethnicities to account for the unique histories and barriers faced by different minority producers in the United States.

Enhance Targeted Technical Assistance

The 2018 Farm Bill offered some improvements to the Section 2501 program, which provides outreach and assistance for socially disadvantaged farmers and ranchers, to make the program more transparent and accountable to the historically marginalized farmers and ranchers it is intended to serve.¹²³ The additions include new reporting requirements on the effectiveness of USDA efforts to enhance participation of socially disadvantaged farmers and ranchers in USDA programs. USDA should use the new reporting and transparency requirements to evaluate the reach of Section 2501 program activities (now housed under FOTO, Farming Opportunities Training and Outreach) and NRCS technical assistance to identify gaps in conservation program assistance provided to historically marginalized producers. USDA should then work to ensure that targeted assistance (including educational activities, conservation planning, and assistance with completing applications) is prioritized and conducted, either by NRCS or through 2501 Program contracts with trusted organizations in the region, as determined appropriate through consultation with impacted stakeholders.

Enforce the Zero-Tolerance Policy and Provide Transparency Regarding its Enforcement

The working lands programs must implement a zero-tolerance policy of discrimination when reviewing applications and providing services.¹²⁴ Under Secretary Vilsack, USDA has stated a zero-tolerance policy

¹¹⁹ Bonny Ibhawoh, *Do Truth and Reconciliation Commission’s Heal Divided Nations?*, THE CONVERSATION (Jan. 23, 2019), <https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925> (stating other nations such as Chile, Ecuador, Ghana, Guatemala, Kenya, Liberia, Morocco, Philippines, Rwanda, Sierra Leone, South Africa and South Korea have implemented Truth Commissions to address past injustices).

¹²⁰ *Id.*

¹²¹ *Truth Commissions*, ICTJ, <https://www.ictj.org/gallery-items/truth-commissions>.

¹²² See, e.g. *Past Programs*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/oce/ag-outlook-forum/past-programs> (past forums have included: 2020 - The Innovation Imperative: Shaping the Future of Agriculture, 2019 - Growing Locally, Selling Globally, 2018 - The Roots of Prosperity, 2017 - A New Horizon: The Future of Agriculture, 2016 - Transforming Agriculture: Blending Technology and Tradition, and 2015 - Smart Agriculture in the 21st Century).

¹²³ Agriculture Improvement Act of 2018, Pub. L. 115-334, § 12301, 132 Stat. 4490 <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>; see *A Closer Look at the 2018 Farm Bill: Farming Opportunities Training & Outreach Program*, NAT’L SUSTAINABLE AGRIC. COAL. (Feb. 19, 2019), <https://sustainableagriculture.net/blog/closer-look-foto-2018-farmbill/>.

¹²⁴ *Racial Equity in the Farm Bill: Barriers for Farmers of Color*, *supra* note 116.

for any form of discrimination.¹²⁵ This policy applies to all employees and every action by USDA.¹²⁶ The farm bill also requires civil rights impact analysis, which should be conducted in accordance with the procedures outlined in Department Regulation 4300-004.¹²⁷

Despite these commitments, complaints of race discrimination in USDA programs jumped from 85 in 2018 to 108 in 2019.¹²⁸ Further, for FY2019 there were only 3 recorded instances of disciplinary actions taken against USDA employees, including just one removal.¹²⁹ While these data points do not provide a full picture, they do suggest a lack of accountability and enforcement of USDA's zero-tolerance policy over the last several years. USDA should review its enforcement policies with respect to complaints against USDA representatives and increase transparency in how discrimination and harassment complaints are addressed. Additionally, USDA should review its anti-discrimination training programs to ensure current modules clearly communicate the zero-tolerance policy and provide employees with tools and training to guard against biases and discrimination in the performance of their responsibilities.

As an additional transparency measure, NRCS should compile and make demographic data for program applicants and awards available for public viewing.

For additional opportunities to improve accountability and enforcement at the Office of the Assistant Secretary for Civil Rights Enforcement, please see [Supporting Civil Rights at USDA: Opportunities to Reform the USDA Office of the Assistant Secretary for Civil Rights](#).

2. Wealth Gap

Distrust by producers of color is also compounded by the wealth gap between these producers and their white counterparts, which further marginalizes their communities.¹³⁰ Farmers of color state that a hurdle to taking advantage of conservation programs is the lack of initial capital to begin the farming venture.¹³¹ With startup expenses including agricultural training, land cost, tractor equipment, planting sprays, storage building, and living expenses for growing times, the startup costs can be a serious deterrent for beginning farmers and producers of color.¹³²

¹²⁵ U.S. DEP'T OF AGRIC., CIVIL RIGHTS POLICY STATEMENT (2011), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_015524.pdf; see NAT. RES. CONSERVATION SERV., CIVIL RIGHTS DIVISION, INFORMATIONAL HANDBOOK (2011), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046103.pdf.

¹²⁶ CIVIL RIGHTS POLICY STATEMENT, *supra* note 125.

¹²⁷ THE 2018 FARM BILL, *supra* note 73, at 330 (regarding § 12403); U.S. DEP'T OF AGRIC., DR 4300-004, CIVIL RIGHTS IMPACT ANALYSIS (2016), <https://www.ocio.usda.gov/document/departmental-regulation-4300-004>.

¹²⁸ U.S. DEP'T OF AGRIC., REPORT OF CIVIL RIGHTS COMPLAINTS, RESOLUTIONS, AND ACTIONS FOR FISCAL YEAR 2019 (2019), <https://www.usda.gov/sites/default/files/documents/fy2019-civil-rights-complaints-report.pdf>.

¹²⁹ U.S. DEP'T OF AGRIC., REPORT OF CIVIL RIGHTS COMPLAINTS, RESOLUTIONS, AND ACTIONS FOR FISCAL YEAR 2019 (2019), <https://www.usda.gov/sites/default/files/documents/fy2019-civil-rights-complaints-report.pdf>.

¹³⁰ Nadra Nittle, *Black-Owned Farms Are Holding on by a Thread*, EATER (Feb. 23, 2021), <https://www.eater.com/22291510/black-farmers-fighting-for-farmland-discrimination-in-agriculture> (stating “The legacy of structural inequality has steadily depleted their ranks. For nearly a century, racial discrimination in agriculture, exclusion from federal relief programs, and laws that preyed upon the economically disadvantaged have slashed the number of Black farmers in America from the nearly 1 million who farmed in 1920 to fewer than 50,000 today.”).

¹³¹ *Racial Equity in the Farm Bill: Barriers for Farmers of Color*, *supra* note 116.

¹³² Ben Schiller, *What Does It Cost To Start A New Farm?*, FAST IDEAS (Aug. 30, 2017), <https://www.fastcompany.com/40458330/what-does-it-cost-to-start-a-new-farm> (for examples of various farm start up costs in different states: “you need \$5,157,500 to set up a new decent-sized grain farm in Iowa; \$2,695,000 for a new dairy farm in Nebraska; and \$4,477,500 for a wheat growing operation in Kansas.”).

Increase Advance Payments to Producers of Color with Limited Resources

The most recent COVID-19 stimulus package provides \$4 billion in debt relief for producers of color, with an additional \$1 billion in funding to support additional USDA actions to address equity in its programs.¹³³ Although the debt relief is a step in the right direction, the wealth gap persists as a structural barrier for producers. EQIP provides an avenue for overcoming this barrier to start up. Under 16 U.S.C. § 3839aa-2(B), USDA is required to provide *at least* 50% of the costs related to purchasing materials or contracting in advance of a producer adopting a practice under EQIP if the producer elects to receive such advance payment. USDA could go beyond this 50% and offer up to the full cost-share payment authorized for socially disadvantaged farmers and ranchers (90%).

Make Rescue Plan Funding Available for Start-Up and Learning Periods

In addition to start-up costs, farmers adopting new conservation practices can experience losses in the form of lost income opportunities during a learning or adoption period. While foregone income may be accounted for in determining rates in an EQIP contract, as noted above, EQIP and CSP contracts can be out of reach for many producers, and particularly those with less familiarity or history with conservation programs. It takes time to learn how to integrate a windbreak, add pollinator habitats, create a wildlife corridor, and incorporate cover crops. Limited access to working lands programs' contracts and other conservation support mechanisms can thus hinder producers from adopting conservation practices that could benefit both the environment and their business.

In consultation with impacted producers, and in coordination between the 2501 Program and NRCS, USDA should consider using part of the discretionary funds from the American Rescue Plan—and any other available pools of discretionary funding—to provide payments to producers of color seeking to adopt conservation practices and/or develop conservation plans for their operations but who are not yet competitive applicants for EQIP and CSP contracts. This type of payment program could help close the gap in conservation support that has historically supported white producers but not offered the same benefits and advancements to non-white producers.

3. Relationships Between Farmers and Landlords

Another aspect of the wage gap is that many farms are leased rather than owned.¹³⁴ The renting farmer must get permission from the non-operating landowner (NOL) to enroll the land in a working lands program for conservation.¹³⁵ Once permission has been granted and the land is enrolled in CSP, the program allows NOLs to receive the CSP payments for efforts of their cash-paying tenants.¹³⁶ Tenant farmers, then, do not have assurances that they will receive the CSP funds paid to their NOL, thus erecting a barrier to entry.

Re-tool the CSP to Work for Tenant-Producers

To ensure that CSP is accessible to producers who rent the land they farm, NRCS should re-examine the program's policies through an equity lens with a focus on supporting tenant-producers. NRCS could:

- Ensure that CSP funds are paid directly to the producers making the conservation efforts.

¹³³ *Black Farmers Will Receive Stimulus Aid After Decades Of USDA Discrimination*, NPR (Mar. 17, 2021), <https://www.npr.org/2021/03/17/978288305/black-farmers-will-receive-stimulus-aid-after-decades-of-usda-discrimination>.

¹³⁴ NAT'L SUSTAINABLE AGRIC. COAL., FARMERS' GUIDE TO THE CONSERVATION STEWARDSHIP PROGRAM 7 (2016), <http://sustainableagriculture.net/wp-content/uploads/2011/09/NSAC-Farmers-Guide-to-CSP-2011.pdf> (stating that more than half of the US farmland is rented).

¹³⁵ *Id.*

¹³⁶ Letter from National Farmers Union re: Docket ID NRCS-2019-0020: Conservation Stewardship Program Interim Rule, (Jan. 13, 2020), <https://1yd7z7koz052nb8r33cfxyw5-wpengine.netdna-ssl.com/wp-content/uploads/2020/01/01-13-2020-NFU-Comments-on-CSP-Interim-Rule1.pdf>.

- Establish clearer processes for tenant-producers to apply for CSP.
- Increase outreach and education for NOLs, who often lack the environmental or agricultural knowledge to understand the benefits of conservation practices.¹³⁷ By targeting those with decision-making power and emphasizing the value of conservation in terms of long-term investment, NRCS could ease the path for tenant-producers to enroll in CSP.

4. Funding Requirements for Community Organizations

Community-based organizations representing producers of color also face barriers to achieving their mission. Critical barriers include general lack of capacity to take advantage of grant opportunities, matching funds requirements, and lack of formal nonprofit status.¹³⁸ Due to the history of discrimination noted above, USDA frequently relies on trusted community-based organizations to reach producers of colors and to lead its programs and initiatives. However, these types of barriers prevent organizations from growing and being able to serve producers of color to the greatest extent possible.

Eliminate Match Requirements and Other Capacity-Related Barriers to Grant Opportunities

While many match requirements are set by statute, USDA should review its grant programs to determine where funding flexibilities could allow the agency to waive match requirements for organizations serving historically marginalized producers and offer organizations the opportunity to take advantage of such a waiver. USDA should also ensure that its grant application processes are as stream-lined as possible and offer assistance to applicants in completing their applications to decrease the burden of applying to programs.

Validate and Support Grassroots Efforts

Grassroots organizers are often community leaders and their efforts democratize control over changes impacting the community. Due to the barriers noted above, however, these community efforts are less likely to receive attention or funding from USDA. One USDA initiative focused on “grassroots” activities is the Grassroots Source Water Protection Program (SWPP).¹³⁹ The SWPP focuses on community-based engagement by providing resident education and engaging the community in developing a water protection plan.¹⁴⁰ Still, though “grassroots” is in the name, the leadership of this initiative comes from NRCS, the Farm Service Agency, and the National Rural Water Association. USDA also announced that it is seeking “grassroots organizations” to apply for outreach and technical assistance cooperative agreements in administering the Coronavirus Food Assistance Program 2.¹⁴¹ However, applicants still need to be a non-profit with 501(c)(3) status, a Federally recognized Native American tribal government, a Native American Tribal Organization, or a public and state-controlled institution of higher education, posing the incorporation barrier noted above.¹⁴²

USDA should examine the funding and service gap in its grant and program offerings that are not reaching grassroots organizations that lack 501(c)(3) status. While USDA may be limited in adjusting its

¹³⁷ Virginia Gewin, *Can Bridging the Gap Between Landowners and Farming Tenants Help Improve Soil Health?*, CIV. EATS (Feb. 18, 2021), <https://civileats.com/2021/02/18/can-bridging-the-gap-between-landowners-and-farming-tenants-help-improve-soil-health/>.

¹³⁸ *Racial Equity in the Farm Bill: Barriers for Farmers of Color*, *supra* note 116.

¹³⁹ 16 U.S.C. 3839bb-2(b); *see* THE 2018 FARM BILL, *supra* note 73, at 114.

¹⁴⁰ “Grassroots” Source Water Protection Program, U.S. DEP’T OF AGRIC., <https://www.fsa.usda.gov/programs-and-services/conservation-programs/source-water-protection/index>.

¹⁴¹ *USDA Announces Funding Available to Organizations to Assist Socially Disadvantaged Farmers and Ranchers Under Pandemic Assistance for Producers Initiative*, U.S. DEP’T OF AGRIC. (Apr. 5, 2021), <https://www.fsa.usda.gov/news-room/news-releases/2021/usda-announces-funding-available-to-organizations-to-assist-socially-disadvantaged-farmers-and-ranchers-under-pandemic-assistance-for-producers-initiative>.

¹⁴² *Id.*

funding requirements without Congressional authorization, the agency should explore options for extending opportunities to such organizations and report to Congress on its findings in advance of the next farm bill. In doing so, the agency could evaluate alternative award criteria that would enable grassroots efforts to apply for funds without incorporating.

5. Poor Communication Regarding CSP

The lack of effective communication to the farming community has also been a barrier to implementation of conservation programs.¹⁴³ Farmers have expressed a lack of understanding regarding application for CSP rules and regulations.¹⁴⁴ Even NRCS staffers claimed that they find explaining the CSP program to the public difficult, and their efforts often result in more confusion by both parties.¹⁴⁵ In response to USDA's solicitation for comments on implementation of the 2018 Farm Bill, the agency received 20 comments that expressly mentioned the unclear administration of CSP and five that stated there is a lack of guidance and clarity for those who would like to enroll in such programs.¹⁴⁶ NRCS should provide clearer guidance around the program and incorporate public communications in its training programs for NRCS staff.

Streamline Paperwork

The application process for CSP is notoriously difficult to navigate for many producers.¹⁴⁷ Farmers have complained that there is valuable time spent applying to the program, that could be spent working on the land.¹⁴⁸ The problem arises because the paperwork is confusing and farmer may not be accepted into the program, thus, the time spent on the paperwork is never recouped. NCRS should continue its efforts to streamline the application and provide technical support and guidance in the process so that producers, particularly producers of color, can access the program.

Ensure that NRCS Field Training Continues

NRCS provides technical assistance to CSP applicants and participants. However, in 2019 (finalized in 2020) NRCS removed language from its regulations concerning field staff training. The removed language stated: "In providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with these producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers."¹⁴⁹ In response to objections, NRCS stated that it removed the language because it reflected an internal agency administrative matter but would still continue with trainings.¹⁵⁰ NRCS should continue this training and restore the language in publicly available guidance to provide transparency in program administration.

¹⁴³ Bruce I. Knight, *Opinion: What's the Future for CSP?*, AGRI-PULSE (Feb. 23, 2018), <https://www.agri-pulse.com/articles/10640-opinion-whats-the-future-for-csp>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Meetings: 2018 Farm Bill Implementation Listening Session, Docket (USDA-2019-0001), DEPT. OF AG. (Feb. 14, 2019), <https://www.regulations.gov/document/USDA-2019-0001-0001>.

¹⁴⁷ Conservation Stewardship Program (CSP) Interim Rule, 85 Fed. Reg. 63993 (proposed Nov. 19, 2019) (to be codified 7 C.F.R. pt. 1470) (for comments on the need for flexibility and streamlining in the NRCS applications for CSP, as farmers have found the paperwork excessive and confusing).

¹⁴⁸ WILD FARM ALLIANCE, FARM BILL 2018 ISSUE BRIEF: CONSERVATION STEWARDSHIP PROGRAM 10 (2018), https://d3n8a8pro7vhmx.cloudfront.net/wildfarmalliance/pages/302/attachments/original/1531441423/csp-issue-brief_FinalWeb.pdf?1531441423.

¹⁴⁹ 7 C.F.R. § 1470.8(c) (2019).

¹⁵⁰ Conservation Stewardship Program, 85 Fed. Reg. 63993 (Oct. 9, 2020) (to be codified at 7 C.F.R. pt. 1470), <https://www.federalregister.gov/documents/2020/10/09/2020-22345/conservation-stewardship-program-csp>.

C. Conclusion

Thank you for the opportunity to provide input on the pivotal role agriculture can play in responding to climate change. Incorporating climate-smart practices in agriculture is critical to reducing net emissions, protecting our lands, and equipping the industry to be part of the climate solution.

Please let us know if we can provide any additional information or resources as you continue your work on this incredibly important issue.¹⁵¹

Sincerely,

The Farm Bill Law Enterprise
farmbilllaw.org

¹⁵¹ Inquiries may be directed to Emma Scott at escott@law.harvard.edu.