

Earthjustice

Asian American Farmers Alliance * Amy Cahn, Acting Director of the Environmental Justice Clinic at Vermont Law School [Affiliation is for Identification Purposes Only] * Black Belt Justice Center * Center for Biological Diversity * Clean Water Action * F.A.R.M.S. * Farmworkers Association of Florida * Funders For Regenerative Agriculture * Harvard Law School Food Law & Policy Clinic * New Mexico Environmental Law Center * Pesticide Action Network * Rural Coalition * Sacoby Wilson, Associate Professor & Director, Center for Community Engagement, Environmental Justice, and Health (CEEJH) Maryland Institute for Applied Environmental Health * Socially Responsible Agricultural Project * Southern Environmental Law Center * Waterkeeper Alliance * West End Revitalization Association (WERA) * West Oakland Environmental Indicators Project

June 23, 2021

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

CC: Robert Bonnie
Liz Archuleta
Dr. Dewayne Goldmon
Mae Wu
Kumar Chandran

Via email

Re: Recommendations for USDA on Executing Executive Order on Advancing Racial Equity and Support for Underserved Communities, Executive Order 13,985

Secretary Vilsack:

The undersigned organizations respectfully submit these comments setting forth recommendations for the United States Department of Agriculture (USDA or Department) as it develops its reports in response to President Biden's Executive Order on Advancing Racial Equity and Support for Underserved Communities, Executive Order 13,985 ("racial equity executive order" or "Executive Order 13,985"). Upon issuance of the racial equity executive order on January 20, 2021, Earthjustice began discussions with dozens of BIPOC-led and BIPOC-serving organizations about ways USDA could strengthen its programs and policies to better address racial equity throughout the Department. It spent several months gathering input from these groups while also reviewing numerous reports and other data related to the history of discrimination at USDA and proposed recommendations for

advancing racial equity. It then organized and synthesized the vast and diverse information received. The recommendations below reflect the culmination of this effort.¹

As reflected in the recommendations below, we believe that in responding to the Racial Equity Executive Order, USDA has an opportunity not only to address the remnants of decades of past discrimination, but also to revise programs and policies in a manner that will proactively advance racial equity. In particular, we recommend the following overarching actions:

- (1) Analyze all existing programs and institute overarching structural safeguards to guard against racial discrimination and inequity;
- (2) Actively work to increase land access for farmers who are Black, Indigenous and people of color (BIPOC);
- (3) Improve and expand farming and farm market supports for BIPOC farmers and ranchers;
- (4) Champion the health, safety and economic well-being of farmworkers and food system workers;
- (5) Meaningfully strengthen USDA's civil rights office and the Department's discrimination resolution processes;
- (6) Support research that benefits BIPOC producers and communities;
- (7) Implement the American Rescue Plan in a manner that advances equity;
- (8) Advance policies that reduce the adverse impact that Concentrated Animal Feeding Operations (CAFOs) have on communities of color where they are situated; and
- (9) Expand access to, and improve, USDA-administered federal nutrition programs.

Taking these actions will go a long way towards fulfilling USDA's obligations under the Executive Order, removing barriers to USDA's programs and services, and advancing a more equitable food and farming sector.

¹ On June 16, 2021, USDA issued a Federal Register notice, Request for Information, Identifying Barriers in USDA Programs and Services: Advancing Racial Justice and Equity and Support for Underserved Communities at USDA, 86 Fed. Reg. 32013, June 16, 2021. Earthjustice had conducted extensive consultation and prepared these recommendations—which go beyond the narrow request for information sought by USDA—prior to the publication of this Request. We are therefore submitting these recommendations separately rather than in response to the request.

BACKGROUND

On January 20, 2021, President Biden issued an executive order titled Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (“racial equity executive order” or “Executive Order 13,985”). The racial equity executive order instructs federal agencies—including USDA—to, *inter alia*, (1) identify “potential barriers” faced by “underserved communities and individuals” in accessing “benefits and services” provided by the federal government, (2) identify “[w]hether new policies, regulations, or guidance documents” are needed to “advance equity in agency actions and programs,” and (3) produce a plan to address the barriers previously identified.² Within 200 days of the date of the order, each agency must submit a report on the first two items, and within one year of the date of the order, they must produce a plan to address the third.

USDA has a long and painful history of racism and discrimination that has left an indelible mark on the current food and agricultural sectors. America’s number of Black farmers has plummeted since the 1920s—falling by 98 percent between 1930 and 1992³—due in large part to USDA’s decades-long legacy of discrimination in disbursing federal benefits, land giveaways, and funds. Black, Indigenous, Latino, and Asian American farmers have experienced failure, bankruptcy, and land loss on a massive scale as a result of the Department’s discriminatory actions and policies that continue to funnel the overwhelming majority of government benefits to white, large-scale landowners. Several lawsuits filed in the late 1990s, including the *Pigford v. Glickman* and *Keepseagle v. Vilsack* lawsuits, resulted in settlement agreements that promised eligible class members compensation for their discrimination claims against USDA. Yet that promise was frustrated for many farmers,⁴ and the tide did not turn. In 2017—the most recent year for which data is available—just 1.4 percent of the nation’s 3.4 million farmers identified as

² Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order No. 13,985, 86 Fed. Reg. 7009, 7010-11 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

³ See Nathan Rosenberg & Bryce William Stucki, *Rural America’s Trump Vote Was Decades in the Making. Democrats’ policies— Starting with the New Deal— Are Partly to Blame*, The Counter (Dec. 06, 2017), <https://thecounter.org/rural-trump-vote-democrat-farm-policy/>.

⁴ See Deborah Barfield Barry, *Black Farmers Still Waiting for Settlement Money*, USA Today (Mar. 18, 2013), <https://www.usatoday.com/story/news/nation/2013/03/15/black-farmers-settlement-money/1991735/>; see also Neely Tucker, *A Long Road of Broken Promises for Black Farmers*, Washington Post (Aug. 13., 2002), <https://www.washingtonpost.com/archive/politics/2002/13/a-long-road-of-broken-promises-for-black-farmers/ecf2afeb-2029-4ec8-a45e-5123c3623cd2/>.

Black, and 2.3 percent of farmers identified as Native American or Alaskan Native.⁵ Fewer than one percent of America’s farmers identified as Asian American.⁶

America’s farming and food sectors remain riddled with stark racial injustices— injustices that USDA laws and policies have not done enough to remedy and have frequently exacerbated. As discussed more fully below, USDA still gives proportionately fewer loans and subsidies to farmers of color than it gives to white farmers.⁷ Farmers and ranchers who are not Native American collect “the vast majority of agriculture revenue on native lands.”⁸ The Department fails to adequately protect the nation’s Latino-dominant, largely impoverished agricultural workforce from exposure to toxic pesticides and extreme heat, and to ensure that such workers have a pathway to economic security, independence, and citizenship. Unregulated, or insufficiently regulated, concentrated animal feeding operations (CAFOs), whose pollution—including waste and antibiotic runoff— disproportionately harms low-income communities and communities of color, receive vast amounts of USDA funding.⁹ And federal anti-discrimination laws, as implemented, have failed to abate discriminatory behavior by Department employees.¹⁰

USDA must rigorously and comprehensively fulfill its obligations under the racial equity executive order to address these issues and more. These recommendations— informed by input from more than ten groups and several individuals representing the

⁵ See U.S. Dep’t of Agric., Nat’l Agric., Stats. Serv, *2017 Census of Agriculture Highlights, Black Producers* (2019), https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Black_Producers.pdf; see also Dep’t of Agric., Nat’l Agric., Stats. Serv, *2017 Census of Agriculture Highlights, American Indian/Alaska Native Producers* (2019), https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_AmericanIndianAlaskaNative_Producers.pdf.

⁶ See U.S. Dep’t of Agric., Nat’l Agric., Stats. Serv, *2017 Census of Agriculture Highlights, Farm Producers* (2019), https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf.

⁷ See Patrice Gaines, *USDA Issued Billions in Subsidies This Year. Black Farmers are Still Waiting for Their Share*, NBC News (Oct. 28, 2020), <https://www.nbcnews.com/news/nbcblk/usda-issued-billions-subsidies-year-black-farmers-are-still-waiting-n1245090>; see also Emily Moon, *The USDA Gives Fewer Loans to Women and Minority Farmers, a Government Watchdog Finds*, Pacific Standard (July 19, 2019), <https://psmag.com/news/the-usda-gives-fewer-loans-to-women-and-minority-farmers-a-government-watchdog-finds>.

⁸ Native Land Information System, *Lost Agriculture Revenue Database* (updated 2021), <https://nativeland.info/topics/lost-agriculture-revenue-database/>.

⁹ See Wendee Nicole, *CAFOs and Environmental Justice: The Case of North Carolina*, 121 *Env’t Health Persp.* 6 (2013).

¹⁰ See Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination against Black Farmers*, The Counter (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

interests of farmers of color, farmworkers, and communities neighboring CAFOs and industrial-scale farms—set forth myriad areas of USDA programming, funding, staffing, and policies that require amendment to better redress racial discrimination of the past and to move toward more equitable access and engagement moving forward.

TABLE OF CONTENTS

A. ANALYZE ALL EXISTING PROGRAMS AND INSTITUTE OVERARCHING STRUCTURAL SAFEGUARDS TO PROTECT AGAINST RACIAL DISCRIMINATION AND INEQUITY	8
i. Analyze existing programs to understand the roots and remnants of past discrimination.	8
ii. Codify into law meaningful consultation with BIPOC farmers, ranchers, food system workers, and Tribal governments.	8
iii. Call for the establishment of an effective and accountable interagency taskforce and other interagency initiatives to address equity issues related to food systems and agriculture.	9
iv. Establish an Equity Action Plan that includes requirements to benchmark the progress and participation of BIPOC producers against measurable goals.	11
v. Call for, support, and implement set asides benefiting BIPOC groups for all USDA benefit programs.	12
vi. Promulgate guidance on USDA implementation of the Environmental Justice Executive Order.	13
vii. Reduce administrative complexity and improve accessibility to program applications and materials.	14
viii. Ensure access to culturally and linguistically appropriate outreach.	15
ix. Institute equity-focused annual reviews of benefit programs.	16
x. Additional recommendations.	17
B. ACTIVELY WORK TO INCREASE LAND ACCESS FOR BIPOC FARMERS AND RANCHERS	17
i. Ensure that BIPOC farmers are able to participate successfully in existing Department benefit programs that substantially affect land access.	18
a. FSA loans.	18
b. The Transition Incentives Program.	19
c. The Rural Cooperative Development Grant Program	19
ii. Regulate tenant-farmer relationships to prevent abusive financial practices.	20
iii. Support legislation that would increase land for BIPOC communities.	20

C. IMPROVE AND EXPAND FARMING SUPPORTS FOR BIPOC FARMERS AND RANCHERS	21
i. Prioritize delivery of funds and services to BIPOC farmers in existing programs.....	21
a. The Beginning Farmer and Rancher Development Program.....	21
b. USDA’s Section 2501 Program	22
c. FSA Microloans	22
d. USDA’s rural cooperative programs	23
e. Agricultural Marketing Service grant programs	23
f. The Emergency Food Assistance Program.....	24
g. The Crop Insurance Program	24
h. The Commodity Credit Corporation	25
i. Increase Department support for urban farms.....	25
ii. Call for and back legislation that would increase support and funds for BIPOC farmers.....	26
D. CHAMPION THE HEALTH, SAFETY, AND ECONOMIC WELL-BEING OF FARMWORKERS AND FOOD SYSTEM WORKERS	26
i. Institutionalize the role of farmworkers as USDA stakeholders in all USDA programs.....	27
ii. Name a Farmworker Coordinator and establish clear and open lines of communication with farmworker communities and groups representing interests of farmworkers.....	27
iii. Codify and strengthen the Farm Labor Survey and reporting process.	28
iv. Promote and prioritize farmworker-focused projects in USDA benefits programs. ...	28
a. The Rural Innovation Stronger Economy (RISE) grant program	29
b. Emergency grants for low-income migrant and seasonal farmworkers.....	29
c. Other programs.....	30
v. Coordinate with other agencies to strengthen farmworker protections against pesticide exposure and heat stress.	30
vi. Call for and support legislation establishing new USDA programs that would protect farmworkers’ health and well-being, and help farmworkers to thrive.	31
vii. Repeal Trump-era actions that raised maximum line speed limits and diminished worker protections at pork and poultry plants.....	31
E. MEANINGFULLY STRENGTHEN USDA’S CIVIL RIGHTS OFFICE AND THE DEPARTMENT’S DISCRIMINATION RESOLUTION PROCESSES.....	32

i.	Ensure prompt and severe consequences for discriminatory actions by reforming USDA’s civil rights office.	33
ii.	Support legislation that would prevent meritorious discrimination claims from expiring.....	34
F.	SUPPORT RESEARCH THAT BENEFITS BIPOC PRODUCERS AND COMMUNITIES	35
i.	Conduct and support agricultural research and education that helps to redress inequities in agriculture and food systems.	35
ii.	Ensure that USDA research agencies are well staffed and diverse.....	36
G.	IMPLEMENT THE AMERICAN RESCUE PLAN IN A MANNER THAT ADVANCES EQUITY	36
H.	ADVANCE POLICIES THAT REDUCE THE ADVERSE IMPACT THAT CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS) HAVE ON NEIGHBORING COMMUNITIES OF COLOR.....	37
I.	ADVANCE EQUITY IN USDA-ADMINISTERED FEDERAL NUTRITION PROGRAMS AND NATIONAL FOOD SECURITY POLICIES.....	38
i.	Improve the inclusivity of USDA, state, and local administration of federal nutrition programs.....	39
ii.	Support legislation that would expand eligibility requirements and total benefits for federal nutrition programs.	39

RECOMMENDATIONS

A. ANALYZE ALL EXISTING PROGRAMS AND INSTITUTE OVERARCHING STRUCTURAL SAFEGUARDS TO PROTECT AGAINST RACIAL DISCRIMINATION AND INEQUITY

For decades, USDA has been plagued by institutionalized discrimination that has had a deep and lasting impact on today's food and farming systems. USDA must recognize the depth of this discrimination and the ways it has infected all aspects of its policies and programs, and must take steps to remedy past harms while leading to real and lasting change throughout the Department. The following recommendations include measures USDA should consider to begin this critical process.

i. Analyze existing programs to understand the roots and remnants of past discrimination.

In addressing the racial equity executive order, USDA should conduct a comprehensive analysis of its existing programs to better understand the areas where discrimination and racial inequity continue to plague the Department. The Department should direct each of its agencies to review all administered programs to assess how to redress racial barriers and disparities and to advance racial equity. Such assessment should not, however, prevent the Department from immediately implementing the steps outlined below.

ii. Codify into law meaningful consultation with BIPOC farmers, ranchers, food system workers, and Tribal governments.

Given the persistent, historic discrimination that BIPOC producers and food system workers have faced in accessing USDA benefits and services, USDA should require its agencies to actively solicit input from BIPOC stakeholders in all aspects of the Department's rulemaking, program design, outreach, and implementation. USDA should promulgate a regulation guaranteeing meaningful agency consultation with these groups. Similar mandates have been adopted in certain states—California law, for example, directs the California Department of Food and Agriculture to ensure “the inclusion of socially disadvantaged farmers and ranchers . . . in the development, adoption, implementation, and enforcement of food and agriculture laws, regulations, and policies and programs.”²

The Department should create an internal task force led by a senior official in the office of the Secretary to help determine policies necessary to include in such a regulation. The task force should be instructed to liaise with Department staff to assist in

the creation of a proposed rule within six months. In adopting a mandate for stakeholder engagement in all aspects of USDA programming, USDA should include the following:

- Ensure that BIPOC individuals and BIPOC-led groups have adequate opportunity to engage in USDA’s rulemaking process. This includes seeking input from BIPOC stakeholders prior to rule proposal and during the notice-and-comment period following rule proposal, as well as requiring an extension of the notice-and-comment period to solicit further input from BIPOC stakeholders where initial participation levels fall short. USDA should, prior to rule proposal, hold listening sessions and community roundtables to seek input from BIPOC stakeholders. After any rule has been proposed, the Department should direct its agencies to send the federal register notice and an email or letter seeking public comment to BIPOC-led organizations whose members or constituents are stakeholders in the rule.
- Ensure input from BIPOC stakeholders in the creation of Department policies related to the implementation of its programs. This includes input into determining program priorities, establishing factors guiding the Department’s evaluation of applications to competitive grant programs, conducting effective outreach, developing service delivery models, and implementing application assistance programs.
- Ensure consultation with BIPOC farmers, ranchers, food system workers, and Tribal governments related to high-level USDA decisions regarding the Department’s discretionary allocation of resources, including through a quarterly meeting involving the office of the Secretary and representatives from BIPOC-led community groups and Tribes.
- Seek to understand traditional best management practices and Tribes’ ecological knowledge and incorporate them in program design and guidance on the evaluation of grant applications, where appropriate.

iii. Call for the establishment of an effective and accountable interagency taskforce and other interagency initiatives to address equity issues related to food systems and agriculture.

Myriad federal agencies shape food and agricultural systems, and a whole-of-government, synthesized approach to equity is sorely needed. USDA should call for the White House to establish an interagency taskforce consisting of, at minimum, USDA, the Food and Drug Administration, the Environmental Protection Agency, the Occupational Health and Safety Administration, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of

Labor, and the Department of Homeland Security – all agencies that play some role in our food and/or agricultural systems. This taskforce should support a mission to increase racial equity in food and agriculture through a comprehensive lens accounting for economic security, community wealth, public health, environmental and climate protection, and worker protections and well-being. The taskforce should hold culturally appropriate and easily accessible public meetings at times when those who work all day can attend, assist in coordinating data and information among agencies and strategies for inclusion, and develop model interagency projects, among other duties. The taskforce' responsibilities, informed by dialogue and suggestions from impacted communities, should include, for example:

- Augmenting the agencies' understanding and implementation of best practices and key challenges in reducing food insecurity by bringing food production, nutrition assistance, social service, and housing providers together to identify and recommend changes to policy, technical assistance, outreach, and other areas.
- Identifying best practices to reduce the impact of CAFOs, other agricultural pollution such as fertilizers, and pesticide exposure on BIPOC communities, and recommending changes to agricultural, environmental, labor, and other policies to achieve such transformation.
- Identifying best practices to improve the working conditions, wages, and pathways to opportunity for agricultural workers, including noncitizens and undocumented workers, and recommending changes to policy, technical assistance, outreach, and other areas.
- Evaluating the cumulative adverse impacts of agricultural pesticide, fertilizer, and antibiotic use on farmworker health and on public health in general, incorporating such evaluations into environmental health risk assessments, identifying cost-effective methods to maintain good crop health and yields and animal health and production without the use of or with reduced use of synthetic fertilizers, pesticides, and antibiotics, and sharing the resulting information with the public.

USDA should additionally call for and support the establishment of a collaborative interagency initiative between USDA, the Department of Health and Human Services (DHHS), and the Department of Housing and Urban Development (HUD) to address child hunger. USDA, DHHS, and HUD all administer programs that substantially impact food security and children's health, and the public would benefit

from better coordination, collaboration, and joint enterprises in this area.¹¹ Similarly, this interagency initiative should develop common principles and form new grant programs to demonstrate the effectiveness of holistic, wraparound services—such as family support, health and housing services, counseling, crisis care, and legal services—in addressing child hunger and poverty.

iv. Establish an Equity Action Plan that includes requirements to benchmark the progress and participation of BIPOC producers against measurable goals.

USDA should establish an Equity Action Plan that aims to both (1) remove barriers to participation in Department programs and procurement opportunities, *and* (2) institute necessary steps to advance equity in agency policies, consistent with the racial equity executive order. The Equity Action Plan should include a comprehensive strategy to increase the number of BIPOC farmers and ranchers thriving in America. The plan should incorporate steps necessary to, within 10 years:

- Increase the number of Black farmers in America by at least 50 percent of 2021 figures.
- Increase the number of BIPOC participants in most USDA grant and loan programs by at least 100 percent of 2021 figures.
- Increase the median sum received by BIPOC participants in USDA grant and loan programs by at least 50 percent of 2021 figures.¹²

The plan should include specific, measurable goals and targets, and incorporate requirements to periodically review progress and benchmark against goals. The

¹¹ This type of interagency initiative has precedent: In 2009, HUD, EPA and DOT formed the Partnership for Sustainable Communities to promote coordination and cooperation across agencies, break down policy silos and enhance services. This partnership led to the formation of successful new planning grants supporting common principles developed by the agencies. See U.S. Env't Prot. Agency, U.S. Dep't of Housing & Urban Dev., U.S. Dep't of Transp., *Partnerships for Sustainability, A Year of Progress for American Communities* (October 2010), https://archives.hud.gov/news/2010/DOC_4560.pdf; see also Lauren C. Heberle et al., *HUD's Sustainable Communities Initiative: An Emerging Model of Place-Based Federal Policy and Collaborative Capacity Building*, 19 *Cityscape* 9 (2017).

¹² These figures—and others throughout this document—are based on consultation with numerous BIPOC-led and BIPOC-serving organizations and represent just a tiny fraction of the actions and total sums necessary to fully redress the mammoth, well-documented wealth and land lost by BIPOC due to USDA and other government discrimination over the past century. USDA should add further targets for BIPOC and adjust those proposed here and elsewhere in this document as necessary to redress past discrimination and advance equity throughout the food and farming sectors.

Department should require its agencies to submit such reviews to USDA’s Office of Inspector General annually.

v. Call for, support, and implement set asides benefiting BIPOC groups for all USDA benefit programs.

USDA should call for and support the implementation of legislative set asides for (1) socially disadvantaged farmers and ranchers, (2) institutions or organizations that serve socially disadvantaged groups, and (3) institutions owned and controlled by members of socially disadvantaged groups for all applicable USDA-administered benefits programs. The definition of “socially disadvantaged” should mimic the definition referenced in the recently passed American Rescue Plan Act and included in section 2501(a) of the Food, Agriculture Conservation, and Trade Act of 1990, each of which defines “socially disadvantaged groups” as groups “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” including African Americans, American Indians or Alaskan natives, Hispanics, and Asians or Pacific Islanders.¹³ USDA should call for Congress to mandate that at least 20—and up to 50—percent of program benefits flow to BIPOC stakeholders for each relevant program, depending on the program’s purpose, consistent with the racial equity executive order. This would complement President Biden’s Justice40 Initiative, which sets a “goal of delivering 40 percent of the overall benefits of relevant federal investments to disadvantaged communities.”¹⁴ Even without congressional action, USDA should conduct a review of each of its programs and the programs’ authorizing legislation to determine whether the Department is empowered to immediately institute set asides for BIPOC individuals and groups.

USDA should also act now to establish target participation rates and reserve funds for BIPOC farmers for each of its benefits programs. The Department already engages in efforts to reserve and target certain loan funds to BIPOC and women farmers and ranchers. The Secretary is directed by statute to establish annual “target participation rates, on a county wide basis” for socially disadvantaged groups for loans administered by the Department, including Guaranteed Loan Funds, Direct Operating and Direct Ownership loan funds, and Microloan funding.¹⁵ The Department “reserves

¹³ 7 U.S.C. § 2279(a)(6).

¹⁴ The White House, *Fact Sheet: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across the Government* (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

¹⁵ 7 U.S.C. § 2003(a)(1).

and allocates sufficient loan funds to achieve these target participation rates.”¹⁶ USDA has determined by regulation that target participation rates for BIPOC farmers for these loan programs should be equal to the rural population percentages for BIPOC at the state and county level.¹⁷ Because of the vast amounts of wealth and land lost by BIPOC due to USDA and other governmental discrimination over the past century, however, such targets are plainly insufficient to restore and provide justice for BIPOC farmers.

The Department should establish similar—but substantially increased—targets for all its benefits programs, and separately reserve funding pools for each relevant racial and ethnic group. For benefits programs that primarily or exclusively serve BIPOC, women, and veteran farmers, target participation rates for minority racial and ethnic groups should total at least 50 percent. Because of USDA’s well-documented discriminatory actions in disbursing benefits, for USDA grant programs that primarily serve rural farmers, target participation rates for each minority racial and ethnic group should exceed the percentage of the total rural population who are members of such racial and ethnic groups at the national, state, and county level, respectively.

vi. Promulgate guidance on USDA implementation of the Clinton-era Environmental Justice Executive Order.

Executive Order 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires USDA to, among other actions, identify and address “disproportionately high and adverse human health or environmental effects” on “minority populations and low-income populations,” promote nondiscrimination in “programs, policies, and activities that substantially affect human health or the environment,” and “work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.”¹⁸ Despite these critical mandates, environmental justice advocates widely view Executive Order 12,898 as reflecting an unfulfilled promise.¹⁹

To better satisfy the executive order’s mandates, USDA should publish detailed guidance for its implementation, providing directions to the Department as a whole and to each sub-agency. Among other instructions, USDA’s guidance should stipulate that

¹⁶ 7 C.F.R. § 761.208(a)(4).

¹⁷ *See id.* § 761.208.

¹⁸ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12,898, 59 Fed. Reg. 7,629, 7,629–7,633 (Feb. 11, 1994).

¹⁹ *See* Richard Marcantonio, *The Unfulfilled Promise of the Environmental Justice Executive Order*, Public Advocates (Feb. 11, 2014), <https://www.publicadvocates.org/resources/blog/the-unfulfilled-promise-of-the-environmental-justice-executive-order/#:~:text=The%20Clinton%20Executive%20Order%20promised,minority%20and%20low%2Dincome%20populations>.

before distributing any program benefits, USDA agencies should evaluate whether such support will contribute to adverse environmental health impacts on any communities of color or low-income populations, and if so, this should weigh heavily against such allocation. For example, before allocating funding to a CAFO through a program such as the Environmental Quality Incentive Program (EQIP), USDA should evaluate whether such allocation will help sustain an operation that has disproportionately adverse effects on communities of color and low-income populations—including workers and surrounding communities. Moreover, consistent with the executive order’s mandate to address disproportionately high human health and environmental effects, USDA should forbid its agencies from making any grant or loan to an individual or entity in violation of any federal pollution, pesticide, or worker protection standard.

vii. Reduce administrative complexity and improve accessibility to program applications and materials.

Overly burdensome application processes and documentation requirements can deter BIPOC farmers, ranchers, and other stakeholders from participating in and benefiting from USDA programs and funding opportunities. USDA should streamline and simplify applications and application processes and reduce requirements to submit duplicative information. The Department should investigate whether universal applications may be used for subsets of Department programs and institute universal applications where possible. For small-scale and BIPOC producers, verification burdens should be shifted away from applicants and towards the federal government, states, or trusted third parties.

The Department should also build a platform allowing every producer the option to create an online profile through a USDA portal/webpage that would serve as a screen for programs for which the producer may be eligible. The portal should alert producers as to their eligibility potential for various programs and provide easy access to applications. Such a platform would also allow information to auto-populate where relevant on online applications.

USDA should additionally provide increased support for BIPOC producers and stakeholders to navigate the application and reporting processes for its benefits programs. As a first step, USDA should dedicate more staff time and Department resources to assisting BIPOC program applicants and recipients. The Department should provide support services in multiple languages and in formats designed to reach a diverse range of producers and communities, including a combination of in-person and online, written and spoken, services and information. In performing stakeholder support services, the Department should partner with trusted community-based organizations and local communities to better and more effectively reach BIPOC farmers and communities. The Department should also work towards ensuring that professional

USDA staff provide services on reservations reflecting the same degree and quality as off-reservation services. Such efforts by USDA should supplement, not replace, work performed by community-based organizations, Tribes, and educational institutions as part of the Department’s Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program.

viii. Ensure access to culturally and linguistically appropriate outreach.

USDA should deliver culturally relevant means of access to agency benefits and culturally competent service providers. This can be accomplished, in part, by making cultural competence part of Department hiring criteria and ensuring that BIPOC employees—particularly those with roots in the communities they are serving—are well-represented in FSA state and local offices and service centers, the National Institute of Food and Agriculture, the Natural Resource Conservation Service, and other USDA agencies responsible for reviewing applications and disbursing program benefits. USDA should also help to ensure that decision-making bodies consisting of non-USDA employees such as FSA county committees and research and promotion boards that help to determine USDA policies, programs, and protocols have equitable representation among BIPOC farming and ranching communities. USDA should actively support recruitment, election, and placement of racially diverse committee and board members.

Language presents an additional barrier for many immigrant, refugee, and new farmers and ranchers seeking to access Department programs and services. This barrier should be removed. USDA should fully adhere to Executive Order 13,166 which requires the Department to “examine the services [it] provides and develop and implement a system” by which [limited English proficiency or “LEP”] persons can meaningfully access those services, and to “work to ensure that recipients of Federal financial assistance . . . provide meaningful access to their LEP applicants and beneficiaries.”²⁰ Consistent with the language executive order, USDA published guidance in 2014 for federal financial assistance recipients on the “Title VI prohibition against national origin discrimination as it affects limited English proficient persons.”²¹ USDA also issued its Departmental Regulation 4330–005 in 2013, an eight-page document titled “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by U.S.

²⁰ Improving Access to Services for Persons with Limited English Proficiency, Exec. Order No. 13166, 65 Fed. Reg. 159, 50,121 (Aug. 11, 2000).

²¹ See Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency, 79 Fed. Reg. 229, 70771 (Nov. 28, 2014).

Department of Agriculture.”²² But USDA’s departmental regulation is vague, imposes few concrete obligations, and allows each sub-agency unfettered discretion in determining whether serviced populations are “significant” enough to warrant language accommodation.²³ The result is that the goal of Executive Order 13166 remains frustrated at USDA, and many non-English dominant communities still cannot adequately access USDA benefits and services.

To eliminate this barrier, USDA should publish more detailed guidance on its own obligations to facilitate access to its programs and services for non-English language dominant communities. Such guidance should stipulate that USDA must provide translations of grant and loan applications to any person—in any language or dialect—on request and that all applications, instructions, informational and outreach materials, and other vital documents must be translated into Spanish and targeted as appropriate to Spanish-dominant communities. Where any LEP language group constitutes at least 1 percent of persons eligible for a USDA program, applications, instructions, informational and outreach materials and other vital documents should be translated into that language or dialect and targeted to those communities. USDA should additionally require its agencies to provide annual progress reports to the Secretary, including compliance data, on their work to ensure language access for diverse communities.

ix. Institute equity-focused annual reviews of benefit programs.

USDA should institute and perform annual reviews of each agency-administered benefit program to assess the proportion of recipients who are BIPOC. This requires disaggregated data-gathering on ethnicity, race, country of origin, and language. Where program beneficiaries are institutions, USDA should assess the proportion of benefit recipients that are BIPOC-led institutions, institutions that primarily serve BIPOC populations, or that are historically Black colleges and universities, Tribal colleges and universities, or Hispanic-Serving Institutions. Where program beneficiaries are towns, counties or communities, USDA should assess the racial and ethnic diversity of those areas.

These equity-focused annual reviews should compel USDA to both assess and redress distributional inequities within individual programs. For each unique benefit program, USDA should assess the proportion of annual recipients reflecting each racial or ethnic group. USDA should then compare these proportions against the number of BIPOC individuals, or BIPOC-led, or BIPOC-serving institutions eligible for the

²² U.S. Dep’t of Agric., Department Regulation 4330-005 (June 4, 2013), https://www.ocio.usda.gov/sites/default/files/docs/2012/DR%204330-005_0.pdf.

²³ *Id.* at 5–6.

program based on the Department’s most recent Census of Agriculture and other federal data. Where, after a review of a specific program, USDA finds that the relevant proportion of program beneficiaries falls below the proportion of eligible people or BIPOC-serving institutions for any minority racial or ethnic group, or that the proportion of program beneficiaries does not reflect appropriate annual progress towards achieving the goals for participation set forth in the action plan and elsewhere, then USDA should institute a tailored outreach campaign to boost applications and provide support to all BIPOC applicants or applicant institutions serving BIPOC communities. If a program’s lack of distributional parity persists beyond two application cycles notwithstanding augmented outreach efforts, USDA should perform a root cause analysis to identify the cause of the continued inequitable distribution of program benefits and recommend and implement steps to address the root cause of the problem.

x. Additional recommendations

In addition to the specific recommendations set forth above, we urge USDA to review and consider the recommendations received from other organizations, in particular BIPOC-led and BIPOC-serving organizations. This includes, for example, reversing the misuse and invasive scrutiny applied in the allocation of funding to BIPOC communities in particular, immediately restoring the integrity of the Outreach and Assistance Program for Socially and Veteran Disadvantaged Farmers and Ranchers, and utilizing and seeking funding for the Heirs Property Authorities in the 2018 Farm Bill.

B. ACTIVELY WORK TO INCREASE LAND ACCESS FOR BIPOC FARMERS AND RANCHERS

The inability to access land is one of the greatest barriers to entry for new BIPOC farmers, and is a formidable obstacle preventing existing BIPOC farmers from thriving. While intergenerational capital transfers finance the majority of starting farms—including 70 to 80 percent of Midwestern farm starts²⁴—BIPOC farmers are much less likely than white farmers to have access to these or other comparable resources. The terms and accessibility of credit, insurance, and grants therefore play an outsized role in determining the equity—or inequity—of the agricultural system and in shaping the prospects of BIPOC farmers. The following recommendations address ways to increase land access for BIPOC farmers and ranchers.

²⁴ See Ben Schiller, *What Does it Cost to Start a New Farm?*, Fast Company (Aug. 30, 2017), <https://www.fastcompany.com/40458330/what-does-it-cost-to-start-a-new-farm>.

i. Ensure that BIPOC farmers are able to participate successfully in existing Department benefit programs that substantially affect land access.

Multiple USDA benefits programs can help farmers and ranchers access and maintain farmland. These include Farm Service Agency (FSA) loans, the Transition Incentives Program, and the Rural Cooperative Development Grant Program. USDA's historic allocation of USDA benefits—particularly FSA-administered benefits—in a discriminatory manner, and the resulting land loss and exodus from the sector of Black farmers and other farmers of color, have left many BIPOC farmers distrustful of the Department's programs.

There is ample room for improvement in conducting outreach to BIPOC farmers to promote credit resources and to encourage loan applications for land acquisition.

a. FSA loans

Even as the number of Black-owned farms has rapidly dwindled over the past century due partly to systemic FSA discrimination, data indicate that Black farmers received a *smaller* share of USDA lending during the Obama administration than during the Bush administration.²⁵ USDA should conduct sustained, targeted, and culturally appropriate outreach to BIPOC farmers to assist them in applying for FSA loans and planning for loan repayment. In doing so, the Department should increase the existing portion of guaranteed and Direct Farm Ownership loans targeted to BIPOC farmers by 100 percent. USDA should also develop a plan for regional Department staff to conduct site visits to local FSA loan offices to monitor loan portfolio performance and oversee BIPOC outreach efforts. USDA should evaluate FSA loan programs nationwide, examining:

- BIPOC representation among loan applicants and loan recipients (nationally, and disaggregated by region and county), and
- The cultural competencies of local FSA staff who review applications and interface with BIPOC loan applicants and loan recipients.

²⁵ See Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination against Black Farmers*, The Counter (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>

Following such evaluation, USDA should develop and implement measures to:

- Increase BIPOC representation among loan applicants and recipients,
- Improve the cultural competencies of local FSA staff, and
- Improve the loan service experience for BIPOC communities.²⁶

USDA should require its agencies to report (1) the findings of the evaluation, and (2) measures developed to advance racial equity in FSA loan disbursement, to the USDA's Office of Inspector General (OIG) within six months. The Department should thereafter require its agencies to annually report progress to OIG on implementing the measures developed.

b. The Transition Incentives Program

The Transition Incentives Program (TIP) incentivizes farmers whose lands were previously enrolled in the Conservation Reserve Program (CRP) to sell or rent those lands to beginning and socially disadvantaged farmers or ranchers for sustainable grazing or crop production. USDA should conduct outreach to farmers whose CRP contracts are set to expire within two years. In conducting such outreach, the Department should coordinate with BIPOC-led associations and nonprofit organizations to connect the CRP-participating farmers with BIPOC farmers interested in buying or leasing the farmland. And USDA should investigate whether, under existing authority, it can provide a premium to farmers selling this land to BIPOC producers.

USDA should also consider expanding this program to farmers who are selling land because no heirs want to continue farming it. USDA could offer incentives to encourage farmers to sell this land to BIPOC producers. And USDA could explore whether it could serve as a no-fee broker to help with such a transition.

c. The Rural Cooperative Development Grant Program

USDA should work to increase participation by BIPOC farmers in the Rural Cooperative Development Grant Program (RCDGP), which provides funds to start and develop rural cooperatives and other mutually owned businesses. USDA should publish guidance clarifying that substantial weight will be placed on RCDGP applications that commit to providing services to BIPOC communities, consistent with RCDGP's

²⁶ Many of these recommendations are consistent with USDA's Rule, Selection and Functions of Farm Service Agency State and County Committees, 78 Fed. Reg. 13,771, Mar. 1, 2013, which aimed to "ensure that socially disadvantaged (SDA) farmers and ranchers are appropriately represented on county committees."

authorizing legislation, which focuses on serving “economically distressed” communities.²⁷ In administering RCDGP funds, USDA should promote and encourage applications for farmland investment cooperatives and communal land trusts serving predominantly BIPOC communities.

ii. Regulate tenant-farmer relationships to prevent abusive financial practices

Because of the many difficulties of securing land access—including lack of capital, discrimination by white landowners, and the growing presence of institutional investors who can outcompete new farmers—substantial numbers of BIPOC farmers rely on tenant farming relationships. The deeply imbalanced power dynamics represented by these relationships often reflect legacies of white agricultural landownership and racial oppression and sometimes result in unfavorable terms for and mistreatment of BIPOC tenants. USDA should promulgate regulations to guard against abusive tenant-farmer relationships and to protect BIPOC tenant-farmers. Such regulations should establish minimum standards for leasing arrangements for landowners receiving federal benefits and should provide that the Department must treat tenant farmers as equals to farm owners in all USDA benefit programs for which farmers and ranchers are eligible.

iii. Support legislation that would increase land for BIPOC communities.

As discussed above, agricultural market access for BIPOC farmers is mediated through access to resources, including land. USDA should support legislation authorizing:

- The provision of funds to USDA to directly purchase land and then sell land at a subsidized rate to BIPOC farmers using sustainable farming practices.
- The provision of funds to incentivize states and local governments to purchase land, impose agriculture-use only covenants on land, and then sell land at a subsidized rate to BIPOC farmers using sustainable farming practices.
- The provision of funds for a program to connect landowners willing to facilitate farming on idle land with BIPOC farmers and to support a fair land transfer or lease process.
- A tax credit for established farmers’ selling land to BIPOC farmers.
- A tax credit for BIPOC buyers of land for farming.

USDA should additionally support a legislative mandate to authorize the Department to spend up to \$8 billion annually to buy land on the open market and grant it

²⁷ See 7 U.S.C. § 1932(e)(5)(D).

to BIPOC farmers and ranchers, similar to that proposed in the Justice for Black Farmers Act.²⁸

C. IMPROVE AND EXPAND FARMING SUPPORTS FOR BIPOC FARMERS AND RANCHERS

USDA’s systemic denial of loans and subsidies to BIPOC farmers throughout the 20th century resulted in the loss of mammoth amounts of intergenerational wealth from these communities. Today, white farmers continue to receive the overwhelming majority of overall USDA benefits, and BIPOC farmers remain underrepresented or inadequately represented in Department grant and loan programs— including in programs that are specially targeted to BIPOC farmers.²⁹ The Department should better target and increase funds directed to BIPOC farmers that provide support for all aspects of the farming process, including education and mentoring, access to equipment, crop insurance, and support for marketing and sales. The following recommendations outline strategies to improve and expand support for BIPOC farmers and ranchers.

i. Prioritize delivery of funds and services to BIPOC farmers in existing programs.

USDA can adapt and target several existing programs to better serve BIPOC farmers and ranchers. These include the Beginning Farmer and Rancher Development Program, the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and the Veteran Farmers and Ranchers Program (Section 2501 Program), the FSA Microloan Program, the Rural Cooperative Development Grant Program, the Rural Development Cooperative Services Program, Agricultural Marketing Service grant programs, and the crop insurance program. And USDA can further utilize resources from the Commodity Credit Corporation to provide additional targeted funding and services.

a. The Beginning Farmer and Rancher Development Program

The Beginning Farmer and Rancher Development Program (BFRDP) supports education, mentoring, and technical assistance programs for beginning farmers and ranchers. The program’s authorizing legislation makes clear that the Department has the discretion to evaluate applications based on “appropriate factors, as determined by the

²⁸ See Justice for Black Farmers Act of 2021, S. 300, 117th Cong. § 203 (2021).

²⁹ See Nathan Rosenberg & Bryce William Stucki, *Rural America’s Trump Vote Was Decades in the Making. Democrats’ policies—Starting with the New Deal—Are Partly to Blame*, The Counter (Dec. 06, 2017), <https://thecounter.org/rural-trump-vote-democrat-farm-policy/>.

Secretary,” in addition to certain factors stipulated by statute.³⁰ USDA should therefore amend its implementing regulations to provide that (1) USDA agencies evaluating BFRDP applications must consider the racial diversity of the population served by the relevant institution and program, and (2) upskilling BIPOC farmers and ranchers is a Department priority for the BFRDP program.

b. USDA’s Section 2501 Program

Section 2501 grants provide funds to community-based organizations and BIPOC-serving institutions to conduct outreach and assistance to BIPOC farmers and veterans. USDA should ensure that all appropriated funds for the Section 2501 Program are exhausted, issue guidance providing that Department funds directed to projects serving veterans should specifically support BIPOC veterans, and ensure that funds are distributed equitably across geographic regions as mandated by Congress.

c. FSA Microloans

FSA created the Microloan program “to better serve the unique financial operating needs of new, niche, and small to mid-sized family farm operations,” and to reach underserved producers in particular.³¹ Though the Department has indicated that the Microloan program is specifically intended to benefit BIPOC farmers,³² the data make clear that that goal has been thwarted in practice: Between 2013 and 2015, 86 percent of all Microloans issued by the Department were given to white farmers.³³ USDA should conduct sustained and targeted outreach to BIPOC farmers to encourage them to take advantage of FSA Microloan opportunities where appropriate and provide assistance to such farmers during the application process. In doing so, the Department should increase the existing portion of Microloans targeted to BIPOC farmers by 300 percent, in recognition of how BIPOC farmers are disproportionately small-scale farmers, are among the intended targets for Microloans, and are consistent with the Biden Justice40 Initiative’s “goal of delivering

³⁰ 7 U.S.C. § 2279(6)(G).

³¹ U.S. Dep’t of Agric., Farm Serv. Agency, *Microloans 1* (2019), <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/microloans-fact-sheet-aug-2019.pdf>.

³² See Nathan Rosenberg & Bryce William Stucki, *Rural America’s Trump Vote Was Decades in the Making. Democrats’ policies—Starting with the New Deal—Are Partly to Blame*, The Counter (Dec. 06, 2017), <https://thecounter.org/rural-trump-vote-democrat-farm-policy/>.

³³ *Id.*

40 percent of the overall benefits of relevant federal investments to disadvantaged communities.”³⁴

d. USDA’s rural cooperative programs

Because BIPOC farmers disproportionately run small and mid-size farm operations, cooperatives can provide particularly valuable support to allow such farmers to access increasingly expensive and high-tech—and sometimes proprietary—equipment. Farm machinery cooperatives have flourished in other countries, including Canada. In Quebec, for example, such cooperatives enroll nearly 2,000 farm operations, making more than \$16 million worth of equipment available to participating farmers that otherwise might not have access to it.³⁵ Though similar initiatives have emerged in the U.S.—the Maine Shared Use Farm Equipment Program, among others—a vanishingly small number of American farmers participate in machinery-sharing cooperatives. USDA should incentivize farmers through the Department’s rural cooperative development and education programs to form equipment sharing cooperatives and promote and prioritize cooperatives that plan to actively seek to enroll BIPOC farmers. This is consistent with comments previously submitted to USDA recommending assistance with accessing equipment for climate-smart practices.³⁶

e. Agricultural Marketing Service grant programs

BIPOC farmers are disproportionately reliant on direct-to-consumer sales.³⁷ Expanding local agriculture not only supports these farmers but is also an engine for growth in economically distressed areas.³⁸ USDA’s Local Agriculture Market Program, Farmers Market Promotion Program, and Local Food Promotion Program each provide financial

³⁴ The White House, *Fact Sheet: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across the Government* (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

³⁵ See Liz Carlisle et al., *Securing the Future of US Agriculture: The Case for Investing in New Entry Sustainable Farmers*, 7 *Elementa: Sci. Anthropocene* 17 (2019).

³⁶ See Comment from Earthjustice et al., USDA-2021-0003-1200, at 39 (June 1, 2021), <https://www.regulations.gov/comment/USDA-2021-0003-1200>.

³⁷ See Gosia Wozniaka, *Millions of Dollars Heading to Farmers, but Small Farms Won’t See Much of it*, *Civil Eats* (June 1, 2020), <https://civileats.com/2020/06/01/millions-of-dollars-heading-to-farmers-but-small-farms-wont-see-much-of-it/>.

³⁸ See Julia Darnton, *Farmers Markets Act as Gathering Space and Local Economic Engine*, *Mich. State Univ. Extension* (Feb. 20, 2012), https://www.canr.msu.edu/news/farmers_markets_act_as_gathering_space_and_local_economic_engine.

support to direct and intermediary producer-to-consumer markets. The Department enjoys broad authority to establish criteria for evaluating proposed projects under these programs. USDA should amend its implementing regulations to stipulate that BIPOC farmers and projects serving disproportionately BIPOC communities will receive priority in the programs' competitive application processes.

f. The Emergency Food Assistance Program

The Emergency Food Assistance Program (TEFAP) provides American-grown USDA Foods to states to redistribute to food banks. USDA recently announced that it will invest \$1 billion to promote sourcing for TEFAP from local, small-scale, and socially disadvantaged producers. USDA should target at least 50 percent of the \$1 billion investment to BIPOC producers. The Department should also establish and implement a policy to target 50 percent of overall TEFAP funds for purchasing and distributing foods from BIPOC producers.

g. The Crop Insurance Program

USDA's crop insurance program provides crop insurance protection to American farmers and agricultural entities through a partnership between the Department's Federal Crop Insurance Corporation—a wholly owned government corporation managed by USDA's Risk Management Agency—and private insurance companies. The Department sets premium rates, approves risk management products, and grants premium subsidies under the crop insurance program. The program is one of the Department's largest subsidy programs.

The crop insurance program is directly responsible for reinforcing the Department's discriminatory legacy by exacerbating the "subsidy gap" between BIPOC and white farmers. Because subsidies are linked to crop value, the largest producers—overwhelmingly white—receive the largest premium subsidies. These white-owned farms are almost certain to receive 99 percent of subsidies granted through the crop insurance program.³⁹

The Department should work to actively decrease this mammoth subsidy gap through its policies. The Federal Crop Insurance Act authorizes the Department to provide premium discounts for "a producer of an agricultural commodity who has good ... production experience relative to other producers of that agricultural commodity in the

³⁹ See John Boyd & Scott Faber, *Op-ed: The Farm Bureau Says it Wants to Fight Racism. Here's Where to Start*, Civil Eats (July 3, 2020), <https://civileats.com/2020/07/03/op-ed-the-farm-bureau-says-it-wants-to-fight-racism-heres-where-to-start/>.

same area,” as determined by USDA.⁴⁰ USDA should recognize the traditional ecological and culturally relevant production experiences of BIPOC farmers and should consider these actuarially sound, thereby allowing it to grant substantial premium discounts to such farmers through this provision. It should also recognize the different opportunities that BIPOC producers have to demonstrate past production and revise the requirements of what production experience must be demonstrated to qualify for coverage. The Department should additionally support legislation to mandate that USDA offer substantial premium discounts for BIPOC farmers. USDA should also consider giving discounts for use of good production methods with good production outcomes.

h. The Commodity Credit Corporation

USDA should use the Commodity Credit Corporation (CCC) to proactively direct funds to BIPOC farmers. The CCC is a federal Department-administered corporation whose funds are used to “stabilize, support, and protect farm income and prices.”⁴¹ The CCC is empowered to borrow up to \$30 billion from the U.S. treasury to conduct its operations, and to have those losses later restored through the congressional appropriations process. The Secretary, moreover, enjoys broad authority under the CCC to structure payment programs, and has historically used this power in a manner that privileges white farmers. Notably, the Trump administration directed 99.5 percent of funds from its newly established CCC-administered Market Facilitation Program to white farm operators. The Department should use this potent tool to remedy past discrimination and provide funding to BIPOC producers, including BIPIC producers adopting sustainable agricultural practices.

i. Increase Department support for urban farms

Disparities in access to USDA supports for urban farms are disproportionately felt by BIPOC, immigrant, and refugee communities. USDA should incentivize states to establish urban agriculture as a land use category and institute protections to preserve and grow urban farms. The Department should also support and conduct research documenting the value of urban farms, assist urban farmers and prospective farmers in proving the social, economic, and cultural capital generated from urban farming in permit applications, and invest in educating cities about urban agriculture. The Department should additionally conduct targeted outreach to ensure that all urban farmers obtain a Farm ID number so that they become eligible to obtain USDA benefits, and that they are accounted for in the agricultural census.

⁴⁰ 7 U.S.C. § 1508(D)(3).

⁴¹ *About the Commodity Credit Corporation*, U.S. Dep’t of Agric. (last updated Mar. 17, 2015), <https://www.fsa.usda.gov/FSA/webapp?area=home&subject=meda&topic=ccc>.

ii. Call for and back legislation that would increase support and funds for BIPOC farmers.

Congress does not give USDA programs that can meaningfully assist BIPOC farmers the amount of funds necessary to make a transformational difference for these farmers. USDA should call for and support substantially increased funding from Congress for the Beginning Farmer and Rancher Development Program, the Section 2501 Program, and grant programs targeted to local agricultural and direct-to-consumer markets. USDA should also urge Congress to create additional grant programs to support BIPOC farmers to upskill and to operate, improve, and expand farms. Such grant programs should include:

- Funds for FSA, nonprofit organizations, associations, and BIPOC-serving institutions to provide business, marketing, and bookkeeping assistance to socially disadvantaged farmers.
- Funds for FSA, nonprofit organizations, associations, and BIPOC-serving institutions to provide application and reporting assistance to BIPOC farmers to successfully participate in Department programs.
- Funds for BIPOC communities to build sustainable, affordable and equitable regional food infrastructure, including supports for seed processing, food distribution, and solar powered cold storage and distribution vehicles.
- Funds for community led BIPOC initiatives in food and agricultural production, including efforts to form BIPOC networks, share information and build community outside of formal cooperative and nonprofit organizational models.

D. CHAMPION THE HEALTH, SAFETY, AND ECONOMIC WELL-BEING OF FARMWORKERS AND FOOD SYSTEM WORKERS

USDA must play a more robust role in creating a food system that allows workers to thrive. America today is reliant on a predominantly immigrant farming workforce. Such workers often earn poverty wages, and federal laws and policies fail to adequately protect them from hazardous working conditions, such as pesticide exposure and heat stress. Slaughterhouse and other food chain workers are also disproportionately BIPOC and face dangerous working conditions—conditions that have been exacerbated by recent USDA actions. The following recommendations focus on the need to better protect the health, safety, and economic well-being of farmworkers and food system workers. This includes ensuring that farmworkers are treated as stakeholders in all Department programs, naming a Farmworker Coordinator and augmenting the role of that office, strengthening the Farm Labor Survey and reporting process, and promoting and prioritizing farmworker-focused projects in USDA programs and in support lent to legislative initiatives.

i. Institutionalize the role of farmworkers as USDA stakeholders in all USDA programs.

USDA should issue guidance stating that farmworkers are stakeholders in all programs administered by the Department, including in programs that exclusively direct funds to farmer and ranchers. USDA’s guidance should provide that any stakeholder outreach related to Department actions must include efforts to connect with farmworker groups and associations, groups representing farmworker interests, and individual farmworkers.

ii. Name a Farmworker Coordinator and establish clear and open lines of communication with farmworker communities and groups representing interests of farmworkers.

U.S. law establishes the position of a Farmworker Coordinator within USDA’s Office of Partnerships and Public Engagement. This position is tasked with the following roles and responsibilities: (1) “serving as a liaison to community-based nonprofit organizations that represent and have demonstrated experience serving low-income migrant and seasonal farmworkers”; (2) coordinating with USDA and federal, state, and local agencies and governments to “ensure that farmworker needs are assessed and met during declared disasters and other emergencies”; (3) consulting with entities and within the Office of Partnerships and Public Engagement to “better integrate farmworker perspectives, concerns, and interests into ongoing programs”; (4) “consulting with [] institutions on research, program improvements, or agricultural education opportunities that assist low-income and migrant seasonal farmworkers”; and (5) helping “farmworkers in becoming agricultural producers or landowners.”⁴²

Though the role of the Farmworker Coordinator has occasionally been filled in previous administrations, it is unclear who, if anyone, fills that role at present. USDA should promptly name a qualified, experienced, and dedicated person to the role and provide them with a robust mandate to fulfill their statutorily required activities. The Department should also prominently highlight the Farmworker Coordinator role on public materials and establish clear and open lines of communication with farmworkers and groups representing farmworkers. The Farmworker Coordinator should additionally be included in relevant high-level USDA decision-making and advisory committees and be charged with regularly updating the public with his, her, or their activities, accomplishments, and priorities. And the office of the Farmworker Coordinator should be given the budget and auxiliary staff to enable it to effectively carry out its mandate by conducting and

⁴² 7 U.S.C § 6934(f)(B)–(F).

synthesizing outreach, liaising with other agencies, and assisting farmworkers and their representatives to present their perspectives to the Department.

iii. Codify and strengthen the Farm Labor Survey and reporting process.

The Farm Labor Survey, performed by the National Agricultural Statistical Service (NASS), provides important information on wages, employment counts, and average weekly hours for workers hired by farms and ranches. The data collected by the Farm Labor Survey is used to “estimate the demand for, and availability of season agricultural workers, establish minimum wage rates for agricultural workers, administer farm labor recruitment and placement service programs, and assist legislators in determining labor policies.”⁴³ In October 2020, USDA suspended data collection for the Farm Labor Survey and announced its intent to not publish the Department’s biannual Farm Labor Survey report.⁴⁴ However, USDA reversed course after a federal judge issued a preliminary injunction compelling the Department to reinstate the survey and reporting process in a case brought by the group United Farm Workers.⁴⁵

USDA should issue a regulation to codify the Farm Labor Survey and reporting process to preserve the integrity of this essential Department activity. In addition, USDA should strengthen the survey to more accurately reflect work practices and conditions by incorporating perspectives from farmworkers as well as data provided by employers. The Department should cross-check information on wages and conditions by surveying farmworkers or by cross-referencing Farm Labor Survey inputs against the Department of Labor’s National Agricultural Workers Survey.

iv. Promote and prioritize farmworker-focused projects in USDA benefits programs.

USDA can and should leverage several of its benefits programs and the department’s congressionally granted authority to promote and prioritize projects that support the education, training, health, and economic development needs of farmworkers. These

⁴³ Morning Ag. Clips, *USDA to Conduct Survey About Hired On-Farm Labor* (Sept. 17, 2020), <https://www.morningagclips.com/usda-to-conduct-survey-about-hired-on-farm-labor-2/>.

⁴⁴ See U.S. Dep’t of Agric., Nat’l Agric. Stat. Serv., Delta Reg’l Field Office, *USDA to Conduct Survey About Hired On-Farm Labor* (2020) [https://www.nass.usda.gov/Statistics by State/Arkansas/Publications/News Releases/2020/ARlabor1020.pdf](https://www.nass.usda.gov/Statistics%20by%20State/Arkansas/Publications/News%20Releases/2020/ARlabor1020.pdf).

⁴⁵ See Farmworker Justice, *Federal Court Overturns USDA Cancellation of Farm Labor Wage Survey that Protects Tens of Thousands of Farmworkers’ Wages* (Oct. 28, 2020), <https://www.farmworkerjustice.org/news-article/federal-court-overturns-usda-cancellation-of-farm-labor-wage-survey-that-protects-tens-of-thousands-of-farmworkers-wages/>.

include the Rural Innovation Stronger Economy grant program and programs that support beginning farmers, as well as the Department’s existing authority to provide emergency grants to support low-income migrant and seasonal farmworkers.

a. The Rural Innovation Stronger Economy (RISE) grant program

The Rural Innovation Stronger Economy (RISE) grant program is designed to “create and augment high-wage jobs, accelerate the formation of new businesses, support industry clusters and maximize the use of local productive assets in eligible low-income rural areas” by providing funds to states, Tribes, nonprofit entities, and educational institutions.⁴⁶ The program aims to assist “local workforces, entrepreneurs, and institutional partners to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers.”⁴⁷ Despite these laudable goals, USDA has not yet followed through on its stated intent to publish proposed regulations governing the program’s administration. Moreover, though Congress appropriated \$5 million in fiscal years 2020 and 2021 for the RISE program,⁴⁸ USDA has not yet administered or distributed those funds.

USDA should promptly promulgate a rulemaking governing the Department’s administration of the RISE program and encourage and prioritize RISE program projects supporting farmworker upskilling and training to transition to farm management and ownership. USDA can encourage and prioritize such projects by highlighting farmworker-focused projects in requests for proposal and conducting outreach to farmworker communities and institutions serving farmworkers during the application process.

b. Emergency grants for low-income migrant and seasonal farmworkers

Federal law authorizes the USDA Secretary to make grants to non-profit organizations with experience serving “low-income migrant and seasonal farmworkers where the Secretary determines that a local, State or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be unable to work, or to stay home . . .”⁴⁹ Despite this broad authority to support farmworkers during and after emergencies, USDA has not distributed such emergency funds during the COVID-19

⁴⁶ *Rural Development, Rural Innovation Stronger Economy (RISE) Grants*, U.S. Dep’t of Agric., <https://www.rd.usda.gov/programs-services/rural-innovation-stronger-economy-grants>.

⁴⁷ 87 U.S.C. § 2008w(d)(1)(b)(ix).

⁴⁸ See U.S. Dep’t of Agric., FY 2021 Budget Summary, <https://www.usda.gov/sites/default/files/documents/usda-fy2021-budget-summary.pdf>; see also Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, § 779, 133 Stat. 2534, 2656; Consolidated Appropriations Act of 2021, H.R. 133–2, § 768.

⁴⁹ 42 U.S.C. § 5177a(a).

pandemic. USDA should use this existing discretionary authority to disburse funds to support farmworkers adversely impacted by COVID-19. Farmworker communities have been at the front lines of the COVID-19 pandemic, and have suffered from high rates of COVID-19 incidence. There is some evidence that farmworkers remain under-vaccinated relative to the general population.⁵⁰ USDA should consult with farmworker communities and organizations that represent and serve farmworkers to determine their pandemic-related economic, health, and safety needs, and provide emergency grants to address those needs.

c. Other programs

A number of additional USDA programs have the potential to benefit farmworkers. These include, for example, the Beginning Farmer and Rancher Development Program (discussed above), the Agriculture Food and Research Initiative (a program that awards research, education, and training grants to advance efforts in food and agriculture, including agricultural workforce training), and the Farm Ownership Loans program (a program that offers financing for the purchase and enlargement of family farms and expansion of farm operations, among other projects). USDA should utilize these existing grant programs to encourage and prioritize projects that focus on farmworker education, training, and development, and encourage loan applications by conducting outreach to farmworkers seeking to start farms.

v. Coordinate with other agencies to strengthen farmworker protections against pesticide exposure and heat stress.

Other federal agencies have critical roles in ensuring that farmworkers are protected from threats such as pesticide exposure and extreme heat. USDA, however, has an important role in assisting these other agencies in their tasks. Unfortunately, USDA has often impeded these efforts or argued for weaker farmworker protections. USDA should become a powerful voice urging EPA to move quickly to fully and thoroughly implement the worker protection standards and ensure all farm workers and farm managers are fully informed of the protections to which they are entitled. USDA should also urge the Occupational Safety and Health Administration to move quickly to promulgate a draft and final heat exposure standard. Finally, USDA should forcefully urge EPA to more seriously consider farmworker health impacts when registering pesticides as opposed to merely assuming away any injurious exposure.

⁵⁰ See Norma Galeana & Alan Devall, *Essential Yet Under Vaccinated, Some California Farmworkers Get Their Vaccines*, Reuters (Feb. 2, 2021), <https://www.reuters.com/article/us-health-coronavirus-vaccines-farmworke/essential-yet-under-vaccinated-some-california-farmworkers-get-their-vaccines-idUSKBN2A22QL>.

vi. Call for and support legislation establishing new USDA programs that would protect farmworkers' health and well-being, and help farmworkers to thrive.

USDA should call for Congress to designate funds for (1) the provision of Personal Protective Equipment to farmworkers to guard against disease transmission and pesticide exposure, (2) farmworker training and education opportunities to aid such workers in the transition to farm management and ownership, and (3) assisting farmworkers with management experience in acquiring land and equipment to transition to agricultural producers and farm owners. These funds should be disbursed through grant programs without matching requirement, with eligibility restricted to farmworkers, recent farmworkers, and institutions and non-profit organizations primarily serving farmworker communities.

USDA should also urge Congress to repeal any requirements preventing non-citizens from accessing Department benefits and services. This would prevent the exclusion of more than 70 percent of crop farmworkers who are non-citizens and are presently barred from obtaining Farm Ownership Loans and other Department grant and loan funds.⁵¹

vii. Repeal Trump-era actions that raised maximum line speed limits and diminished worker protections at pork and poultry plants.

USDA should respect a recent federal court's ruling that a provision within the Trump-era New Swine Inspection System (NSIS) rules establishing faster facility line speeds at pork slaughterhouses is unlawful, as the Department has indicated it will do.⁵² USDA should not attempt to resurrect the vacated provision because of the critical health and safety risks imposed by the ill-advisedly relaxed requirements.

USDA should similarly revoke all line-speed waivers granted to poultry slaughterhouses during the Trump administration and disassemble the Department's line speed waiver program. USDA in the Trump era granted more than 50 line-speed waivers to poultry slaughter plants, putting workers at grave risk of dismemberment and other serious

⁵¹ See 17 U.S.C. § 1922(a)(1); see also *Farm Labor*, U.S. Dep't of Agric., Economic Res. Serv., <https://www.ers.usda.gov/topics/farm-economy/farm-labor/> (last visited June 12, 2021) (estimating that more than 50 percent of hired crop farmworkers lack authorization status); *Id.* (estimating that 20 percent or more crop farmworkers have work authorization but lack citizenship); see also Miriam Jordan, *Farmworkers, Mostly Undocumented, Become 'Essential' During Pandemic*, N.Y. Times (Apr. 2, 2020), <https://www.nytimes.com/2020/04/02/us/coronavirus-undocumented-immigrant-farmworkers-agriculture.html>.

⁵² See Ryan McCarthy, *FSIS Accepts Federal Court Ruling on Swine Slaughter Line Speeds*, Meat + Poultry, (May 27, 2021), <https://www.meatpoultry.com/articles/25025-fsis-accepts-federal-court-ruling-on-swine-slaughter-line-speeds>.

injury.⁵³ USDA's actions also put poultry workers at greater risk of contracting COVID-19: At least 40 percent of poultry plants that were granted line-speed waivers experienced coronavirus outbreaks.⁵⁴

Slaughterhouse workers are disproportionately Black and Hispanic,⁵⁵ and are put at risk of suffering a greater rate of injury from rules that increase line speeds. Even before USDA's new rules were instituted, pork and beef processing workers were seven times more likely to suffer from repetitive motion injuries than the average American worker. American meat plant workers were also dramatically more likely to experience amputations, fractured fingers, head trauma, and second-degree burns. To protect workers, USDA should disallow poultry processors from seeking and obtaining line-speed waivers. The Department should also consider the effects of any proposed changes in line speeds on the health and safety of slaughterhouse workers and should decline to implement changes that would worsen their working conditions.

E. MEANINGFULLY STRENGTHEN USDA'S CIVIL RIGHTS OFFICE AND THE DEPARTMENT'S DISCRIMINATION RESOLUTION PROCESSES

USDA's civil rights office has so far failed to fully achieve its mandate to enforce equal rights for USDA programs and within the Department itself. The office has historically been complicit in the Department's legacy of discrimination in American agricultural policy. The office—shuttered by the Reagan administration, which reportedly routinely rejected Black farmers' civil rights complaints without investigation, and resurrected by the Clinton administration—has allowed large numbers of discrimination claims to expire without investigation. Under the Bush administration, the civil rights office found only one discrimination claim to be meritorious—out of more than 14,000 civil rights claims made against the Department.⁵⁶ Even under the Obama administration, the Department persisted in neglecting many discrimination complaints from BIPOC farmers

⁵³ See Christopher Doering, *White House Withdraws Trump-era Rule to Permanently Increase Poultry Line Speeds*, Food Dive (Jan. 26, 2021), <https://www.fooddive.com/news/white-house-withdraws-trump-era-rule-to-permanently-increase-poultry-line-s/593930/>.

⁵⁴ See Leah Douglas, *At Poultry Plants Allowed to Run Faster Processing Lines, A Greater Risk of Covid-19* (Sept. 10, 2020), https://thefern.org/ag_insider/at-poultry-plants-allowed-to-run-faster-processing-lines-a-greater-risk-of-covid-19/.

⁵⁵ See Shawn Fremstad et al., *Meatpacking Workers Are a Diverse Group Who Need Better Protections*, Ctr. for Econ. & Pol'y Rsch. (Apr. 29, 2020), <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/>.

⁵⁶ See U.S. Dep't of Agric., *Hispanic and Women Farmers and Ranchers Claims Process, Civil Rights at USDA: A Background on Efforts by the Obama Administration*, https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_011689.pdf.

and other constituents.⁵⁷ The Department has also neglected to respond adequately to worker bias complaints from USDA employees, which have traditionally been high and continue to flourish.⁵⁸ To remedy these longstanding issues, the Department should reform its civil rights office to ensure prompt resolution and meaningful consideration of complaints, serious and fair treatment of discrimination claims, and staff competency. The Department should also support legislation that would extend the statute of limitations for civil rights complaints to preserve all meritorious discrimination claims.

i. Ensure prompt and severe consequences for discriminatory actions by reforming USDA’s civil rights office.

USDA should promptly and fairly resolve all pending and new administrative civil rights complaints against the Department. Under prior administrations, USDA slow-walked civil rights complaints, running out the clock on complaints bound by a two-year statute of limitations and foreclosing on Black farmers with pending civil rights complaints.⁵⁹ Records reveal that USDA’s civil rights office takes an unacceptably long time to process a civil rights complaint, spending an average of around 1.3 years, meaning that potentially discriminatory behavior is allowed to continue unaddressed and unabated for an inordinately long period.⁶⁰

To address these ongoing issues and improve the time it takes to process complaints, the Department should institute guidance directing the civil rights office to resolve all civil rights complaints within six months or sooner after receipt while strongly discouraging the office from allowing a statute of limitations to lapse on a pending complaint. USDA should promptly review any lapse of the statute of limitations on any pending civil rights complaint to assess what went wrong, and should require the office to implement corrective measures

⁵⁷ See Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination against Black Farmers*, The Counter (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

⁵⁸ See Liz Crampton, *USDA’s Top Civil Rights Official Heads for the Exit*, Politico (Jan 17., 2020), <https://www.politico.com/newsletters/morning-agriculture/2020/01/17/usdas-top-civil-rights-official-heads-for-the-exit-784489>.

⁵⁹ See U.S. Dep’t of Agric., *Hispanic and Women Farmers and Ranchers Claims Process*, *Civil Rights at USDA: A Backgrounder on Efforts by the Obama Administration*, https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_011689.pdf; see also Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, The Counter (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

⁶⁰ See U.S. Dep’t of Agric., *Food, Conservation, and Energy Act of 2008 Section 14010 Report of Civil Rights Complaints, Resolutions, and Actions for Fiscal Year 2019* (2020), <https://www.usda.gov/sites/default/files/documents/fy2019-civil-rights-complaints-report.pdf>.

to prevent the incident from recurring. USDA should also amend its regulations to forbid departmental agencies from foreclosing on any loan recipient with a pending or successful civil rights complaint, consistent with the moratorium on that practice imposed by the 2008 Farm Bill.⁶¹ USDA should also strengthen its civil rights office so that civil rights complaints are treated seriously and fairly, and that proactive action is taken to address discriminatory practices.

USDA's civil rights office has historically been plagued by personnel problems, mismanagement, harassment, and the perception that individual employees have undermined—and continue to undermine—the office's performance.⁶² Moreover, data show that the Department determined wrongdoing in only two cases out of more than 300 civil rights complaints filed by Department employees in fiscal year 2019.⁶³ The Department should review the civil rights office's staffing, institute performance reviews that are deeply informed by peer and subordinate perspectives, and move staff who perform poorly out of the office. The Department should also implement a clearer chain of command in the civil rights office and commit to hiring people with deep civil rights experience in senior roles.

ii. Support legislation that would prevent meritorious discrimination claims from expiring.

USDA should support legislation extending the Equal Credit and Opportunity Act (ECOA) statute of limitations for civil rights complaints to protect complaints filed with the Department. The Department has been criticized for being insufficiently supportive of such measures in Congress in the past, potentially frustrating the passage of provisions during the Obama administration that would have extended ECOA's statute of limitations and preserved thousands of meritorious discrimination claims.⁶⁴

⁶¹ See 7 CFR § 766.358.

⁶² See Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination against Black Farmers*, The Counter (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

⁶³ See Liz Crampton, *USDA's Top Civil Rights Official Heads for the Exit*, Politico (Jan 17, 2020), <https://www.politico.com/newsletters/morning-agriculture/2020/01/17/usdas-top-civil-rights-official-heads-for-the-exit-784489>.

⁶⁴ See Nathan Rosenberg & Bryce Wilson Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, The Counter (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>.

F. SUPPORT RESEARCH THAT BENEFITS BIPOC PRODUCERS AND COMMUNITIES

Over the last several years, funding for agricultural research has fallen sharply: the federal share of overall research and development spending as a percentage of gross domestic product is now at its lowest point since the 1950s, and food and agriculture lag even further behind other research areas. Additional funding for research is critical to strengthening our food and agricultural systems, and research focused on the needs of BIPOC producers and communities is essential to advancing a more equitable sector. The following recommendations focus on ways to increase research that benefit BIPOC producers and communities.

i. Conduct and support agricultural research and education that helps to redress inequities in agriculture and food systems.

USDA's Research, Education, and Economics agency (REE) and its sub-agencies play a critical role in collecting, assessing, and disseminating information on the agricultural and food systems. To better serve BIPOC producers and communities, REE's Economic Research Service and the National Agricultural Statistics Service should prioritize research, education, and outreach that help to redress inequities in agriculture and food systems, including ongoing program evaluation, research on unmet needs, and research on demographic trends in rural America and in farming. In addition, the National Agricultural Statistics Service should add a question about ethnicity to the national agricultural census, to better portray the nuance of communities served by the Department and allow for the development of policies accounting for ethnic variation. The information garnered from the addition of such a question would help the Department and communities assess, for example, particular language access needs and develop culturally appropriate programmatic outreach with greater precision. And the Department should ensure collection of demographic data regarding recipients of commodity payments, crop insurance benefits, trade payments, conservation programs, and other USDA benefits.

USDA should also increase support for food and agriculture research benefiting BIPOC communities, including, for example, an examination of how CAFOs and slaughterhouses have adversely affected BIPOC communities, how USDA programs can better serve BIPOC communities, and the impact of USDA funding streams—both positive and negative—on BIPOC communities. And the Department should increase funds provided to historically Black colleges and universities, Tribal colleges and universities, and Hispanic-Serving Institutions, and ensure that research into climate solutions addresses the disproportionate impact of the climate crisis on historically underserved communities.

In addition to collecting data on CAFO impacts, USDA should ensure that such data is made publicly available. Though aggregation or anonymization of certain data may be necessary, the vast majority of this data should be available to the public. Not only is the public entitled to know how public funds are spent, but public availability of demographic data regarding recipients of USDA subsidies will allow researchers to study these programs and recommend further improvement, allow USDA and the public to monitor the Department's progress in improving racial equity, and help build support for USDA programs, in particular those that support BIPOC communities.

ii. Ensure that USDA research agencies are well staffed and diverse.

USDA's abrupt relocation in 2019 of two of its research agencies, the National Institute of Food and Agriculture and the Economic Research Service, from Washington, D.C. to Kansas City prompted mammoth numbers of affected staff to leave the agencies. The resulting hemorrhaging of scientific expertise has devastated USDA's research capacity, which had already diminished dramatically over the past several decades: Between 2003 and 2011, public funding for agricultural research fell from \$6 billion to \$4.5 billion after adjusting for inflation.⁶⁵ USDA should rapidly staff up its research agencies. As it does so, it should take care to fill roles with a research workforce that better reflects the full diversity of America and whose research interests, expertise, and experience will contribute to an understanding of the deep inequities that permeate food and agricultural production and ways to address them.

G. IMPLEMENT THE AMERICAN RESCUE PLAN IN A MANNER THAT ADVANCES EQUITY

The American Rescue Plan Act of 2021 (ARPA) appropriated sums "as may be necessary" for debt relief for up to 120 percent of outstanding debt for BIPOC and Hispanic farmers and ranchers, and set aside \$1 billion for additional aid for such farmers and ranchers. But delays in implementing the statute's debt relief provisions have frustrated BIPOC farmers and ranchers. BIPOC communities are also concerned that USDA's allocation of the \$1 billion in additional aid will occur without sufficient public input and engagement.

USDA should promptly address the detailed requests made by the Black Belt Justice Center and other groups in an April 9, 2021, letter addressed to Secretary Vilsack, including the following:

⁶⁵ See Mathew Clancy et al., U.S. Dep't of Agric., Econ. Res. Serv., *U.S. Agricultural R&D in an Era of Falling Public Funding* (Nov. 10, 2016), <https://www.ers.usda.gov/amber-waves/2016/november/us-agricultural-r-d-in-an-era-of-falling-public-funding/>.

- (1) **Immediately pay off all USDA direct, guaranteed, and storage facility loans of socially disadvantaged farmers.** After paying off this debt, USDA should also provide funding authorized by Section 1006 [of the ARPA] for tax advisors to assist farmers at no cost with issues related to their taxes and the debt forgiveness.
- (2) **Develop an inclusive implementation process rooted in a community-based participatory framework that values racial equity, respect, humility, shared decision making, and knowledge democracy.** USDA should provide numerous opportunities to obtain meaningful input directly from Black farmers and other farmers of color regarding the implementation process for the \$1B authorized by Section 1006 and for addressing the tax consequences of the debt forgiveness.
- (3) **Prioritize the restoration of Black farmers through financial compensation, land acquisition, and grantmaking for regenerative food and fiber re-entry and innovation.** Priority for funds not included in the set-asides for items 1 through 4 of Section 1006 [i.e., set-asides for outreach and assistance, land access, equity commissions, and research, education, and extension] should be given to item 5 of the section which will provide financial assistance to former farm loan borrowers that suffered related adverse actions or past discrimination or bias in the Department of Agriculture programs. Over the last two decades, thousands of Black farmers have passed away, robbed of the opportunity to pass generational wealth to their descendants. In compliance with the authorized use of the \$1B fund for related services, USDA should provide financial assistance to Black farmers and other farmers of color who lost their land as a result of USDA discrimination, collusion, and criminality.⁶⁶

H. ADVANCE POLICIES THAT REDUCE THE ADVERSE IMPACT THAT CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) HAVE ON NEIGHBORING COMMUNITIES OF COLOR

To protect BIPOC communities, USDA should work to reduce funding to CAFOs and disincentivize the formation of new CAFOs. CAFOs are disproportionately situated in BIPOC communities and the vast amounts of air, land, and water pollution they produce cause devastating impacts to these communities. Despite their deleterious impacts, CAFOs are well funded by USDA programs such as EQIP and through subsidies, loans, and other payments.

⁶⁶ Letter from Tracy Lloyd McCurty, Esq., Executive Director of the Black Belt Justice Center and Co-Organizer of the Black Farmers' Appeal, to Secretary Vilsack, U.S. Dep't of Agric. (April 8, 2021) ("Black Belt Justice Center Letter") (Attached as "Ex. 1").

USDA should promulgate regulations pursuant to the National Environmental Protection Act (NEPA) declaring that all USDA actions providing loan, grant, technical assistance, or other funds to construct, expand, or facilitate the operation of new or existing CAFOs are “major Federal actions significantly affecting the quality of the human environment.”⁶⁷ Accordingly, USDA should require its agencies to assess a CAFO’s impact on the environment and surrounding community and prepare an environmental impact statement (EIS), or an environmental assessment (EA) and a finding of no significant impact (FONSI), under NEPA in advance of and as a prerequisite to USDA’s providing such funds. In preparing the EIS or EA, USDA should consult with communities neighboring the CAFO or proposed CAFO and map localized environmental impacts. As discussed above, consistent with Executive Order 12,898, USDA should also rigorously examine the CAFO’s human health and environmental impacts on BIPOC and low-income communities during the application process.

As discussed above, consistent with Executive Order 12,898 on environmental justice, USDA should establish and implement guidance providing that before distributing any program benefits, USDA agencies should evaluate whether such support will contribute to adverse environmental health impacts on any communities of color or low-income populations, and if so, this should weigh heavily against provision of such funds. USDA should additionally direct the Natural Resources Conservation Service to reduce the amount of EQIP funds allocated to existing CAFOs, eradicate funding for new and expanding CAFOs, and increase and accelerate compliance requirements that CAFOs must meet to obtain EQIP funds.

I. ADVANCE EQUITY IN USDA-ADMINISTERED FEDERAL NUTRITION PROGRAMS AND NATIONAL FOOD SECURITY POLICIES

The food insecurity rate for Black and Hispanic households in the U.S. is about twice that of white households nationwide.⁶⁸ The percentage of Americans who are food insecure has also skyrocketed during the pandemic.⁶⁹ USDA must take steps to address equity within the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental

⁶⁷ 42 U.S.C. § 4332(C).

⁶⁸ See Christianna Silva, *Food Insecurity in the U.S. By the Numbers*, NPR (Sept. 27, 2020), <https://www.npr.org/2020/09/27/912486921/food-insecurity-in-the-u-s-by-the-numbers>; see also Helena Bottemiller Evich, *Stark Racial Disparities Emerge as Families Struggle to Get Enough Food* (July 6, 2020), <https://www.politico.com/news/2020/07/06/racial-disparities-families-struggle-food-348810>.

⁶⁹ See Brynne Keith-Jennings et al., *Number of Families Struggling to Afford Food Rose Steeply in Pandemic and Remains High, Especially Among Children and Households of Color*, Ctr. on Budget & Policy Priorities (Apr. 27, 2021), <https://www.cbpp.org/research/food-assistance/number-of-families-struggling-to-afford-food-rose-steeply-in-pandemic-and>.

Nutrition Program for Women, Infants, and Children (WIC), the Food Distribution Program on Indian Reservations (FDPIR), the Commodity Supplemental Food Program (CSFP), the Community Food Projects Competitive Grant Program (CFPCGP), and other federal nutrition programs. USDA should take the following actions to improve accessibility for Department-administered food and nutrition programs.

i. Improve the inclusivity of USDA, state, and local administration of federal nutrition programs.

BIPOC communities face multiple barriers to accessing federal nutrition program benefits for which they are eligible. This includes state requirements that participants apply for services in person coupled with the inaccessibility of program office locations. USDA should amend its implementing regulations to require options for federal nutrition program participants to apply for benefits online or over the phone in addition to mail, fax, and in person services. USDA should also require states to evaluate the locations of local offices responsible for reviewing and disbursing federal nutrition program applications and benefits to determine (1) whether offices are situated in transportation deserts, and (2) whether offices are sited proximately to high-poverty neighborhoods and communities. If any local office is inaccessible by public transportation and sited far from high poverty neighborhoods or communities, USDA should require states to relocate the local office (or to open a new one) to better serve BIPOC and low-income communities.

USDA should also take steps to promote food sovereignty and increase BIPOC communities' autonomy through the Department's administration of federal nutrition programs. USDA should incentivize nutrition program participants living on reservations and in Indian Country to purchase food connected with production on Tribal lands where appropriate to support Tribal producers, allow access to fresher foods, and ensure that food is produced and consumed locally and regionally. USDA should also direct Community Food Projects grant funds towards BIPOC communities and BIPOC-led organizations to increase such communities' food production, processing, and distribution capacities and to support the production and consumption of locally produced and culturally relevant foods.

ii. Support legislation that would expand eligibility requirements and total benefits for federal nutrition programs.

Restrictive eligibility requirements for federal nutrition programs prevent many members of BIPOC communities from participating in and enjoying the benefits of such programs. USDA should support legislation that would expand eligibility requirements for federal nutrition programs, including:

- Unambiguously providing that people with criminal convictions cannot be barred from obtaining federal nutrition assistance benefits,

- Permanently removing requirements that prevent certain unemployed persons from obtaining such benefits,
- Extending eligibility for such benefits to all noncitizens residing in the United States, and
- Providing that residents of Puerto Rico, American Samoa, and the Commonwealth of Northern Mariana Islands qualify for SNAP benefits.

USDA should also support a permanent increase in benefits for all federal nutrition assistance programs, including SNAP, WIC, FDPIIP, and CSFP. Research indicates that under typical SNAP caps, a quarter of participants deplete the entirety of their monthly benefits within one week, while the majority of participants do so within two weeks. Tribal and rural participants, participants living in food deserts, and participants in high-cost areas are also often forced spend more than the average participant on food purchased through federal nutrition assistance programs. The Department should additionally call on Congress to extend and augment short-term increases to nutrition assistance benefits authorized during the pandemic.

Respectfully submitted:

Earthjustice

Asian American Farmers Association

Amy Cahn, Acting Director of the Environmental Justice Clinic at Vermont Law School

[Affiliation is for Identification Purposes Only]

Black Belt Justice Center

Center for Biological Diversity

Clean Water Action

F.A.R.M.S.

Farmworkers Association of Florida

Funders For Regenerative Agriculture

Harvard Law School Food Law & Policy Clinic

New Mexico Environmental Law Center

Pesticide Action Network

Rural Coalition Network

Sacoby Wilson, Associate Professor & Director, Center for Community Engagement,

Environmental Justice, and Health (CEEJH) Maryland Institute for Applied Environmental

Health Socially Responsible Agricultural Project

Southern Environmental Law Center

Waterkeeper Alliance

West End Revitalization Association (WERA)

West Oakland Environmental Indicators Project