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Racial and Ethnic Equity in U.S. Agriculture: Selected Current Issues

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SUMMARY

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Issues concerning racial and ethnic equity in the United States have increased in profile among the general public, policymakers, and Members of Congress. The media has reported on racial inequity across various sectors and industries, including agriculture. Similarly, Congress has drawn attention to the challenges facing agricultural producers of color (i.e., producers who identify as a race or ethnicity other than White) through hearings, legislation, and oversight of federal agencies.

Over 260,000 Black, Native American, Asian, multiracial, and other producers of color are in the United States, representing 8% of all U.S. producers. They operate over 193,000 farms on more than 94 million acres of farmland, representing 10% of total farmland. The 116th and 117th Congresses have taken certain actions focused on enhancing equity for producers of color in the United States in the areas of agricultural credit; farmland ownership; U.S. Department of Agriculture (USDA) research, extension, and education; and as concerns civil rights complaints against USDA. As Congress considers successor legislation to the 2018 farm bill (P.L. 115-334), it may weigh additional actions regarding racial equity in the agricultural sector.

The USDA Farm Service Agency (FSA) is the primary agency providing loans to family-sized farms unable to obtain credit elsewhere. Between 1990 and 2010, USDA settled legal claims that it discriminated on the basis of race or national origin in its loan programs administered by the FSA. Some stakeholders contend that USDA continues to discriminate against producers of color who apply for FSA loan programs. The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) includes policies to address agricultural credit issues. In addition, the House-passed Build Back Better Act (BBBA; H.R. 5376) and other legislation introduced in the 117th Congress also would address concerns about access to agricultural credit for producers of color.

The Government Accountability Office (GAO), USDA Office of Inspector General (OIG), and U.S. Office of Special Counsel have found deficiencies in USDA's documentation and processing of civil rights complaints in reports and audits at various times since 1999. ARPA provided funding to create an equity commission to analyze how USDA's policies and systems may contribute to systemic discrimination, barriers to access, or both. In February 2022, Congress held a hearing to review a report by OIG on USDA's oversight of civil rights complaints. Congress could direct USDA to take administrative actions to better address civil rights complaints.

Producers of color own over 73 million acres of farmland and rent or lease over 21 million acres of farmland. Some stakeholders assert that many Black and Native American producers are impacted by heirs' property issues. *Heirs' property* is family-owned land that is passed down without a will or deed to prove ownership. The heirs have the right to use the property but do not have a clear ownership title to the property. Without a legal title, heirs operating these farms may have difficulty accessing credit from commercial lenders, participating in certain USDA programs, and improving the land they control. Congress established the USDA Heirs' Property Relending Program through the 2018 farm bill and provided authorization of appropriations until FY2023. Congress may consider reauthorizing the appropriations for the USDA Heirs' Property Relending Program. It also could consider whether to authorize USDA to issue grants to address farmland ownership issues.

USDA's National Institute of Food and Agriculture offers support for research, extension, and education through the land-grant university (LGU) system—a national network of public colleges and universities. There are three types of LGUs: historically Black 1890 Institutions, Tribal 1994 Institutions, and 1862 Institutions that predominately enroll White students. Some stakeholders assert that 1890 and 1994 Institutions do not receive equitable funding compared with 1862 Institutions. In ARPA, Congress provided additional funding for 1890 and 1994 Institutions. BBBA and other introduced bills would address research infrastructure at 1890 and 1994 Institutions, and the 117th Congress held a hearing to review the state of 1890 Institutions and associated federal investments. Congress also could consider requesting additional reporting and analysis on funding equity among the three types of LGUs, as well as concerns about nonfederal matching fund requirements for 1890 Institutions, and on whether to establish 1994 capacity funding programs.

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Introduction

Issues concerning racial and ethnic equity in the United States have increased in profile among the general public, policymakers, and Members of Congress.[1] The media has reported on racial inequity across various sectors and industries, including agriculture.[2] Similarly, Congress has drawn attention to the challenges facing Black farmers and ranchers and other producers of color through hearings, legislation, and oversight of federal agencies.[3]

Terminology

Producers of Color. In this report, the term *producers of color* refers to farmers and ranchers who identify as Black, Native American, Asian, Hispanic, Latino, Spanish, or multiracial. The term *socially disadvantaged farmer or rancher (SDFR)* is used by the U.S. Department of Agriculture (USDA) to refer to a farmer or rancher who is a member of a group whose members have been subjected to racial or ethnic discrimination (7 U.S.C. §2279) and to farmers or ranchers who have been subjected to gender discrimination (7 U.S.C. §2003). Gender discrimination is beyond the scope of this report; therefore, *producers of color* is used in this report.

Hispanic and Latino Producers. The term *Hispanic and Latino producers* refers to farmers and ranchers of Hispanic, Latino, and Spanish origin. In following the approach used in the USDA National Agriculture Statistics Service's Census of Agriculture, Hispanic and Latino is considered an ethnicity rather than a racial category in this report.

Racial Equity. The term *racial equity* refers to the consistent and systematic fair, just, and impartial treatment of all individuals with respect to race.

According to CRS analysis of the 2017 agricultural census, the most recent available, more than 260,000 producers of color were in the United States in 2017, representing 8% of all U.S. farmers (**Table 1**).[4] They operated more than 193,000 farms on over 94 million acres of farmland that was owned, rented, and leased, representing 10% of the total farmland. Of producers of color, producers who identified as Hispanic and Latino (non-White and White) had the most farms (more than 86,000). Native Hawaiian and other Pacific Islander producers had the fewest farms (more than 4,000). Hispanic and Latino producers received the highest amount of government

[1] Pew Research Center, June 12, 2020; Juliana Horowitz et al., *Amid National Reckoning, Americans Divided on Whether Increased Focus on Race Will Lead to Major Policy Change*, Pew Research Center, October 6, 2020; Carroll Doherty et al., "Deep Divisions in Americans' Views of Nation's Racial History – And How to Address It," Pew Research Center, August 12, 2021; and U.S. Congress, House Committee on Agriculture, *A Hearing to Review the State of Black Farmers in the U.S.*, hearing, March 25, 2021.

[2] For examples, see Aris Folley, "Fighting for Relief for Black Farmers," *The Hill*, February 7, 2022; Ximena Bustillo, "'Rampant Issues': Black Farmers Are Still Left Out at USDA," *Politico*, July 5, 2021; and Philip Brasher, "GAO: Underserved Farmers Got Small Share of Trade Aid," *Agri-Pulse*, February 3, 2022.

[3] See, for example, U.S. Congress, House Committee on Agriculture, *Hearing to Review the State of Black Farmers in the U.S.*, hearing, 117th Cong., 1st sess., March 25, 2021 (Washington, DC: GPO, 2021) which explored obstacles facing Black farmers trying to access USDA farm programs. Legislation proposed or passed in the 117th Congress includes The Justice for Black Farmers Act of 2021 (S. 300) which would direct the USDA to provide assistance to address discrimination and disparities in the agricultural sector through a USDA equity commission, Farm Conservation Corps, and funding for historically Black colleges and universities; The Farm Subsidy Transparency Act (H.R. 3794) which would direct the Secretary of Agriculture to track the distribution of all farm subsidies by race, gender, and size of farm operation; and the American Rescue Plan Act (P.L. 117-2) which directs USDA to provide farm debt forgiveness to socially disadvantaged farmers and ranchers, and provides funding for USDA to address historical discrimination and disparities in the agriculture sector.

[4] USDA National Agricultural Statistics Service (NASS), *2017 Census of Agriculture*, Table 1, "Historical Highlights: 2017 and Earlier Census Years," Table 11, "Selected Characteristics of Irrigated and Non-irrigated Farms: 2017 and 2012," Table 61, "Selected Farm Characteristics by Race: 2017," "Race/Ethnicity/Gender Profile," and tabulations from NASS for CRS.

payments on average ($15,492), while Black producers received the lowest amount of government payments on average ($7,108).[5] Asian producers had the highest farm income on average per farm ($111,319), while Black producers had the lowest farm income on average per farm ($3,509).

This report reviews actions taken by the 116th and 117th Congresses to enhance equity for producers of color in the United States in the areas of agricultural credit; USDA civil rights complaints; farmland ownership; and USDA research, education, and extension.

Table 1. U.S. Producer and Farm Characteristics by Race and Ethnicity

Race and Ethnicity	No. of Producers	No. of Farms	Farmland Owned/Rented (acres)	Farm Income (avg. per farm)	Government Payments (avg. per farm)
Race					
American Indian/Alaskan Native	79,198	60,083	58,749,543	$8,577	$12,601
Asian	25,310	18,338	2,931,365	$111,319	$14,000
Black	48,697	35,470	4,673,140	$3,509	$7,108
Native Hawaiian/Other Pacific Islander	5,296	4,341	1,043,936	$24,867	$12,704
Ethnicity					
Hispanic/Latino	112,451	86,278	32,079,910	$45,226	$15,492
Producers of Color	260,751	193,494	94,129,419	$32,341	$11,764
White Producers	3,139,083	1,848,726	806,088,157	$44,174	$14,004
All U.S. Producers	3,399,834	2,042,220	900,217,576	$43,053	$13,906

Source: Created by CRS using USDA, National Agricultural Statistics Service (NASS), *2017 Census of Agriculture*, Table 1, "Historical Highlights: 2017 and Earlier Census Years," Table 11, "Selected Characteristics of Irrigated and Non-irrigated Farms: 2017 and 2012," Table 61, "Selected Farm Characteristics by Race: 2017," "Race/Ethnicity/Gender Profile," and tabulations from NASS for CRS.

Notes: *Race* and *Ethnicity* are independent classifications. All producers are represented in at least one racial category, and some producers also are included in the ethnicity category of *Hispanic/Latino*. The U.S. Census of Agriculture allows producers to select one or more racial and ethnic category; as a result, the total number of producers who identify as a race or ethnicity (270,952) is more than the total number of producers of color, which counts each producer once (260,751). Producers who identify as Hispanic/Latino in addition to non-White, White, or Spanish are included in the *Hispanic/Latino* racial category. Producers who identify as Black or African American are included in the *Black* racial category. *Producers of Color* include farmers and ranchers who identify as a race other than White, and each producer is counted once even if the individual self-identifies as more than one race. *White Producers* include producers who identify as White and do not identify as another race or as Hispanic or Latino. *Farmland Owned/Rented* includes land that is owned, rented, and leased. As farms may be operated by more than one producer, there are more producers than the total number of farms. For *Farm Income*, data are the average net cash farm income of the operations per farm, a measure of farm profitability. For *Government Payments*, data are the average federal government payments received from all USDA programs for farms receiving payments.

[5] Black producers include producers that identify as Black or African American.

Agricultural Credit

Overview

The federal government has a long history of assisting farmers with obtaining loans for farming. Government intervention in otherwise private lending markets has been justified by lack of competition, insufficient lending resources in certain rural areas, and a desire by Congress to target lending to various groups, such as small farms, beginning farmers, or socially disadvantaged farmers.[6]

The federal government has supported a variety of mechanisms to assist farmers in obtaining farm loans, ranging from government agencies to government-sponsored enterprises. The USDA Farm Service Agency (FSA), as a federal agency, has the greatest degree of government engagement. In the overall market for agricultural credit, FSA is a relatively small lender based on market share, providing about $13 billion of direct loans (about 3% of the $441 billion market for farm debt at the end of 2020) and $17 billion of loan guarantees (about 4% of the market).[7] Other agricultural lenders include the Farm Credit System, a government-sponsored enterprise with a federal charter (44% market share); commercial banks (36% market share); individuals and nontraditional lenders (10% market share), life insurance companies (4% market share), and Farmer Mac, another privately held government-sponsored enterprise (2% market share).[8] FSA has a key role in making direct farm ownership and operating loans to family-sized farms that are unable to obtain credit elsewhere. FSA also guarantees timely payment of principal and interest on qualified loans made by other lenders who might not have lent to certain farms without the government guarantee.

For individual borrowers, FSA loan limits are set in the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. §§1922 et seq.): $400,000 for direct farm operating loans and $600,000 for direct farm ownership loans. For guaranteed loans, the limit is $1.825 million (adjusted for inflation in FY2022). The standard guarantee ratio is 80%-90% of the amount borrowed, depending on the borrower's credit risk, but the guarantee ratio is 95% for borrowers who are socially disadvantaged or beginning farmers.[9]

Congress enacted provisions in 1988 to target USDA loans to *socially disadvantaged farmers or ranchers* (SDFRs). This term originally was defined as those who have been subjected to racial or ethnic prejudice because of their identity as members of socially disadvantaged groups without regard to their individual qualities (7 U.S.C. §2003).[10] In 1992, Congress expanded the definition of SDFR for the farm loan program to include gender. The target loans are to be implemented at

[6] For background on agricultural credit, see CRS Report R46768, *Agricultural Credit: Institutions and Issues*.

[7] USDA, Farm Service Agency (FSA), "FY2020 Farm Loan Programs Servicing Data," at https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/program-data/index; and USDA, Economic Research Service (ERS), "Farm Sector Balance Sheet," December 1, 2021, at https://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics/data-files-u-s-and-state-level-farm-income-and-wealth-statistics.

[8] Farmer Mac is a privately funded secondary market for agricultural loans that was created by Congress in 1987 as a government-sponsored enterprise. It purchases qualified loans and may pool and sell them to investors as securities or hold them in its own portfolio. See CRS In Focus IF11595, *Farmer Mac and Its Board Members*.

[9] For example, a loan having an 80% guarantee generally means that if the borrower defaults, the guarantor (in this case, FSA) would reimburse the private lender after the lender bears a 20% loss.

[10] Agricultural Credit Act of 1987 (P.L. 100-233, §617); and 7 U.S.C. §2003. For more information on socially disadvantaged farmers or ranchers (SDFRs), see CRS Report R46727, *Defining a Socially Disadvantaged Farmer or Rancher (SDFR): In Brief*.

the county level based on local demographic information for the population of producers.[11] USDA publishes performance measures of annual direct and guaranteed lending to socially disadvantaged producers, including women, each year.[12] Over FY2017-FY2019, about 17% of FSA direct loans and 10% of FSA guaranteed loans were provided to socially disadvantaged borrowers. The portion for racial and ethnic groups is not separable from gender in these FSA data.

A Government Accountability Office (GAO) report in 2019 observed that SDFRs had proportionately fewer FSA direct and guaranteed loans than nonsocially disadvantaged producers.[13] GAO found that SDFRs face difficulties in obtaining farm loans and highlighted the historic, systemic discrimination against such farmers. In its role as a lender, USDA is associated with past legal settlements arising from claims of discrimination.[14] In these cases, Black, Hispanic, and Native American farmers alleged that USDA discriminated against them when they tried to participate in USDA programs.[15]

Selected Stakeholder Concern: Ongoing Discrimination

Some stakeholders contend that producers of color continue to experience discrimination by USDA when applying for loans, particularly by FSA staff at county offices and FSA county committees.[16] FSA county committee members, elected by local producers, help to deliver FSA farm programs.[17] Some Black farmers and advocates have alleged that discrimination by FSA staff and county committee members has involved mishandled paperwork, failure to process loan applications, and poor customer service.[18] Other observers contend that the reasons producers of color may have experienced difficulty obtaining farm loans are because, on average, they tend to have weaker credit histories compared with other farmers or tend to have lower-revenue farm management plans compared with other farm operations.[19]

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[11] The USDA Office of General Counsel determined in 2007 that the targets apply only to the direct loan program. In practice, the Government Accountability Office (GAO) has found that FSA allots guaranteed loan funds for socially disadvantaged farmers based on demand and funding availability. See GAO, *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited*, GAO-19-539, July 2019, p. 20.

[12] USDA, FSA, "Program Data," updated annually, at https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/program-data.

[13] The 2018 farm bill (P.L. 115-334, §5416) mandated the GAO study cited in footnote 11 (GAO-19-539, July 2019).

[14] For more information, see CRS Report R46969, *Racial Equity in U.S. Farming: Background in Brief*.

[15] Stephen Carpenter, "The USDA Discrimination Cases: Pigford, In re Black Farmers, Keepseagle, Garcia, and Love," *Drake Journal of Agricultural Law*, vol. 17, no. 1 (Spring 2012), pp. 1-35.

[16] Testimony of National Black Farmer Association President John W. Boyd, Jr., in U.S. Congress, House Committee on Agriculture, *A Hearing to Review the State of Black Farmers in the U.S.*, hearing, March 25, 2021; and GAO, *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62, October 2008, Appendix VI.

[17] USDA, FSA, "County Committee Elections," at https://www.fsa.usda.gov/news-room/county-committee-elections/index.

[18] Testimonies of National Black Farmer Association President John W. Boyd, Jr., and Earrak Cotton, owner, and Arnetta Cotton, co-owner and program facilitator of Kingdom Community Development Services, in U.S. Congress, House Committee on Agriculture, *A Hearing to Review the State of Black Farmers in the U.S.*, hearing, March 25, 2021. For prior similar views from stakeholders, see GAO, *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62, October 2008, Appendix VI.

[19] GAO interviewed representatives from some SDFR advocacy groups, federal depository institutions, and lending industry associations. GAO included their feedback in the following report: GAO, *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited*, GAO-19-539, June 11, 2019, pp.

Recent Congressional Actions

The American Rescue Plan Act (ARPA; P.L. 117-2) contains a farm loan debt forgiveness provision for socially disadvantaged farmers that was modeled after S. 278, which was introduced in the Senate in February 2021. The ARPA debt forgiveness provision (§1005) required USDA to make payments to SDFRs equal to 120% of certain outstanding farm loan balances as of January 1, 2021. The ARPA provision defined *eligible borrowers* as SDFRs based on race and ethnicity.[20] Eligible loans included FSA direct and guaranteed loans and USDA Farm Storage Facility Loans. The payments were intended to retire loan balances, with the excess of payments over 100% to cover tax liabilities and bank fees associated with debt forgiveness.[21] The Congressional Budget Office (CBO) estimated the debt forgiveness provision would cost $4 billion.[22]

USDA issued a Notice of Funds Availability for direct loan forgiveness in May 2021 and began to collect applications.[23] USDA planned to issue a subsequent notice for guaranteed and other loans.[24] However, various courts blocked implementation of the ARPA debt forgiveness program after the relief was found to be race-based and not narrowly tailored to meet a compelling state interest (see CRS Legal Sidebar LSB10631, *The American Rescue Plan Act: Equal Protection Challenges*). Legal restrictions on USDA making payments have included a temporary restraining order in Wisconsin (*Faust v. Vilsack*), a preliminary injunction in a Florida case (*Wynn v. Vilsack*), and a class action suit certified and pending in Texas (*Miller v. Vilsack*).[25]

After the ARPA debt forgiveness payments were blocked, the House passed the Build Back Better Act, Title I (BBBA; H.R. 5376, §12101) of which would rescind and replace the ARPA provision.[26] The BBBA provision is tailored to "economically distressed borrowers" instead of

24-26.

[20] USDA follows two definitions of *socially disadvantaged farmers*. One defines socially disadvantaged farmers based on racial and ethnic minorities (7 U.S.C. §2279(a)); the other includes gender (7 U.S.C. §2003).

[21] Federal, state, or local tax provisions may treat debt forgiveness as taxable income. Lenders may charge fees associated with early repayment of loan balances.

[22] U.S. Congressional Budget Office (CBO), *Estimated Budgetary Effects of H.R. 1319, American Rescue Plan Act of 2021*, March 10, 2021, at https://www.cbo.gov/publication/57056. USDA later estimated that between 11,000 and 13,000 individuals would be eligible to receive direct loan forgiveness. See Laura Reiley, "USDA to start debt forgiveness and payouts to some 13,000 Black, Hispanic and other minority farmers in June," *Washington Post*, May 21, 2021).

[23] USDA, "Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)," 86 *Federal Register* 28329, May 26, 2021, at https://www.govinfo.gov/content/pkg/FR-2021-05-26/pdf/2021-11155.pdf. See also USDA, "American Rescue Plan Debt Payments" at https://www.farmers.gov/loans/american-rescue-plan.

[24] Some lenders in the guaranteed loan program indicated a likelihood of financial losses from early repayment of loans due to expected lost income and portfolio adjustments. See Alan Rappeport, "Banks Fight $4 Billion Debt Relief Plan for Black Farmers," *New York Times*, May 21, 2021, at https://www.nytimes.com/2021/05/19/us/politics/black-farmers-debt-relief.html.

[25] National Agricultural Law Center, "Judge Certifies Two Classes in Lawsuit Challenging Minority Debt Relief Payments," August 3, 2021, at https://nationalaglawcenter.org/judge-certifies-two-classes-in-lawsuit-challenging-minority-debt-relief-payments/.

[26] For the text of H.R. 5376 as modified by the Committee on the Budget and passed by the House, see U.S. Congress, House Committee on Rules, *Text of* H.R. 5376, *Build Back Better Act*, committee print, 117th Cong., 1st sess., November 3, 2021, CP-117-18.

being based on race and ethnicity.[27] The CBO estimates the BBBA plan would provide more debt relief than the ARPA provision—$11.7 billion made up of two parts:[28]

1. such sums as necessary, estimated to be $10.7 billion, to forgive USDA direct loans—(a) either in full for economically distressed borrowers or, (b) for borrowers not meeting economically distressed criteria, up to $150,000 reduced by payments from the Coronavirus Food Assistance Program (CFAP) and Market Facilitation Program (MFP) from 2018 to 2020; and
2. $1 billion of loan modifications for "at-risk" borrowers, using USDA's authority to reduce or write-off direct or guaranteed FSA loans.[29]

Most socially disadvantaged farmers with FSA debt targeted for relief under the ARPA provision likely remain eligible under the BBBA provision targeting economically distressed farmers.[30] The proportion of debt retired may be higher for socially disadvantaged borrowers based on individual economic qualifications. In contrast, the $1 billion portion of the BBBA relief package for guaranteed loan modifications may not reduce those loans as much as the ARPA provision for guaranteed loans of socially disadvantaged farmers. The BBBA provision would not provide payments to cover any tax liabilities or fees from debt forgiveness.

In addition to debt relief, BBBA would replace other ARPA assistance (§1006, $1.01 billion) for socially disadvantaged groups and reallocate it for "underserved farmers" (§12102, $1.384 billion). The subdivision of these BBBA funds would be more specific than in ARPA. It would provide

- (a) $750 million for financial assistance (up to $500,000 individually) to farmers who have experienced discrimination in USDA lending programs;
- (b) $200 million for land loss assistance grants and loans for heirs' property and fractionated land issues (see "Selected Stakeholder Concern: Heirs' Property");
- (c) $200 million for outreach, mediation, training, cooperative development, and technical assistance for *underserved farmer*s (defined to include veterans, limited resource farmers, beginning farmers, and farmers living in high poverty areas);
- (d) $189 million for research, extension and scholarship support for certain minority-serving institutions of higher education; and
- (e) $10 million to establish equity commissions to address racial equity issues in USDA.

[27] *Economically distressed borrowers* is defined in the Build Back Better Act (BBBA) by several factors, including being 90 days delinquent, owing more interest than principal, undergoing bankruptcy or foreclosure, receiving a farm loan program disaster set-aside during the Coronavirus Disease 2019 (COVID-19) pandemic (see CRS Insight IN11415, *COVID-19 and USDA Farm Loan Flexibilities*), engaging in certain debt restructuring, or farming in zip codes or counties with more than 20% poverty or on land held by an Indian Tribe or Indian.

[28] CBO, "Estimated Budgetary Effects of Title I, Committee on Agriculture, H.R. 5376, the Build Back Better Act As Posted on the Website of the House Committee on Rules on November 3, 2021 (Rules Committee Print 117-18)," November 15, 2021, at https://www.cbo.gov/publication/57618.

[29] *At-risk borrowers* is defined in BBBA to be at the Secretary of Agriculture's discretion, using factors such as whether a borrower is a limited resource farmer (e.g., low income or low wealth) and the amount (or, in some cases, the absence) of payments received by the borrower under the Coronavirus Food Assistance Program (CFAP).

[30] The CBO score of $10.7 billion of debt forgiveness for FSA direct loans implies that more than 75% of the $13.6 billion FSA direct loan portfolio may be retired. See FSA, "Direct Loan Executive Summary," at https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/program-data.

Together, BBBA Section 12101 and Section 12102 would provide $13.06 billion of support ($11.7 billion of debt relief for economically distressed borrowers and $1.4 billion of financial assistance, outreach, mediation, and training for underserved farmers). The incremental cost of these provisions in BBBA is $7 billion, after adjusting for the $6 billion that was provided, rescinded, and repurposed from ARPA.[31]

In addition to the BBBA and ARPA provisions, Members introduced several other bills to address agricultural credit issues in the 117th Congress.

- S. 278. The Emergency Relief for Farmers Act of 2021 proposed to offer $4 billion of debt relief to socially disadvantaged producers who had FSA direct and guaranteed loans.
- S. 300/H.R. 1393. The Justice for Black Farmers Act of 2021 would have created a separate bank to offer loans and assistance for socially disadvantaged farmers. In addition, the bill would provide oversight of the FSA County Committees and create an equity commission to provide recommendations for reforming the County Committees.
- S. 2023. The Relief for America's Small Farmers Act was introduced in the 117th Congress with an eligibility limit based on adjusted gross income, and would provide up to $10 billion of total debt relief.[32]

Considerations for Congress

If Congress chooses to address stakeholder concerns, it may choose to do so through legislation, funding decisions, or oversight activities.

- **Modify farm loan terms in the next farm bill.** The Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334) generally expires in 2023; at that time, Congress typically would enact a new farm bill.[33] Farm loan provisions are permanently authorized in the Consolidated Farm and Rural Development Act, with the exception of the authorization for appropriation. Periodic farm bills have been a vehicle for making marginal changes to farm loan terms or qualifications criteria.
- **Consider whether to apply new eligibility criteria in the next farm bill.** Recent assistance for SDFRs in ARPA and revisions proposed in BBBA may influence the next farm bill debate. BBBA uses the terms *economically distressed* and *at-risk* for farmers, both of which would be new eligibility criteria in the farm loan program.
- **Consider impacts of ARPA/BBBA loan forgiveness.** Farm bills usually address qualifications for future loans rather than reducing debt or modifying the terms of existing loans. From an economic and policy perspective, loans are made with an expectation of being repaid; forgiving debt for a group, such as in ARPA or

[31] See Table 1 in CRS In Focus IF11988, *Build Back Better Act: Agriculture and Forestry Provisions*.

[32] In the 116th Congress, S. 3602/H.R. 6683 would have forgiven up to $250,000 for small farmers to relieve general financial burdens without regard to race or ethnicity.

[33] See CRS Report R45210, *Farm Bills: Major Legislative Actions, 1965-2018*.

BBBA, may change producers' expectations for needing to repay future loans.[34] Likewise, such debt forgiveness may influence private lenders' willingness to participate in USDA loan guarantees and their expected profits.

- **Address equity commission recommendations.** In considering the next farm bill, or other legislation, Congress may have the opportunity to consider recommendations made by equity commissions created by ARPA or that would be established by BBBA.

USDA Civil Rights Complaints

Overview

Responsibility for civil rights complaints at USDA is divided among the Office of the Assistant Secretary for Civil Rights (OASCR), which has overall responsibility for enforcement of applicable civil rights laws and regulations, and offices within each mission area or agency within USDA.[35] OASCR processes two types of complaints—equal employment opportunity (EEO) complaints and program complaints. EEO complaints are complaints made by USDA employees or job applicants related to alleged discrimination in hiring or employment decisions. Program complaints are complaints made by USDA program participants related to alleged discrimination in USDA's administration of its programs. Complaint data are available for FY2014 to FY2020, excluding FY2017 (**Table 2**).

Table 2. USDA Civil Rights Complaints

Complaint Type	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020
Program Complaints							
Total Complaints	552	665	797	N/A	754	689	643
Complaints Closed	183	247	248	N/A	329	297	344
Average Processing Time	N/A	837 days	780 days	N/A	1,030 days	989 days	895 days
EEO Complaints							
Total Complaints	1,419	1,387	1,357	N/A	1,371	1,271	1,169
Complaints Closed	529	493	498	N/A	543	476	529
Average Processing Time	770 days	802 days	711 days	N/A	633 days	683 days	686 days

Source: Office of the Assistant Secretary for Civil Rights, *Section 14010 Report of Civil Rights Complaints, Resolutions, and Actions*, FY2016, FY2019, and FY2020. CRS was unable to locate data for FY2017.

Notes: EEO = Equal Employment Opportunity. N/A = data not publicly available for FY2017, nor after FY2020. *Total complaints* includes new complaints filed and open complaints filed in prior years.

[34] The farm loan program already has various borrower protections and forbearance provisions that are based on individual financial circumstances.

[35] Mission areas typically comprise multiple agencies. For example, the Farm Production and Conservation mission area comprises USDA's Farm Service Agency, Natural Resources Conservation Service, and Risk Management Agency. USDA, "Mission Areas," at https://www.usda.gov/our-agency/about-usda/mission-areas.

Selected Stakeholder Concern: Complaint Resolution Process

GAO, the USDA Office of Inspector General (OIG), and the U.S. Office of Special Counsel have found deficiencies in USDA's documentation and processing of civil rights complaints in reports and audits at various times since 1999.[36] For example, a 2021 OIG audit found that OASCR did not process civil rights program complaints in a timely manner. The 2021 OIG audit also found that 9 of the 28 complaint determinations and closures that OIG reviewed were not adequately processed and supported.

In 2008, GAO found that OASCR provided divergent data on its backlog of discrimination complaints.[37] In June 2007, OASCR reported to a congressional subcommittee that it had a backlog of 1,275 civil rights complaints to be processed at the end of FY2005. One month later, OASCR reported in a USDA report that it had 404 cases to be processed by the end of FY2005. GAO stated in its audit report, "The lower numbers reported to the public were not qualified and provided a more favorable impression than the data reported to the subcommittee."[38]

Also in its 2008 report, GAO found that OASCR failed to process civil rights complaints in a timely manner, which in some cases negatively affected the producers involved.[39] By regulation, there is a two-year limit to process certain claims; USDA did not process certain claims within that time frame.[40] In the cases when USDA's processing time extends beyond the two-year time limit, USDA may be unable to compensate farmers who have experienced discrimination. In one complaint case involving American Indian farmers of the Fort Berthold Reservation in North Dakota, GAO found that USDA had failed to process the complaint for over 18 years and some of the farmers in that case had died awaiting a decision.

In addition, GAO stated in its 2008 report that some OASCR employees have feared retaliation for reporting program and management-related issues or questioning management's actions. In 2017, the U.S. Office of Special Counsel found that OASCR also failed to process USDA employees' EEO complaints in a timely manner.[41]

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[36] USDA, Office of the Inspector General (OIG), *USDA Oversight of Civil Rights Complaints*, Audi Report 60601-0001-21, September 22, 2021, pp. 1-83; GAO, *USDA: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62, October 22, 2008, pp. 1-55; USDA OIG, *Review of the Office of the Assistant Secretary for Civil Rights' Oversight of Agreements Reached in Program Complaints*, Audit Report 60601-0001-23, August 9, 2012, pp. 1-25; Carolyn N. Lerner, OIG, "*Letter to the President Re: OSC File Nos. DI-14-2558, DI-14-4627, and DI-15-0001,"* letter to the President, May 18, 2015; GAO, *USDA: Problems Continue to Hinder the Timely Processing of Discrimination Complaints*, RCED-99-38, January 29, 1999, pp. 1-37.

[37] GAO, *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights*, GAO-09-62, October 2008.

[38] Ibid., p. 12.

[39] Ibid.

[40] A legal memorandum from the U.S. Department of Justice's Office of Legal Counsel dated January 29, 1998, stated, that "31 U.S.C. §3702 does not authorize the Department of Agriculture to pay compensatory damages in an administrative settlement of an ECOA claim if ECOA's two year statute of limitations has run." ECOA claims refer to claims filed under the Equal Credit Opportunity Act (15 U.S.C. §§1691 et seq.). The legal memorandum is available at https://www.justice.gov/olc/opinion/statute-limitations-and-settlement-equal-credit-opportunity-act-discrimination-claims.

[41] Adam Miles, Acting Special Counsel, U.S. Office of the Special Counsel, "Letter to the President, Re: OSC File Nos. DI-16-2101 and DI-16-2552," June 22, 2017.

Faculty at the Harvard Law School's Food Law and Policy Clinic, in a 2021 issue brief, expressed concerns about USDA's handling of civil rights complaints,[42] including the following:

- Deficiencies in the complaints review process persist, which may deter individuals from filing claims, prevent claims investigations, or both.
- USDA continues to foreclose on farms belonging to producers who are awaiting decisions on their discrimination complaints.
- USDA's Office of General Counsel continues to be involved in complaint cases.
- Civil rights compliance reviews of USDA agencies are behind schedule.

These researchers also made recommendations they assert would strengthen the integrity of the complaints review process. These recommendations include allowing for fast-tracking and prima facie findings of discrimination,[43] reestablishing the Program Complaints Task Force,[44] and increasing training and resources for OASCR investigators.

Recent Congressional Actions

During a March 2021 House Agriculture Committee hearing, Black farmers and their advocates shared their experiences of discrimination and suggested possible solutions to address the effects of discrimination and strategies to improve the profitability and sustainability of Black farmers.[45] The Secretary of Agriculture shared USDA's existing plans to overcome systemic racism and known USDA barriers directed at Black farmers and other socially disadvantaged farmers and ranchers. USDA uses the term *socially disadvantaged farmer or rancher (SDFR)* to refer to a farmer or rancher who is a member of a group whose members have been subjected to racial or ethnic discrimination (7 U.S.C. §2279).

In January 2021, President Biden signed an executive order on "Advancing Racial Equity and Support for Underserved Communities through the Federal Government."[46] The order required federal agencies, including USDA, to assess their programs and policies to determine whether underserved communities and their members face barriers in accessing benefits and opportunities available through agencies' policies and programs, and to report their findings to the Assistant to the President for Domestic Policy.

Section 1006 of the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) appropriated $1.01 billion to USDA to address socially disadvantaged farmers, ranchers, and forest landowners through outreach, loan and grant programs, research, extension, education, and other financial

[42] Emma Scott et al., *Supporting Civil Rights at USDA: Opportunities to Reform the USDA Office of the Assistant Secretary for Civil Rights*, Harvard Law School Food Law and Policy Clinic, Issue Brief (April 2021), pp. 1-22.

[43] Fast-tracking would allow for expedited review of certain claims, such as those involving potential loss of land or farms. Under a prima facie finding of discrimination, the agency could presume that discrimination took place, shifting the evidentiary burden to the accused party from the accuser. For additional information, see U.S. Department of Justice, *Title VI Legal Manual, Section VI-Proving Discrimination-Intentional Discrimination*, April 22, 2021.

[44] In 2009, USDA created the Program Complaints Task Force to review program discrimination complaints filed with OASCR between FY2000 and FY2008. In three years, the task force had reviewed more than 14,000 claims submitted from July 1, 1997, to October 31, 2009. For additional information, see FY2013 USDA Budget Explanatory Notes, Office of Civil Rights, at https://www.usda.gov/sites/default/files/documents/09ocr2013notes.pdf.

[45] U.S. Congress, House Committee on Agriculture, "A Hearing to Review the State of Black Farmers in the U.S.," Committee Report Serial No. 117-3, March 25, 2021.

[46] Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities through the Federal Government," 86 *Federal Register* 7009, January 20, 2021.

assistance. The funds are to remain available until expended. Congress designated a portion of the $1.01 billion as follows:

- Not less than 5% of funds ($50.5 million) to provide outreach, mediation, financial training, capacity building training, cooperative development training and support, and other technical assistance to socially disadvantaged farmers, ranchers, or forest landowners, or other members of socially disadvantaged groups (§1006(b)(1)).
- Not less than 5% of funds ($50.5 million) to provide grants and loans to improve land access for socially disadvantaged farmers, ranchers, or forest landowners, including issues related to heirs' property in a manner as determined by the Secretary of Agriculture (§1006(b)(2)).
- Not less than 0.5% of funds ($5.05 million) to fund the activities of one or more equity commissions that will address racial equity issues within USDA and its programs (§1006(b)(3)).
- Not less than 5% of funds ($50.5 million) to support and supplement agricultural research, education, and extension, as well as scholarships and programs that provide internships and pathways to Federal employment to be distributed among Historically Black Serving Institutions (i.e., 1890 Institutions), Native American Serving Institutions (i.e., 1994 Institutions), Alaska Native and Native Hawaiian Serving Institutions, Hispanic Serving Institutions, and Insular Area Institutions located in U.S. territories (§1006(b)(4)).
- Not less than 5% of funds ($50.5 million) to provide financial assistance to socially disadvantaged farmers, ranchers, or forest landowners that are former farm loan borrowers that suffered related adverse actions or past discrimination or bias in USDA programs, as determined by the Secretary of Agriculture (§1006(b)(5)).

The Secretary of Agriculture is to allocate the remaining funds. In November 2021, USDA announced it would disburse approximately $75 million of the allocated funding to 20 organizations to provide technical assistance connecting underserved producers with USDA programs and services.[47]

In response to ARPA, USDA created an equity commission to advise the Secretary of Agriculture and analyze how USDA's programs, policies, and systems contribute to systemic discrimination, barriers to access, or both.[48] The commission is charged with delivering an interim report and providing actionable recommendations to the Secretary and other applicable USDA offices within 12 months, and a final report within two years after inception. The commission is composed of 15 members appointed by the Secretary of Agriculture for two-year terms. The commission members include community-based organizations representing underserved communities, experts in policy design or evaluation, and an expert in civil rights. The Equity Commission's nomination process included an application period, which opened on September 27, 2021, and closed on November 30, 2021. On February 10, 2022, USDA announced the 15-member newly formed Equity Commission and the 13-member Agriculture Subcommittee.[49] The Equity Commission is led by

[47] USDA, "USDA Announces American Rescue Plan Technical Assistance Partnerships," press release, November 24, 2021.

[48] USDA, "Equity Commission," at https://www.usda.gov/equity-commission.

[49] USDA, "In Major Step to Implement American Rescue Plan, USDA Announces Membership of Newly Formed Equity Commission," press release, February 10, 2022.

Arturo Rodriguez, the former president of the United Farm Workers, and Jewel Bronaugh, Deputy Secretary of Agriculture. The Equity Commission had its inaugural meeting on February 28, 2022.

Some Members of the 117th Congress have introduced the following bills to address USDA civil rights complaint issues.

- H.R. 4169. The Black Farmers and Socially Disadvantaged Farmers Increased Market Share Act would seek to ensure civil rights accountability for USDA employees and increase market access for Black farmers and other socially disadvantaged farmers and ranchers. The bill would require USDA to ensure that USDA officials and employees are held accountable for engaging in discriminatory or retaliatory actions, civil rights violations, and related misconduct. The bill also would require USDA to prove by substantial evidence that an adverse decision was valid.
- S. 300/H.R. 1393. The Justice for Black Farmers Act of 2021 would establish an equity commission at USDA to examine discrimination against Black producers and recommend actions to end the systematic disparities in the treatment of Black producers and other producers.

In February 2022, the House Agriculture Committee held a hearing to review the USDA OIG's 2021 audit report on USDA's oversight of civil rights complaints.[50] The USDA Inspector General testified that the audit found that OASCR did not process civil rights program complaints in a timely manner, nor did the USDA agencies (the Food and Nutrition Service and Rural Development) that OASCR contracted with to help process complaints.[51] The audit also found that OASCR developed a strategic plan that included objectives and goals related to civil rights program complaints, but it failed to monitor its performance or conduct reviews to measure progress toward reaching those goals and objectives. The Inspector General cited insufficient staff at OASCR and an ineffective management system to catalog complaints and track progress as factors contributing to delays in processing complaints.

Considerations for Congress

If Congress chooses to address stakeholder concerns, it may choose to do so through legislation, funding decisions, or oversight activities. For example,

- **Revise internal processes.** Congress could consider expanding the moratorium on foreclosures while USDA civil rights complaints are outstanding, establishing an ombudsman office to address concerns about civil rights, and increasing training and resources for OASCR investigators. Implementing some of these recommendations may require additional appropriations of funds.
- **USDA report on progress.** Congress could require USDA to report on progress toward addressing the outstanding USDA OIG recommendations to improve USDA's civil rights complaints process.

[50] U.S. Congress, House Committee on Agriculture, Subcommittee on Nutrition, Oversight, and Department Operations, *Review of the Office of the Inspector General Report on 'USDA Oversight of Civil Rights Complaints,'* hearing 117th Cong., 2nd sess., February 15, 2022.

[51] Testimony of Ms. Phyllis K. Fong, USDA Inspector General, U.S. Congress, House Committee on Agriculture, Subcommittee on Nutrition, Oversight, and Department Operations, *Review of the Office of the Inspector General Report on 'USDA Oversight of Civil Rights Complaints,'* hearing 117th Cong., 2nd sess., February 15, 2022.

Farmland Ownership

Overview

Land is an essential input for producing agricultural products. Farms with more acreage, owned or rented, often have the potential to be more efficient than farms with less acreage.[52] Owned farmland is the principal component of farm household wealth. It can be used as collateral for farm loans, and it contributes to retirement savings for farm households.[53] Ownership of land may reduce the likelihood that farms experience certain types of financial stress.[54] In certain areas, the supply of farmland to either purchase or rent may be limited and, consequently, may be difficult or expensive to obtain.[55]

Producers of color operate more than 193,000 farms on over 73 million acres of owned farmland and over 21 million acres of rented or leased farmland (**Table 3**). Among producers of color, Native American and Alaska Native producers own the most farmland (more than 50 million acres), and Native Hawaiian and other Pacific Islander producers own the least farmland (approximately 500,000 acres). Latino and Hispanic producers rent and lease the most farmland (more than 10 million acres), and Native Hawaiian and other Pacific Islander producers rent and lease the least amount of farmland (approximately 500,000 acres).[56] Native American and Alaska Native producers have the largest farms on average (978 acres).[57] Black producers have the smallest farms on average (132 acres).[58]

Table 3. U.S. Farmland by Race and Ethnicity

Race and Ethnicity	No. of Farms	Farmland Owned (acres)	Farmland Leased/Rented (acres)	Average Farm Size (acres)
Race				
American Indian/Alaskan Native	60,083	50,723,444	8,026,099	978
Asian	18,338	2,037,250	894,115	160
Black	35,470	2,887,102	1,786,038	132
Native Hawaiian/Other Pacific Islander	4,341	538,644	505,292	240

[52] Nigel Key, "Farm Size and Productivity Growth in the United States Corn Belt," *Food Policy*, vol. 84 (April 2019), pp. 186-195.

[53] Cynthia Nickerson et al., *Trends in U.S. Farmland Values and Ownership*, USDA, ERS, Economic Information Bulletin No. EIB-92, February 2012.

[54] Christopher Burns et al., *Farmland Values, Land Ownership, and Returns to Farmland, 2000-2016*, USDA, ERS, Economic Research Report No. ERR-245, February 2018.

[55] Ed Maixner and Sara Wyant, "Big Changes Ahead in Land Ownership and Farm Operators?," *Agri-Pulse*, February 5, 2019.

[56] The data for Hispanic and Latino producers include people who identify as White and those who identify as a race other than White; these data also include Spanish producers.

[57] While Alaskan Native and American Indian producers have on average the largest farms compared to producers of other races, their farms are not necessarily the most profitable. The 2017 Census of Agriculture states that the average net cash farm income for Alaskan Native and American Indian farms is $8,577 compared to an average of $43,053 net cash farm income for all U.S. farms. For more information, see USDA National Agricultural Statistics Service's 2017 Census of Agriculture: Race/Ethnicity/Gender Profile.

[58] Black producers include producers that identify as Black or African American.

Race and Ethnicity	No. of Farms	Farmland Owned (acres)	Farmland Leased/Rented (acres)	Average Farm Size (acres)
Ethnicity				
Hispanic/Latino	86,278	21,344,157	10,735,753	372
Producers of Color	193,494	73,083,892	21,045,527	486
White Producers	1,848,726	474,672,190	331,415,967	436
All U.S. Producers	2,042,220	547,756,082	352,461,494	441

Source: Created by CRS using USDA, NASS, *2017 Census of Agriculture*, Table 1, "Historical Highlights: 2017 and Earlier Census Years," Table 11, "Selected Characteristics of Irrigated and Non-irrigated Farms: 2017 and 2012," Table 61, "Selected Farm Characteristics by Race: 2017," "Race/Ethnicity/Gender Profile," and tabulations from NASS for CRS.

Notes: *Race* and *Ethnicity* are independent classifications. All producers are represented in at least one racial category, and some producers are also included in the ethnicity category of *Hispanic/Latino*. Producers who identify as Hispanic/Latino in addition to non-White, White, or Spanish are included in the *Hispanic/Latino* racial category. Producers who identify as Black or African American are included in the *Black* racial category. *Producers of Color* include farmers and ranchers who identify as a race other than White, and each producer is counted once even if the individual self-identifies as more than one race. *White Producers* include producers who identify as White but do not identify as another race or as Hispanic or Latino. Race and ethnicity categories other than *Producers of Color* and *White Producers* include race/ethnicity alone and in combination with other races/ethnicities.

Selected Stakeholder Concern: Heirs' Property

Some stakeholders have raised concerns about issues involving producers of color and *heirs' property*, which refers to land and other property that is passed to family members without a will.[59] If landowners die intestate (i.e., die without a will), their heirs may not have legal title to the inherited farmland. Without legal title, the landowners operating farms on the land may have difficulty accessing credit from commercial and other lenders, may have difficulty participating in certain USDA programs, and/or improving the land they control.[60] Holders of heirs' property own a fractional interest in the undivided land rather than title to the land. Resolving heirs' property issues can be time-consuming and require funds for legal services and, in some cases, funds to buy other holders' fractional interests in the land.

Heirs' property appears particularly common in historically Black agricultural communities. The Federation of Southern Cooperatives estimates that over 60% of all Black-owned farmland is heirs' property, where the landowner has died without leaving a will or clear title of ownership.[61] Secretary of Agriculture Tom Vilsack stated that in addition to Black farmers, Hispanic and Native American farmers are also impacted by heirs' property.[62] Native American producers also

[59] USDA, "Heirs' Property Landowners," at https://www.farmers.gov/working-with-us/heirs-property-eligibility.

[60] GAO, *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers is Limited*, GAO-19-539, June 11, 2019, pp. 1-48; and GAO, *Agricultural Credit Needs and Barriers to Lending on Tribal Lands*, GAO-19-464, May 9, 2019.

[61] Donna DeCaille, "The Federation of Southern Cooperatives/LAF Leads Research and Advocacy to Address Heirs Property and Eligibility to Participate in USDA Programs," *The Federation of Southern Cooperatives/Land Assistance Fund*, press release, June 21, 2018.

[62] Steve Davies, "USDA Taps $67m for Heirs' Property Lending Program," *Agri-Pulse*, July 29, 2021.

may lack legal title to farmland in areas where the title is held in trust by the federal government or otherwise restricted.[63]

The laws governing ownership of farmland, assets, and businesses are generally state laws and may vary across states. Efforts at the state level to address heirs' property issues have focused on reducing partition sales. Partition sales are one way that heirs' property holders may lose control of their farmland. Partition sales can occur if at least one of the landholders requests a sale.[64] Partition sales encompass the entirety of the property, not only the portion held by individuals who wish to sell. As a result, the willingness to sell a minor interest in the land may result in the sale of the entire property—including the portions held by heirs who do not want to sell. Furthermore, partition sales may be open to bidders who do not hold any fractional interest in the property (nonheirs), and may result in sales at below market rates.[65] Owners acquiring farmland through a partition sale are not obligated to permit continued use of the property by the current farmers, who may be members of the original landowners' family.

Advocates have promoted state adoption of the Uniform Partition of Heirs' Property Act to modify the process for partition sales in ways that would benefit holders of heirs' property. The act, which has been enacted in 19 states and territories and introduced in an additional seven states,[66] grants heirs' property holders first opportunity to buy the interest of any co-holder who wishes to sell their fractionated interest in the land based on appraised value of the property. It also establishes a preference for physical division of heirs' property, as opposed to partition by sale; and requires courts to consider the noneconomic value of the property before ordering a partition by sale.[67] The law also changes the rules of partition sale auctions to increase the potential benefit for the holders of heirs' property.

Some advocates assert that the loss of Black farmland is not primarily the result of heirs' property,[68] and that partition sales caused by heirs' property issues are only one factor contributing to the loss of Black farmland. They contend that less direct support as a result of lower participation in federal government programs by Black farmers has been a larger factor in the loss of farmland than partition sales. These stakeholders recommend increasing direct government financial support for farmers of color.

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[63] GAO, *Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands*, GAO-19-464, May 9, 2019, pp. 1-35.

[64] Sarah Farmer, "Knowledge of 'Heirs Properties' Issues Help Families Keep, Sustain Land," *USDA Forest Service Feature Story*, October 8, 2021; and American Bar Association, "Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act," *State and Local News Fall 2016*, October 1, 2016.

[65] Federal Reserve Bank of Atlanta, *Understanding Heirs' Properties in the Southeast*, Partners Update, March/April 2016, at https://www.frbatlanta.org/community-development/publications/partners-update/2016/02/160419-understanding-heirs-properties-in-southeast; and Thomas W. Mitchell, "Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act," *American Bar Association State & Local Law News*, vol. 40, no. 1 (Fall 2016), pp. 6-15.

[66] Uniform Law Commission, *2010 Partition of Heirs Property Act*, retrieved on December 27, 2021, at https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d.

[67] Thomas W. Mitchell, "Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act," *American Bar Association State & Local Law News*, vol. 40, no. 1 (Fall 2016), pp. 6-15.

[68] Letter to Sen. Warren from Black farmers, advocates, researchers and organizations, "Justice for Black Farmers," August 31, 2019.

Recent Congressional Actions

The 2018 farm bill (P.L. 115-334, Title V, §5104) authorized USDA to create the Heirs' Property Relending Program (HPRP), prioritizing loans made in states that had enacted the Uniform Partition of Heirs' Property Act. Appropriations acts have funded this program since FY2020. On August 9, 2021, USDA announced the start of the HPRP, with maximum loan levels of $5 million for loan intermediaries and $600,000 per loan recipient.[69]

Through the 2018 farm bill, Congress also made heirs' property holders eligible to apply for an FSA farm number (P.L. 115-334, Title VII, §12615). Farm operators are required to have an FSA farm number to participate in certain USDA programs, including farm loan programs, commodity support programs, disaster assistance programs, crop insurance, and some conservation programs. To apply for an FSA farm number, a farm operator must be able to document control of the land, such as with proof of ownership or a lease agreement. In accordance with the requirements of Section 12615, USDA adopted alternative means of documenting control of the land with additional options available to farmers located in states that have adopted the Uniform Partition of Heirs Property Act.[70]

Since the 2018 farm bill, Members of Congress have introduced other resolutions and bills to address farmland ownership issues.

In the 116th Congress

- H.Con.Res. 88/S.Con.Res. 36. The Supporting the Farmers Bill of Rights concurrent resolution affirmed the rights of African-American and other historically underserved farmers and ranchers to retain their land ownership and rights.

In the 117th Congress

- S. 300/H.R. 1393. The Justice for Black Farmers Act of 2021 would authorize USDA to purchase land from willing sellers at fair market value and make grants of up to 160 acres to eligible black individuals.
- S. 978. The Flexible Financing for Rural America Act of 2021 would establish a National Center for Minority Farmer Agricultural Law Research and Information, and authorize USDA to make grants and loans to resolve property issues related to ownership and succession on farmland.

Considerations for Congress

If Congress chooses to address stakeholder concerns, it may choose to do so through legislation, funding decisions, or oversight activities. For example,

- **USDA Heirs' Property Relending Program.** Congress authorized appropriations for the HPRP through the Agriculture Improvement Act of 2018

[69] 86 *Federal Register* 43381, August 9, 2021. The Consolidated Appropriations Act, 2021 (P.L. 116-260) authorized the program to offer up to $33,693,000 in loans.

[70] For additional information on documentation that heirs' property holders can use to apply for an FSA farm number, see USDA, FSA, "Guidance for Heirs' Property Operators Participating in Farm Service Agency (FSA) Programs" *Fact Sheet* (July 2020), pp. 1-2.

(P.L. 115-334) until FY2023. Congress could consider whether to reauthorize appropriations for the program in the next farm bill.

- **USDA grants for resolving heirs' property issues.** Certain stakeholders suggest that grants could provide more help to low-income producers seeking to resolve heirs' property issues than loans.[71] Providing grants instead of loans may increase the costs of the programs. Congress could compare the costs and benefits of using grants, loans, or both to resolve heirs' property issues.

USDA Research, Extension, and Education

Overview

USDA administers agricultural research, extension, and education programs that focus on or support various types of institutions, including those that serve socially disadvantaged groups.[72] Certain Members of Congress and stakeholders representing certain minority-serving institutions have raised questions regarding the equity of policies and funding for these programs, as well as broader concerns about access and inclusion of diverse participants in the agricultural sciences.[73]

USDA's National Institute of Food and Agriculture (NIFA) supports agricultural research, extension, and education through the land-grant university (LGU) system—a national network of public colleges and universities established through various legislation[74]—as well as other institutions. Two of the three LGU types serve socially disadvantaged communities: the 19 historically Black *1890 Institutions* and the 35 Tribal *1994 Institutions*.[75] The third LGU type consists of the 57 original *1862 Institutions*, which have predominantly White student enrollments. NIFA programs relevant to racial equity concerns include programs specific to 1890 and 1994 Institutions, programs open to other minority-serving institutions (MSIs), and certain programs open to a range of institutions.[76]

NIFA manages a variety of capacity (formula-based) and competitive (peer-reviewed) grant programs specific to 1890 and 1994 Institutions. For 1890 Institutions, NIFA administers capacity programs for research, extension, and institutional capacity. Competitive programs for 1890 Institutions include programs for research, extension, and scholarships. For 1994 Institutions, NIFA administers capacity programs with general and educational objectives. Competitive grant programs for 1994 Institutions include programs specific to research and extension.

Certain competitively awarded NIFA programs not specific to LGUs also support research, extension, and education at MSIs. These include programs for institutions in U.S. territories,

[71] Emily Liss, "Policy Update: AFT [American Farmland Trust] Submits Comment on Heir's Property Relending Program," October 22, 2021.

[72] Agricultural *extension* provides nonformal education to the nonuniversity public.

[73] See, for example, House Committee on Agriculture, "Chairman David Scott, House Leaders Call for Action on State Funding Disparities for 1890 Land-Grant Universities," press release, February 24, 2022, and Susan Adams, "For HBCUs Cheated Out Of Billions, Bomb Threats Are The Latest Indignity," *Forbes*, February 1, 2022.

[74] For more information, see CRS Report R45897, *The U.S. Land-Grant University System: An Overview*.

[75] Land-grant university (LGU) institutional types are known by the year of their establishing legislation. For additional information on the 1890 Institutions, see CRS In Focus IF12009, *1994 Land-Grant Universities: Background and Selected Issues*.

[76] For more information on USDA's National Institute of Food and Agriculture (NIFA) grant programs, see USDA, NIFA, "Search for a Funding Opportunity," at https://nifa.usda.gov/grants/funding-opportunities.

Alaska Native-Serving and Native Hawaiian-Serving Institutions, and Hispanic-Serving Institutions. Other NIFA programs that address historically underserved communities are available to applicants from various institutions, including programs focused on women, minorities, and Tribal students.

In addition to its NIFA programs, USDA's Office of Partnerships and Public Engagement (OPPE) administers certain education programs available to students at 1890 and 1994 Institutions.[77]

Selected Stakeholder Concern: LGU Funding Equity

The federal government funds LGUs through capacity and competitive grants.[78] The 1862 Institutions receive the greatest proportion of federal funds, followed by the 1890 and 1994 Institutions, respectively. Significant differences among these institutions factor into federal funding allocations, including the numbers of students served, types of degrees awarded, and institutional missions (**Table 4**). In general, 1862 Institutions have the largest enrollments and offer a variety of undergraduate and graduate degrees; 1890 Institutions are smaller and offer a more limited set of degrees; and 1994 Institutions have the smallest enrollments and many offer only two-year degrees. Some assert that the allocation of funds among the three LGU types is inequitable despite their institutional differences.[79]

Table 4. Selected Aggregated Metrics by Land-Grant University (LGU) Type

Metric / LGU Type	1862	1890	1994
Number of Institutions	57	19	35
Total Number of Undergraduate Students	1,534,525	89,544	23,481
Total Number of Graduate Students	446,014	14,734	273
Total FY2020 Federal Capacity Funding: Research and Extension Programs	$574M	$124M	—

Sources: Twelve-month (2019-2020) enrollment data from National Center for Education Statistics, *Integrated Postsecondary Education Data System*. Funding totals from enacted FY2020 appropriations (P.L. 116-94) include capacity programs for 1862 Institutions (Hatch Act of 1887, Smith-Lever Act of 1914, 3(b) and 3(c)); 1890 Institutions (National Agricultural Research, Extension, and Teaching Policy Act of 1977, §1444 and §1445 [Evans-Allen Act of 1977]); and 1994 Institutions (no comparable programs).

Notes: Student totals do not indicate the subset of students that are engaged in agricultural disciplines, making it difficult to compare overall support levels for these students. Access to funding sources other than National Institute of Food and Agriculture capacity grants may vary by institution type.

1994 Grant Funding

The extent of federal funding for 1994 Institutions has been a concern for some observers. Although the 1994 Institutions gained new access to federal funding with their LGU designations, this access is more limited than that of other LGU types. For example, no research or extension

[77] For more information on OPPE programs, see USDA, "Partnerships," https://www.usda.gov/partnerships.

[78] NIFA distributes *capacity grants* (formula funds) among eligible institutions based on formulas in statute. NIFA awards *competitive grants* directly to individual projects, selected by NIFA through a peer-review process.

[79] For information on claims regarding funding inequities and the 1890 Institutions, see Association of Public and Land-grant Universities, *Policy Brief: Land-Grant But Unequal*, September 2013; for 1994 Institutions, see National Indian Education Association, *FY2022 NIEA Federal Appropriations Priorities: The Federal Trust Responsibility to Native Education*, 2021.

capacity program is specific to the 1994 Institutions. These institutions do receive annual interest distributions for general use from the Tribal College Endowment Fund on a formula basis.[80] Advocates for the 1994 Institutions have requested increased appropriations, characterizing these funding allocations as inequitable.[81]

1890 Institution Matching Funds Requirement

Incomplete state matching funds for federal capacity grants to 1890 Institutions have been an ongoing concern for some observers.[82] Federal capacity grants for the LGU system generally require one-to-one nonfederal matching funds. However, legislation permits USDA to waive up to 50% of this matching requirement for 1890 Institutions. In FY2020, states provided a full match for 12 of the 19 1890 Institutions.[83] In contrast, all states met the full matching requirements for their 1862 Institutions. The matching waiver permits 1890 Institutions to receive federal funding even without full state-funding support, yet allows a funding disparity between 1890 and 1862 Institutions: only 1890 Institutions can receive less than 100% nonfederal matching funds.

Recent Congressional Actions

The 2018 farm bill (P.L. 115-334) included provisions that address racial equity issues in agricultural research, extension, and education. Some provisions address differences in program policies among LGU types, and others create new programs. On the program policy side, Section 7116 (7 U.S.C. §3221(a)) addresses the issue of state matching fund waivers for 1890 Institution capacity grants. This provision requires USDA to report annually on capacity funding and state matching contributions (reflecting any waivers granted) by institution and grant program. Section 7114 (7 U.S.C. §3221(a)) allows 1890 Institutions to carry over federal extension funds from one year to the next, as 1862 Institutions are permitted to do. Provisions creating new programs include Section 7117 (7 U.S.C. §3222a), which establishes the Scholarships for Students at 1890 Institutions program. This program provides funding to 1890 Institutions offering scholarships to students pursuing degrees in food and agricultural sciences. Section 7120 (7 U.S.C. §3222e) establishes New Beginning for Tribal Students, a competitive grants program available to LGUs to recruit and support Tribal students.

The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) includes appropriations for institutions of higher education serving socially disadvantaged groups of not less than $10.1 million for each of the following: 1890 Institutions (§1006(b)(4)(A)); 1994 Institutions (§1006(b)(4)(B)); Alaska Native-Serving and Native Hawaiian-Serving Institutions (§1006(b)(4)(C)); Hispanic-Serving Institutions (§1006(b)(4)(D)); and insular area institutions (§1006(b)(4)(E)). Section 1006(b)(4) of ARPA did not include appropriations for 1862 Institutions. As of this report, USDA has not announced its plan for the appropriations.

In June 2021, the House Agriculture Committee held a hearing on *1890 Land Grant Institutions: Investing for Agricultural Resiliency, Equity, and Global Impact* to discuss the status and needs of

[80] For FY2019 distribution amounts by institution, see NIFA, "FY 2019 Tribal College Endowment Program Distribution," at https://nifa.usda.gov/sites/default/files/program/FY-2019-Tribal-College-Endowment-Program.pdf.

[81] See footnote 79.

[82] For additional information, see CRS In Focus IF11847, *1890 Land-Grant Universities: Background and Selected Issues*.

[83] Data are available at NIFA, "FY 2020 Allocation and Matching," at https://nifa.usda.gov/resource/fy-2020-allocation-and-matching.

1890 Institutions.[84] The committee discussed with 1890 Institution presidents issues including operations during the Coronavirus-19 (COVID-19) pandemic, broadband access needs, and implementation of 2018 farm bill programs. In February 2022, the Chairs of the House Committee on Agriculture and House Committee on Education and Labor issued a letter calling on governors and state leaders to provide equitable state matching funds for 1890 Institutions.[85]

Members of the 117th Congress also introduced bills to address issues related to USDA research, extension, and education.

- H.R. 5376. The Build Back Better Act would provide $1.0 billion for competitive grants for the construction or improvement of agricultural research facilities at 1890 and 1994 LGUs, and certain other MSIs.
- S. 278. The Emergency Relief for Farmers of Color Act of 2021 would authorize funding for certain programs that support research, extension, and education activities at MSIs and for members of socially disadvantaged groups.
- S. 300/H.R. 1393. The Justice for Black Farmers Act of 2021 would authorize funding for certain programs that support research, extension, education activities at MSIs and for members of socially disadvantaged groups.

Considerations for Congress

If Congress chooses to address stakeholder concerns, it may choose to do so through legislation, funding decisions, or oversight activities. For example,

- **LGU Funding Equity.** Congress could require USDA to engage in additional reporting and analysis on funding equity among the LGUs, including recommendations to address any concerns about inequity that it identifies.
- **1994 Institution Grant Programs.** Congress could consider establishing 1994 capacity programs for research and extension through new legislation; increasing funding to existing 1994 grant programs; or requiring collaborations between 1994 and other LGUs.
- **1890 Institutions Matching Funds Requirements.** Congress could address concerns about nonfederal matching funds in various ways, including (1) expanding NIFA's reporting requirement (7 U.S.C. §3221(a)) to include the source(s) of nonfederal matching funds (e.g., the state legislature, university general funds, philanthropic sources) in addition to the amount; (2) eliminating matching funds requirements and increasing federal appropriations; or (3) eliminating waivers.

[84] U.S. Congress, House Committee on Agriculture, *1890 Land Grant Institutions: Investing for Agricultural Resiliency, Equity, and Global Impact*, hearing, 117th Cong., 1st sess., June 16, 2021.

[85] Letter from Chairman David Scott and selected Members of the House Committee on Agriculture and Chairman Robert Scott of the House Committee on Education and Labor to Governors and State Leaders, February 24, 2022, at https://agriculture.house.gov/uploadedfiles/house_agriculture_committee_1890_letter_02242022.pdf?utm_campaign=1357-520.

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