

THE FUTURE OF FEDERAL FARM POLICY: STEPS FOR ACHIEVING A MORE SUSTAINABLE FOOD SYSTEM

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I. INTRODUCTION

When advocating a path forward to modernize domestic farm and food policy, an organization or individual must decide whether to press for a systematic overhaul or incremental change. Indeed, there is no question that a fundamental shift in the structure of U.S. agricultural policy could enable our nation to achieve a sustainable, environmentally sound, and nutritious food system.¹ Accordingly, there would be substantial value in advocating for such an immediate, fundamental farm bill reform because the process of making that argument provides a glimpse of that objective, and it is important that the ultimate goal not be lost.

However, the enormous political and financial power of agribusiness might be better challenged through incremental reforms targeting specific farm bill programs on issues that have the support of large segments of the American public. In effect, this approach allows the millions of interested Americans, and the organizations that advocate on their behalf, to slowly and strategically chip away at the outdated, sometimes illogical, components of U.S. agricultural policy. These small but critical reforms would breathe new life into the farm bill. Although reform would take longer under such an incremental approach, the goal is still the same; indeed, these vitally significant and targeted reforms along the way will allow for improvement at many levels even if fundamental farm bill reform never comes to pass.

This Article first presents the argument for a major and urgent shift in U.S. agriculture and food policies to achieve sustainability. It then provides a counterview, arguing instead for several narrower and more gradual reforms to achieve many of the same goals, highlighting examples of targeted challenges and ways to strengthen support for existing programs

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1. For additional arguments in favor of fundamental changes to farm bill policy, see William S. Eubanks II, *Paying the Farm Bill: How One Statute Has Radically Degraded the Natural Environment and How a Newfound Emphasis on Sustainability is the Key to Reviving the Ecosystem*, 27 ENVTL. F. 56 (2010); William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 ENVTL. L. REP. 10493, 10493–94 (2010); and William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with our Nation's Tax Dollars*, 28 STAN. ENVTL. L. J. 213, 214–16 (2009).

that sorely need the public's backing to achieve a healthier food system.

II. SEEKING A TRULY "GREEN" REVOLUTION: LARGE-SCALE REFORM FOR WIDESPREAD PROBLEMS

While arguably somewhat overstated, the author James H. Kunstler has starkly drawn this picture of American agriculture:

We have to produce food differently. The [Archer Daniels Midland]/Cargill model of industrial agribusiness is heading toward its Waterloo. As oil and gas deplete, we will be left with sterile soils and farming organized at an unworkable scale. Many lives will depend on our ability to fix this. Farming will soon return much closer to the center of American economic life. It will necessarily have to be done more locally, at a smaller and finer scale, and will require more human labour.²

There is at least some truth to this depiction. Despite what many scientists, farmers, and ranchers think to be the best available agricultural practices for environmental protection and a nutritious food supply,³ U.S. agriculture and food policies under the farm bill have generally strayed from these practices to placate the agribusiness and food-processing industries. The average commodity crop farm now produces enough corn and soybeans to feed hundreds, or even thousands, of Americans each year from food items processed from its crops.⁴ However, those same commodity farmers send no healthy fruits and vegetables to the market, and amazingly can no longer feed their own families from their massive fields because of inflexible planting rules and encouragement of monocrop production through various

2. James H. Kunstler, *Ten Ways to Prepare for a Post-Oil Society*, CANADIAN NAT'L NEWSPAPER (Jan. 12, 2008), <http://www.agoracosmopolitan.com/home/Frontpage/2008/01/12/02127.html>.

3. As described later in this article, some of the many farming practices that best preserve and enhance soil, water, and other natural resources are no-till farming, cover cropping, crop rotation, residue mulching, elimination of most or all agrochemical fertilizers, significant reduction per acre of water usage, nitrogen fixing through on-farm manure use, measurable energy reduction per acre farmed, greater use of integrated pest management, contour farming, and increased direct sales from farm to consumer or intermediated sources to reduce transportation. Indeed, these and many other practices are incentivized through an existing farm bill program, discussed later in the article, called the Conservation Stewardship Program, which lays out a more detailed list of practices that have been determined through consensus as key farming practices that maximize environmental benefits. NATURAL RES. CONSERVATION SERV., CONSERVATION STEWARDSHIP PROGRAM CONSERVATION ACTIVITY LIST (2011), available at http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046211.pdf.

4. MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* 34-35 (2006).

types of farm bill subsidies.⁵ Heavy corn-producing states such as Iowa now import, on average, *more than 80% of the food consumed by the residents of those states*.⁶ The U.S. food production system under the farm bill, which should ideally encourage production of healthy food, is instead creating a plethora of “food deserts”—even in rural areas where the local economy is dependent on farming—composed of locations where food is difficult to come by and much of the food that is available consists of processed commodities, saturated fats, and little to no nutrition.⁷ Moreover, as Part II of this Article highlights, the environmental impacts of the current industrial model are significant. And that model is founded on the farm bill—the omnibus legislation Congress enacts every five years to encourage certain types of agricultural production and food systems.

The successive farm bills have promoted larger and larger farms and the inherent adverse consequences of monocrop production and market consolidation. Scholars have noted how the stability of the Soviet Union “foundered precisely on the issue of food” as it tried to force a transition to industrial agriculture.⁸ That policy contributed to the Soviet collapse because the program “sacrificed millions of small farms and farmers,” but the system of industrial agriculture “never managed to do what a food system has to do: feed the nation.”⁹ Indeed, with each passing farm bill, one can argue that the domestic farming and food system is gradually moving towards its own failure to accomplish the fundamental objective of feeding the nation, at least in terms of providing nutritious food grown in an ecologically resilient manner that seeks to preserve our natural resources for the long term.¹⁰

One promising change that could mitigate the primary problems of industrial commodity crop agriculture in the United States would be incentivizing sustainable agriculture to assist in normalizing the market, and thereby closing the price gap in supermarkets between the handful of heavily subsidized commodities and all other foods that receive little or no financial incentives and thus appear more expensive than would otherwise

5. *Id.*

6. *Id.*

7. *See generally id.* (exploring the relationship between food, American society, and the low nutrient value of processed foods).

8. *Id.* at 256; ROBERT W. CAMPBELL, SOVIET-TYPE ECONOMIES: PERFORMANCE AND EVOLUTION 65 (1974) (calling the inefficient Soviet industrial agricultural system “unreliable, irrational, wasteful, unprogressive—almost any pejorative adjective one can call to mind would be appropriate”); CAMPBELL R. MCCONNELL, ECONOMICS: PRINCIPLES, PROBLEMS AND POLICIES 936 (7th ed. 1978) (arguing that the Soviet industrial agricultural system was “something of a monument to inefficiency”).

9. POLLAN, *supra* note 4, at 256.

10. *See id.*, at 256–57 (discussing the benefits of a more local agricultural system as compared to the current industrial agricultural system).

be the case in a free market. Although a truly free market without subsidies would be ideal,¹¹ such as the system currently operating in New Zealand,¹² the vast subsidy infrastructure currently embedded in the farm bill would be difficult to pull out from under the feet of farmers that depend on those subsidies to survive, and upon which farmers benefiting from that system have made long-term machinery and other capitalized purchases based on the assumption that such subsidies would continue to exist.

Therefore, instead of immediately eliminating the farm bill subsidies on which many farms now rely for survival, Congress should instead shift a substantial portion of these subsidies—in phases—to farmers implementing sustainable agricultural methods. Past and current conservation programs often had a major flaw: they target only large commodity crop growers. A more workable policy would be to offer a predetermined share of subsidy incentives to *all* farmers based on their farming practices, irrespective of crops cultivated or farm size. This would create a more just system than the current subsidy framework that excludes 60% of American farmers from any subsidies whatsoever.¹³

Farmers who never see farm bill subsidies in our current system are typically those who grow crops using environmentally sustainable agricultural methods and those who grow most of the nation's fruits, vegetables, and nuts, which are called "specialty crops" in the farm bill, but are critical for good health. It should be noted that the two sets of farmers are not necessarily the same. Growers in California provide a vivid example of the current failures of the farm bill's subsidy program to reward farmers for growing healthy food for our nation. With nearly 81,500 farms, and nearly \$43.5 billion in annual on-farm revenues, California is the leading

11. See, e.g., Eliot Coleman, *Beyond Organic*, 189 MOTHER EARTH NEWS (Dec./Jan. 2002), available at <http://www.fourseasonfarm.com/pdfs/beyondorganic.pdf> (describing the origins, evolution, and modern issues of "organic farming"). Many scholars such as Eliot Coleman believe that any nationalized system of agriculture—conventional or organic—is inefficient. *Id.* Thus these critics advocate for a localized agricultural system with no national standards, subsidies, or framework for regulating agriculture. *Id.*

12. DANIEL IMHOFF, *FOOD FIGHT: THE CITIZEN'S GUIDE TO A FOOD AND FARM BILL* 80–83 (2007). New Zealand is one of the few nations that has eliminated agricultural subsidies altogether. *Id.* In 1984, New Zealand eliminated all subsidies for farming and the results have been very positive. *Id.* In fact, New Zealand has seen "an energizing transformation of the food and farming sectors . . . Profitability, innovation, and agricultural diversity have returned to farming." *Id.* Both farm output and farm income are on the rise in New Zealand. *Id.*

13. The Conservation Stewardship Program that was implemented by the 2008 farm bill does in fact reward farmers—including vegetable and fruit growers, as well as organic producers—with incentives for using ecologically sustainable practices. That program is a small-scale version of what would be necessary on a much larger subsidy scale to drive the change necessary to transform the food system in a measurable and even more meaningful way.

state in annual agricultural sales.¹⁴ Despite this, more than 90% of California's farmers receive no agricultural subsidies.¹⁵ Of the few Californian farmers that do receive farm bill subsidies, most are cotton and rice farmers.¹⁶ Yet these subsidy-neglected California farmers are invaluable to our nation's agricultural system because the state contributes more than 15% of the total U.S. agricultural market value and nearly half of all fruits, nuts, and vegetables.¹⁷ By ignoring these farmers and precluding them from receiving farm bill subsidies, Congress is prioritizing monocultures of corn, soybean, wheat, cotton, and rice at the expense of sound agricultural, nutritional, and environmental practices.¹⁸

Sustainable agriculture, however, can serve as a first step in changing these policies for the better. What is "sustainable agriculture"? According to the scholar James Horne, sustainable agriculture "encompasses a variety of philosophies and farming techniques . . . [that] are low chemical, resource and energy conserving, and resource efficient."¹⁹ Ironically (because it did little to encourage such agriculture), the 1990 farm bill defined sustainable agriculture as:

an integrated system of plant and animal production practices having a site-specific application that will, over the long term, satisfy human food and fiber needs; enhance environmental quality and the natural resources base upon which the agricultural economy depends; make the most efficient use of nonrenewable resources and on-farm/ranch resources; and integrate, where appropriate, natural biological cycles and controls; sustain the economic viability of farm/ranch operations; and enhance the quality of life for farmers/ranchers and society as a whole.²⁰

As most agricultural experts note, it is important to understand that "[s]ustainable agriculture does not mandate a specific set of farming

14. *California Agricultural Production Statistics*, CAL. DEP'T. OF FOOD & AGRIC., <http://www.cdfa.ca.gov/statistics/> (last visited Feb. 17, 2013) [hereinafter CA Statistics].

15. KARI HAMERSCHLAG, ENVTL. WORKING GRP., *FARM SUBSIDIES IN CALIFORNIA: SKEWED PRIORITIES AND GROSS INEQUITIES 1* (2010), available at <http://farm.ewg.org/pdf/california-farm.pdf>.

16. See generally MARK ARAX & RICK WARTZMAN, *THE KING OF CALIFORNIA: J.G. BOSWELL AND THE MAKING OF A SECRET AMERICAN EMPIRE* (2005) (describing J.G. Boswell's cotton production methods that led to nearly \$18 million in farm bill subsidies between 1994 and 2004).

17. CA Statistics, *supra* note 14.

18. IMHOFF, *supra* note 12, at 59.

19. JAMES E. HORNE & MAURA McDERMOTT, *THE NEXT GREEN REVOLUTION: ESSENTIAL STEPS TO A HEALTHY, SUSTAINABLE AGRICULTURE* 59 (2001).

20. PRESIDENT'S COUNCIL ON SUSTAINABLE DEV., *SUSTAINABLE AGRICULTURE: TASK FORCE REPORT 3* (1997), available at http://clinton2.nara.gov/PCSD/Publications/TF_Reports/ag-top.html.

practices.”²¹ Rather, sustainable practices vary from place to place depending on the ecosystem, climate, and other factors, but “[t]here are myriad approaches to farming that may be sustainable.”²² The more important overarching goal of sustainable agriculture is the “stewardship of both natural and human resources . . . includ[ing] concern over the living and working conditions of farm laborers, consumer health and safety, and the needs of rural communities.”²³

Despite the promise of sustainable agriculture to solve the multifaceted ecological problems caused by farming, the farm bill has been surprisingly silent on *how* to encourage farmers to engage in such practices. As early as 1994, the President’s Council on Sustainable Development chartered the Sustainable Agricultural Task Force composed of agricultural experts to present strategies to alleviate the problems that can result from ill-conceived farm policies.²⁴ In the mid-1990s, the task force outlined goals and made policy recommendations that were intended to serve as updates to the farm bill the next time the legislation came up for reauthorization.²⁵ In particular, the task force reached consensus on nine key policy recommendations: (1) integrate pollution prevention and natural resource conservation into agricultural production; (2) increase the flexibility for participants in commodity programs to respond to market signals and adopt environmentally sound production practices and systems, thereby increasing profitability and enhancing environmental quality; (3) expand agricultural markets; (4) revise the pricing of public natural resources; (5) keep prime farmlands in agricultural production; (6) invest in rural communities’ infrastructure; (7) continue improvements in food safety and quality; (8) promote the research needed to support a sustainable U.S. agriculture; and (9) pursue international harmonization of intellectual property rights.²⁶ Since that time, Congress has reauthorized three farm bills (1996, 2002, and 2008), and is currently in the process of reauthorizing a fourth. Yet, these recommendations have been given little, if any, consideration by Congress. After ignoring such experts for nearly two decades, it is now time for Congress to listen to the proponents of sustainable agriculture in order to address the environmental and health problems triggered by the farm bill.

21. HORNE & MCDERMOTT, *supra* note 19, at 59.

22. *Id.*

23. *Id.*

24. PRESIDENT’S COUNCIL ON SUSTAINABLE DEV., *supra* note 20, at 1–2.

25. *Id.* at 3–8.

26. *Id.*

A. Why a Fundamental Shift Will Work: Sustainable Agriculture Already Exists on a Small Scale

Of the nearly \$20 billion in annual farm bill subsidies, 84% currently goes to the five primary commodity crops of corn, rice, wheat, cotton, and soybeans.²⁷ Shifting a sizeable portion of these subsidies (billions, not mere millions of dollars) to farmers who implement sustainable farming practices would greatly impact the market by bringing down the supermarket prices of sustainably farmed goods, which are almost invariably more labor-intensive. Additionally, this nudges up supermarket prices of foods based on industrial-farmed corn and soybeans to a level that would more closely reflect the market prices that would appear in the absence of the heavy subsidies that artificially deflate market prices of corn and other commodities. A critical step would involve tapping into the knowledge of scientists, experts from the U.S. Department of Agriculture (USDA), nonprofit advocates, farmers, and other key stakeholders in order to set specific standards of what constitutes a sustainable agricultural practice for purposes of receiving these incentives.²⁸ Although this approach would require time to reach consensus among those varied interests, it is clear that such incentives would better protect the natural environment and the public's health than continuing to maintain the status quo. Indeed, this expert panel could use the Conservation Stewardship Program's grading system as a starting point for discussion.²⁹

27. IMHOFF, *supra* note 12, at 60.

28. This is a very important step that would have to be developed thoroughly prior to implementation. In addition to setting concrete standards for sustainable agricultural practices, experts and regulators would also have to create a defined spectrum on which the environmental and public health benefits of a farmer's sustainable practices can be measured in order to receive one's fair share of subsidies. For example, a large corn farm in Iowa might allege that it uses a single practice deemed "sustainable" by the regulatory scheme such as crop rotation, which benefits both the soil and local water sources as runoff is reduced. Although this farm would likely receive subsidies for undertaking this practice because it is "sustainable" and benefits the environment, the farm would likely receive considerably less in subsidies than a similarly-situated large corn farm that instead decides to implement crop rotation *and* to diversify its crops, reduce pesticide use, utilize integrated pest management, and begin selling to local markets to reduce transportation and fossil fuel use. Despite the fact that both are benefiting the environment and public health, the second farm clearly has undertaken sustainable practices that are not only greater in number but, more important, greater in positive impact to the natural environment and public health. Due to this difference in magnitude, the second farm would receive greater rewards for its efforts.

29. See, e.g., Michael Pollan, *The Food Issue: Farmer in Chief*, N.Y. TIMES MAG., Oct. 9, 2008, available at <http://www.nytimes.com/2008/10/12/magazine/12policy-t.html> (addressing problems with USDA conservation programs). In fact, the 2008 farm bill might have taken the first step toward such a sustainable subsidy system with the creation of the Conservation Stewardship Program, which rewards farmers for making wise agricultural decisions that provide off-farm benefits. Despite the program's promise, however, Pollan notes that legislators "need to move this approach from the

Agricultural methods that could fall into the category of sustainable agriculture for subsidy purposes are no-till farming, cover cropping, crop rotation, residue mulching, elimination of most or all agrochemical fertilizers, significant reduction per acre of water usage, nitrogen fixing through on-farm manure use, measurable energy reduction per acre farmed, greater use of integrated pest management, contour farming, and increased direct sales from farm to consumer to reduce transportation.³⁰ Each of these farming practices promotes sustainability by eliminating harmful inputs in the soil, reducing pollution in our ecosystem, or preventing some other harmful result. Not only would these practices create a healthier environment in which to live, but they would also almost certainly produce a healthier food product for the consumer, thereby allowing us to address public health concerns such as obesity.³¹

Because many Americans associate the sustainable practices listed above with “organic” agriculture, it is necessary to tackle the controversial “organic” certification label under the USDA’s National Organic Program (NOP), the existence of which might or might not be included as one of the many factors entitling a farmer to subsidies under any new incentive system. Since it is uncertain how an expert panel would define the conditions for eligibility to a new farm subsidy system, a producer that is USDA-certified organic might be automatically eligible for such a program on the basis that organic certification denotes certain of the practices listed

periphery of our farm policy to the very center.” *Id.* Until such a system becomes the foundation of the farm bill, the United States will not maximize its agricultural potential to “grow crops and graze animals in systems that will support biodiversity, soil health, clean water and carbon sequestration.” *Id.* For a discussion of CSP’s grading system, see *CSP 2011 Ranking Period One Enhancement Activity Job Sheets (2011)*, U.S. DEP’T OF AGRIC., NATURAL RES. CONSERVATION SERV., <http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/financial/csp/?&cid=stelprdb1045117> [hereinafter CSP 2011 Ranking Period].

30. David Pimentel et al., *Environmental, Energetic, and Economic Comparisons of Organic and Conventional Farming Systems*, 55 *BIOSCIENCE* 573, 573 (2005). See generally HORNE & MCDERMOTT, *supra* note 19, at 55–62 (defining sustainable agriculture). “Cover cropping” means planting certain plants on lands not in production during a given season with plants that are known to replenish critical nutrients to the soil; “crop rotation” means growing a series of crops from different families in consecutive seasons to ensure that nutrients are balanced in the soil; “residue mulching” means returning crop residues or unused portions of previous crops as mulch onto current crops to recycle the vital nutrients already absorbed by the plant without having to use chemical fertilizers; and “contour farming” means plowing a slope in contour lines that prevent soil erosion and efficiently store water for crop use.

31. See, e.g., Alyson E. Mitchell et al., *Ten-Year Comparison of the Influence of Organic and Conventional Crop Management Practices on the Content of Flavonoids in Tomatoes*, 55 *J. AGRIC. & FOOD CHEMISTRY* 6154, 6154–55 (2007), available at <http://pubs.acs.org/cgi-bin/sample.cgi/jafcau/2007/55/i15/pdf/jf070344+.pdf?isMac=706237> (concluding that sustainable organic farming practices with tomatoes resulted in much higher levels of healthy flavonoids as compared to nitrogen-fertilized, conventionally produced tomatoes).

in the previous paragraph, consistent with the NOP's implementing regulations. On the other hand, however, an expert panel might decide—in part due to the fact that inputs for certified organic foods can change over time pursuant to regulation—that instead of granting eligibility based solely on organic certification, all farms, including organic producers, must demonstrate the on-farm practices and techniques carried out to achieve ecological protection in order to satisfy the eligibility requirements for the program.

Historically, farmers have generally grown and raised organic products using sustainable agricultural methods, which are then certified by an entity that has been authorized by USDA to ensure that the regulatory labeling standards are satisfied.³² There is a very important and distinct difference, however, between sustainable agriculture and organic agriculture: Sustainable agricultural practices *always* have the goal of protecting public health and preserving the environment because sustainability is its very foundation.³³ In contrast, since what constitutes “organic” produce is a construct of federal regulation, the standards imposed *may* be ecologically protective, but also may not reflect sound agricultural, environmental, or health-based decision making because of the influence of agribusiness or other interested parties that lobby the agency and its National Organic Standards Board to modify standards.³⁴

In any event, from the beginning of the NOP, USDA has been careful not to endorse organic products as superior to their nonorganic counterparts. For example, in 2000, USDA Secretary Dan Glickman “went out of his way to say that organic food is no better than [industrial-farmed] conventional food.”³⁵ Secretary Glickman made clear that in his opinion “[t]he organic label is a marketing tool . . . [and] is not a statement about food safety . . . nutrition or quality.”³⁶

In spite of these public pronouncements from the USDA, mounting evidence gathered from recent studies is increasingly illustrating that organic produce, when farmed using sustainable methods, appears to have more key nutrients, vitamins, minerals, and health benefits than its

32. *National Organic Program*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOPNationalOrganicProgramHome&acct=nop> (last modified Nov. 28, 2012).

33. HORNE & MCDERMOTT, *supra* note 19 at 57–59.

34. See POLLAN, *supra* note 4, at 178–79 (explaining the federal government's agricultural “fiction”).

35. *Id.* at 178.

36. *Id.* at 179.

industrial-farmed conventional counterparts.³⁷ While more research is needed to comprehensively verify these results, there is no question that because of the constraints imposed on organic farmers as a result of their certification, organic foods are produced with far less pesticides, and in some cases none at all, meaning that both the risk of environmental harm as a result of pesticide application and the health risk of consumption of pesticide residues are considerably lower with organic crops.³⁸

In recent years many consumers have become aware of the purported benefits of buying organic: In 2011, 78% of U.S. families acknowledged that they purchased some organic foods (the highest percentage ever), with 48% of those families buying organic indicating that their “strongest motivator . . . is their belief that organic products ‘are healthier for me and my children.’”³⁹ In 2009, nearly \$24.8 billion in U.S. sales were attributed to organics, which was a 5.1% increase from 2008.⁴⁰

Despite these accomplishments, less than 4% of food sales in 2009 were for organic products,⁴¹ due in part to the price distortion caused by farm bill subsidies that prioritize nonorganic commodity crops and make them appear cheaper at the market than their organic counterparts. For years Congress, the USDA, and agribusiness have used subsidies as a way to keep commodity crops cheap compared to organic alternatives,⁴² but a new trend has taken hold that might be just as troubling—large agribusiness companies such as Monsanto, Wal-Mart, and Cargill are recognizing the growing success of organic agriculture and are not only joining the market, but consolidating it in the way those companies consolidated conventional

37. *Id.*; Mitchell et al., *supra* note 31, at 6154–55; *Study Hails Organic Food Benefits: Organic Food Has a Higher Nutritional Value than Ordinary Produce, a Study by Newcastle University Has Found*, BBC NEWS (Oct. 29, 2007), http://news.bbc.co.uk/2/hi/uk_news/england/tyne/7067226.stm (reporting that one of the largest studies of sustainably farmed organic agriculture ever conducted has found up to 40% more of healthful antioxidants in organic fruit and vegetables as compared to nonorganic competitors farmed alongside their organic counterparts); *see also Nutritional Consideration*, ORGANIC TRADE ASS’N, <http://www.ota.com/organic/benefits/nutrition.html> (last visited Apr. 17, 2013) (summarizing 20 recent scientific studies that have all found measurable increases in nutrients in organically produced foods compared to conventional counterparts).

38. *See, e.g.*, Crystal Smith-Spangler et al., *Are Organic Foods Safer or Healthier Than Conventional Alternatives? A Systematic Review*, 157 ANNALS OF INTERNAL MEDICINE 348, 358–59 (2012); DR. CHARLES BENBROOK, INITIAL REFLECTIONS ON NEW ORGANIC STUDY 1–2 (Sept. 4, 2012), *available at* http://www.foodfirst.org/sites/www.foodfirst.org/files/pdf/Benbrook27s_Response_to_Annals_Article.pdf.

39. Press Release, Organic Trade Ass’n, Seventy-eight percent of U.S. families say they purchase organic foods (Nov. 2, 2011), *available at* http://www.organicnewsroom.com/2011/11/seventyeight_percent_of_us_fam.html.

40. *Organic Food Facts*, ORGANIC TRADE ASS’N., <http://www.ota.com/organic/mt/food.html> (last updated June 2010).

41. *Id.*

42. POLLAN, *supra* note 4, at 182.

markets in the post-World War II era.⁴³ Although this may be a positive development because it should lead to greater overall production of organic foods farmed with sustainable methods—and in turn make such foods more affordable to consumers—it also provides a potential avenue for agribusiness to commandeer organic standards in order to water them down (e.g., advocate for inclusion of pesticides and other chemicals not currently on the list of approved organic inputs), much in the way that it has used the farm bill's commodity provisions for several decades to encourage farm and market consolidation.⁴⁴ Moreover, organic farming on an industrial scale, as many of the largest companies do, presents many of the same ecological problems (e.g., monoculture, soil erosion, and overtilling) that plague conventional farming on an industrial scale, thereby potentially undermining the value and purpose of having an organic label in the first place.⁴⁵

Therefore, the public must stay vigilant in protecting the integrity of organic standards as part of a renewed push to subsidize sustainable agriculture, in order to ensure that foods labeled as organic protect the key values for consumers that the label was created to safeguard. And, in any

43. See *id.* at 145–84 (discussing how organic farming looks more like industrial processes because of the involvement of agribusinesses); SAMUEL FROMARTZ, ORGANIC INC.: NATURAL FOODS AND HOW THEY GROW 188 (2006) (discussing the multibillion-dollar organic food business, in which more than half of all organic sales in 2006 came from only the largest 2 percent of organic farms owned or controlled by Kraft, General Mills, Monsanto, and other corporations); Philip H. Howard, *Organic Processing Industry Structure*, MICH. STATE UNIV. <https://www.msu.edu/~howardp/organicindustry.html> (last visited Apr. 21, 2013) (demonstrating how few independent companies remain in the organic market).

44. See POLLAN, *supra* note 4, at 145–84 (explaining how organic farming takes on industrial values because of the control of agribusinesses); see also Howard, *supra* note 43 (demonstrating that very few independent organic companies exist because many have been purchased or consolidated by large food processors or retailers).

45. See, e.g., Coleman, *supra* note 11. According to Coleman:

Now that the food-buying public has become enthusiastic about organically grown foods, the food industry wants to take over. Toward that end the U.S. Department of Agriculture-controlled national definition of 'organic' is tailored to meet the marketing needs of organizations that have no connection to the agricultural integrity organic once represented. We now need to ask whether we want to be content with an 'organic' food option that places the marketing concerns of corporate America ahead of nutrition, flavor and social benefits to consumers.

Id. See generally FROMARTZ, *supra* note 43 (highlighting the controversies surrounding organic certification that have been caused in large part due to the emergence of big corporations in the organic market and the stark contrasts between these corporations and the small growers that initially sparked the organic movement); JOEL SALATIN, HOLY COWS AND HOG HEAVEN: THE FOOD BUYER'S GUIDE TO FARM FRIENDLY FOOD 44–45 (2004) (encouraging consumers to purchase foods from local buyers as opposed to purchasing organic foods from large corporations because of the politicization of the organic label).

event, if Congress does endeavor to incentivize sustainable practices, agricultural experts, as described above, will have to determine how the preexisting organic program fits, if at all, within the parameters of the new subsidy framework and its eligibility requirements.

B. Scaling up Sustainable Agriculture with Significant Reform of Farm Bill Commodity Subsidies

As seen with our nation's massive corn production tied solely to subsidies, farmers will farm wherever the money is. If subsidies were available for sustainable agriculture, regardless of the crop produced, data suggests that farmers would undertake sustainable agricultural practices in order to survive. Further, all available data indicates that many farmers genuinely want to grow healthier foods, maintain their communities, and conserve their natural ecosystems, but they are pressured to farm corn and other commodity crops at the expense of those values because that is where profits are garnered under the existing subsidy framework.⁴⁶ Although most farmers in the United States do not want farm bill subsidies eliminated or phased out,⁴⁷ farmers "show[] strong support for programs focused on conservation" and seem very concerned about the status of the natural environment.⁴⁸ This is not surprising considering the interdependent relationship between healthy farms and a healthy environment: Long-term farm health requires a functioning local ecosystem that can sufficiently supply all of a farm's needs. To prevent degradation of this important ecosystem, which suffers from a classic "tragedy of the commons"⁴⁹ problem under the current farm bill subsidy regime, the proposed

46. BRADLEY D. LUBBEN ET AL., NAT'L PUB. POL'Y EDUC. COMM., THE 2007 FARM BILL: U.S. PRODUCER PREFERENCES FOR AGRICULTURAL, FOOD, AND PUBLIC POLICY v-vi (2006) available at http://www.ag.uidaho.edu/AERS/PDF/2007_farm_bill_us_producer_preferences.pdf (illustrating that many farmers support the current commodity subsidy program despite the fact that such a program undermines other values highly supported by the same farmers such as environmental protection, financial payments for small farms, compliance with WTO rules, and better food safety); see also Timothy A. Wise, *Identifying the Real Winners from U.S. Agricultural Policies* 9 (Global Dev. and Env't Inst. Working Paper No. 05-07, 2005), available at <http://ase.tufts.edu/gdae/Pubs/wp/05-07RealWinnersUSAg.pdf> (concluding that, despite revenues garnered through subsidized corn and soybean production in the past, "diversified family farms [would be much] more competitive relative to [food processors and] industrial livestock operations" if agricultural subsidies were altered so that the price of crops "more accurately reflected costs [paid by the farmer]").

47. *Id.* at vi.

48. *Id.* at vi-vii.

49. Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1244 (1968) (explaining that a "tragedy of the commons" occurs when a common resource (e.g., an ecosystem, air, or water) is degraded by individual users of that resource (e.g., farmers) as each user maximizes his personal benefit while sharing the burden of his resource use (e.g., pollution) among all users of the commons).

sustainable agriculture subsidy system would pay farmers to protect this common pool resource for society and for the farmers themselves for future crop years, to avoid passing on environmental externalities as has typically been the case under federal farm policies.

A related question that is often asked is whether farmers are willing to make the transition from solely growing corn or other commodity crops to planting a diversity of fruits and vegetables under a sustainable agriculture subsidy program. Based on available research, it seems that farmers would be willing to do so both financially and for the viability of their farms and families. Financially speaking, a farmer receives only four cents out of every consumer dollar spent on a corn-based product in the supermarket because of the large number of middlemen such as Cargill, ADM, Coca-Cola, and PepsiCo.⁵⁰ The return is starkly different for whole foods such as green vegetables, fruits, and eggs, where the respective farmer receives forty cents for every supermarket dollar spent, or ten times the amount of return on investment.⁵¹ Thus, it makes financial sense for farmers to indulge in the cultivation of healthier produce and unprocessed whole foods once sustainable agriculture subsidies are put into place, not to mention the ability to feed one's family with the farm's diverse crops rather than purchasing food at the supermarket that was produced and processed hundreds, if not thousands, of miles away.

With respect to anticipated environmental impacts, sustainable agriculture will greatly help to repair local ecosystems, boost farmers' yields as the ecology and soil improves, and mitigate the degradation caused by decades of mechanized agriculture under the farm bill. As farmers well know, sustainable agriculture includes polycultures and crop rotations that are essential to protect soils from erosion and streambeds from sedimentation.⁵² Farmers have long recognized the need for better farming practices to enhance environmental protection.⁵³ When the USDA

50. POLLAN, *supra* note 4, at 95.

51. *Id.*

52. *See generally* Pimentel et al., *supra* note 30 (discussing different cropping systems that employ crop rotations).

53. PRESIDENT'S COUNCIL ON SUSTAINABLE DEV., *supra* note 20, at 8. According to the Council:

In 1990, Congress passed legislation that allowed farmers who had signed up for a particular commodity program—for example, the wheat program—to plant some of their land in a crop other than that specified by the program. In response, farmers reduced the number of acres under monoculture and diversified their crops. By 1994, approximately 42 percent of the land on which farmers were allowed to grow whatever they chose was planted in crops other than those specified by the commodity program in which the farmers were enrolled.

Id.

has given farmers the flexibility to diversify their crops into polycultures and yet retain their full direct payment of commodity subsidies, many farmers have taken advantage of this flexibility and planted noncommodity crops on nearly half of the land available for diversification.⁵⁴ This choice indicates a desire to move towards a more ecologically protective cultivation scheme within the parameters of the farm bill's commodity title.⁵⁵ Additionally, sustainable agricultural systems do not rely on harmful chemical inputs of synthetic fertilizers or pesticides that pose serious threats to humans and wildlife.⁵⁶ Studies indicate that sustainable farming systems "use 30 to 70 percent less energy per unit of land than conventional systems, a critical factor in terms of global warming and eventual fossil fuel shortages."⁵⁷ Since subsidizing sustainable agriculture will result in more polycultures and thus more robust and diverse local food supplies, less transportation will be needed, and the result will be "reduced energy consumption, less processing and packaging, and higher nutritional values" lost during storage and transportation.⁵⁸

Additionally, as money is drawn away from subsidizing corn and spent instead on subsidizing sustainable farming practices, the decreasing amount of corn grown will gradually force a reconfiguration of the Concentrated Animal Feeding Operation (CAFO) industry, which is built almost entirely on large volumes of highly subsidized corn. Fewer livestock animals would be bred for meat production as corn prices return closer to nonsubsidized market rates, which would likely result in an increased proportion of cattle being transitioned back to their native grass-fed diets because of the prohibitive cost of raising grain-fed cattle in the face of decreasing corn subsidies. To encourage the transition, a certain proportion of farm bill subsidies could be allocated to farmers transitioning from concentrated livestock production to more traditional grazing patterns. Such an incentive approach would vastly improve not only water and air quality, but also the health of Americans consuming meat and meat-based products, according to studies that have compared grass-fed animals with their corn-fed counterparts.⁵⁹ Of course, the supermarket price of meat and meat-based

54. *Id.*

55. *Id.*

56. IMHOFF, *supra* note 12, at 143.

57. *Id.*

58. *Id.*

59. E.N. Ponnampalam et al., *Effect of Feeding Systems on Omega-3 Fatty Acids, Conjugated Linoleic Acid and Trans Fatty Acids in Australian Beef Cuts: Potential Impact on Human Health*, 15 ASIA PAC. J. CLINICAL NUTRITION. 21, (2006) (concluding that grass-fed cattle have much higher levels of healthy fats and other compounds while grain-fed cattle have much higher levels of unhealthy fats and compounds).

products will rise as the agricultural market normalizes under this new policy, but the health benefits—and thus the reduction in medical costs—that will be gained from shifting from corn-fed meat to grass-fed meat would be expected to mitigate, if not outweigh, the expected supermarket price increase that is likely to occur.⁶⁰

Finally, and importantly, rural farming communities will be able to sustain some semblance of their past strength, which author and agriculturist Wendell Berry argued could only be regained with a “revolt of local small producers and local consumers against the global industrialism of the corporation.”⁶¹ Thus, assuming large-scale reform of the farm bill is more than an idealistic pipe dream, the time is now for a revolution—a truly “green” revolution—against current agricultural policies, which can only end when the farm bill once again protects our nation’s farmers, the natural environment, and ultimately, the American public by substantially reworking the commodity program to infuse a level of sustainability that powerful interests have attempted to shut out for far too long.

III. BREATHING NEW LIFE INTO THE FARM BILL: LIFE BY A THOUSAND CUTS

While seeking a major overhaul to the farm bill to achieve a sustainable nationwide agricultural system is a laudable objective, the tense partisan climate in Congress and the political and financial power of the agribusiness industry suggest that a more pragmatic course of action would be to seek targeted reforms and to enhance existing initiatives that can incrementally, but steadily, enhance sustainable agriculture and improve consumer choices. By engaging in this more cautious approach, success would, at the least, result over time in a dual system in which sustainable agriculture can thrive alongside an industrial system, and could push the entire system towards a more ecologically balanced and healthful equilibrium. Below are brief examples of programs that, if shaped properly and funded sufficiently, would move the needle much farther towards sustainability in the U.S. farming and food system in the short term.

A. Eliminating or Limiting Commodity Payments and Crop Insurance Payments

An issue that has aroused vigorous debate is the extent to which Congress should limit commodity and crop insurance payments (or other

60. *Id.*

61. POLLAN, *supra* note 4, at 254.

subsidy vehicles under the farm bill), especially given the tenuous financial situation of the U.S. government and the level of federal debt. Everyone from President Obama to members of Congress have taken aim at the most-known subsidy payment scheme—direct payments under the commodity program. The 2008 farm bill limited direct payments, which are provided based on a fixed per-bushel price, to a maximum of \$40,000 per farm, processor, or other eligible entity each year.⁶² In 2011, facing an uncertain financial future and an increasing debt load, President Obama proposed as part of his budget reduction plan to eliminate direct payments entirely, which do not vary with “prices, yields, or producers’ farm incomes” but rather “provide[] producers fixed annual income support payments for having historically planted crops that were supported by Government programs, regardless of whether the farmer is currently producing those crops—or producing any crop, for that matter.”⁶³ As the President’s plan explained, “[e]conomists have shown that direct payments have priced young Americans out of renting or owning the land needed to enter into farming.”⁶⁴

On the heels of this budget plan and in the midst of the debate over the 2012–2013 farm bill, elimination of direct payments received bipartisan support from some members of the House of Representatives, who urged that if Congress “takes even a single action to reduce federal farm subsidies, it should eliminate the direct payment program and apply the savings to reducing the deficit.”⁶⁵ While a bill introduced in the Senate with bipartisan support stopped short of recommending elimination of direct payments entirely, it nonetheless urged a hard per-farm cap on direct payments of \$20,000, a 50% reduction from the 2008 farm bill, regardless of farm size or income.⁶⁶ Myriad environmental benefits would result from a system with fewer and smaller direct payments (or, ideally, none), since such incentives severely restrict planting flexibility (as described in more detail

62. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 1603, 122 Stat. 923, 1002.

63. OFFICE OF MGMT. & BUDGET, LIVING WITHIN OUR MEANS AND INVESTING IN OUR FUTURE: THE PRESIDENT’S PLAN FOR ECONOMIC GROWTH AND DEFICIT REDUCTION 17 (Sept. 2011), available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jointcommitteereport.pdf>.

64. *Id.*

65. Letter from Jeff Flake & Earl Blumenauer, Members of Cong., to the Joint Select Committee on Deficit Reduction (Oct. 18, 2011), available at http://www.taxpayer.net/images/uploads/downloads/10_18_11_Flake_Blumenauer_Deficit_Reduction_Letter.pdf.

66. Letter from Sen. Charles Grassley & Sen. Tim Johnson to the Joint Select Committee on Deficit Reduction, available at <http://www.grassley.senate.gov/judiciary/upload/Agriculture-10-14-11-Grassley-Johnson-Letter-to-Jt-Cmte-re-Payment-Limits.pdf>; Rural America Preservation Act of 2011, S. 1161, 112th Cong. (1st Sess. 2011).

below) and thus encourage large-scale and ecologically devastating monocultures. But any attempt to eliminate or further cap direct payments will inevitably be met with fierce resistance from large farms and processors that benefit from the current system. At the time of writing, it remains to be seen whether this important step will be achieved in the 2012–2013 farm bill behind the weight of the White House and congressional members on both sides of the aisle.

In addition to elimination of direct payments, hard caps are also necessary to limit other forms of subsidy payments that deplete public funds and foster environmental degradation, and to ensure that these payments are allocated only to provide a safety net to farmers in need, instead of helping large farms get even wealthier on the taxpayer's dime. A few areas where caps have been proposed include counter-cyclical subsidy payments that are paid to eligible farmers in years where the actual price paid for a commodity is less than a target set by the USDA,⁶⁷ and nonrecourse commodity marketing loans and loan deficiency payments that "provide[] an influx of cash when market prices are typically at harvest-time lows, which allows the producer to delay the sale of the commodity until more favorable market conditions emerge."⁶⁸ As with direct payments, in the 2008 farm bill, Congress authorized sizeable disbursements for both counter-cyclical payments, which were capped at \$65,000 annually per farm, and marketing loans and loan deficiency payments, which had no limits on their allocation.⁶⁹ There are two different ways that such payments can be reduced to more reasonable levels—on the front end by capping them on a per-farm basis like the above proposals for direct payments, or on the back end by lowering eligibility requirements far below the current limit for most commodity subsidies set at an Adjusted Gross Income (AGI) of \$1.25 million by the 2008 farm bill.⁷⁰ Recent efforts have seen members of Congress advocate for both approaches; one proposed bill calls for a hard per-farm cap of \$30,000 for counter-cyclical payments (down 54% from the 2008 farm bill) and \$75,000 for loan deficiency payments and marketing

67. See *Counter-Cyclical Payments*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., <http://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/program-provisions/counter-cyclical-payments.aspx> (last updated Oct. 29, 2012) (providing overview of counter-cyclical payment program).

68. *Non-Recourse Marketing Assistance Loan*, U.S. DEP'T OF AGRIC, FARM SERV. AGENCY, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=prsu&topic=col-nl> (last modified Jan. 17, 2013).

69. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 1603, 122 Stat. 923, 1002.

70. See Flake & Blumenauer, *supra* note 65.

loans (down from no limit at all).⁷¹ Another proposal offered with bipartisan support advocated that “farm subsidy payments be limited to those with an [AGI] of less than \$250,000,” which is an 80% reduction in the maximum eligibility for subsidies.⁷² Despite their different approaches, both proposals agreed that “the aggregate of agriculture subsidies any one . . . entity [or married couple] can receive be capped at . . . \$250,000 annually.”⁷³

The well-documented environmental devastation encouraged by commodity payment incentives compels the conclusion that the time and effort of conservation and sustainable agriculture advocates would be well spent by continuing to press for even lower caps and stricter eligibility requirements. As a result, subsidy payments as well as crop insurance payments provided by the federal government, if any at all, would be used only for their original purpose of buttressing small family farmers in need of supplemental income or disaster relief.⁷⁴

B. *Putting the Flexible Back in Planting Flexibility*

Another area of intense debate in the agriculture community is over what conditions, if any, should be placed on planting flexibility as part of the farm bill’s commodity and crop insurance programs. In the 2008 farm bill, Congress restricted all payments under the commodity title of the farm bill (direct payments, counter-cyclical payments, and average crop revenue election payments) to only those farms that “comply with the planting flexibility requirements of section 1107” of the legislation.⁷⁵ In effect, section 1107 provides that farmers enrolled in any of the three types of commodity payment programs may not plant fruits, vegetables, or wild rice on any portion of their base acres.⁷⁶ As a result, farmers have all of their eligible base acres available for commodity cultivation that in turn translates to a per-bushel or per-weight payment to the farmer each year on October 1 as specified in sections 1103, 1104, and 1202 of the legislation. If a farmer whose farm has not historically produced fruits or vegetables opts

71. Grassley & Johnson, *supra* note 66; *see also* Rural America Preservation Act of 2011, S. 1161, 112th Cong. (1st Sess. 2011).

72. Flake & Blumenauer, *supra* note 65.

73. *Id.*; Grassley & Johnson, *supra* note 66.

74. For a detailed discussion of the environmental impacts incentivized by commodity subsidies, *see* Eubanks, *A Rotten System*, *supra* note 1.

75. Food, Conservation, & Energy Act of 2008, Pub. L. No. 110-246, § 1106(a)(1), 122 Stat. 923, 949.

76. *Id.* § 1107.

to grow fruits or vegetables on his base acres, the farmer is ineligible for commodity payments that year.⁷⁷

The idea of planting flexibility—or the ability to diversify one’s crops for environmental or other sustainability purposes—was first adopted in the Integrated Farm Management Program in the 1990 farm bill.⁷⁸ As the National Sustainable Agriculture Coalition notes:

The adoption of planting flexibility [in the 1990 farm bill] was important to farmers utilizing sustainable farming methods. Producers who for environmental, health or economic reasons were adopting diversified resource-conserving crop rotations or were adding grass-based livestock production with continuing grain production activities found themselves enormously disadvantaged by the traditional commodity program structure. As these farmers added forages and soil-building crops to their rotations or converted marginal or hilly crop acres to grass-based production systems—all very positive practices for the environment—they lost government payments. The advent of planting flexibility rules . . . at least provided for a prospective elimination of a significant barrier to the adoption of more sustainable and diversified systems.⁷⁹

Unfortunately, recognizing that an increase of noncommodity crop production on commodity crop lands formerly ineligible for fruit and vegetable production would harm their interests, the lobby for fruit and vegetable growers sought to ensure that the new planting flexibility would not jeopardize their profit and market share.⁸⁰ Thus, before the new planting flexibility rules could be enacted, several restrictive limits were incorporated into the 1990 farm bill to prohibit commodity-eligible farms from “growing fruits and vegetables as an alternative crop on base acres.”⁸¹ As noted, the original intent behind the restrictions, which still persist today, was “to protect fruit and vegetable growers who do not receive

77. See *Planting Flexibility for Fruits and Vegetables*, NAT’L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/competitive-markets-commodity-program-reform/planting-flexibility-for-fruits-vegetables/> (last visited Apr. 29, 2013) (“The general prohibition on planting fruits and vegetables remains, however, and planting flexibility is still not absolute.”).

78. *Id.*

79. *Id.*

80. JEFFREY K. O’HARA, UNION OF CONCERNED SCIENTISTS, ENSURING THE HARVEST: CROP INSURANCE AND CREDIT FOR A HEALTHY FARM AND FOOD FUTURE 1, 19 (2012), available at http://www.ucsusa.org/assets/documents/food_and_agriculture/ensuring-the-harvest-full-report.pdf.

81. JIM MONKE, CONG. RESEARCH SERV., RS21615, FARM COMMODITY PROGRAMS: BASE ACREAGE AND PLANTING FLEXIBILITY, at CRS-3 (2005), available at <http://www.nationalaglawcenter.org/assets/crs/RS21615.pdf>.

government payments.”⁸² Indeed, fruit and vegetable farmers—who are almost categorically excluded from subsidy programs under the farm bill—“generally oppose [measures to allow more planting flexibility] . . . because the change would weaken protections that have existed since planting flexibility was created in the 1990 farm bill,” meaning that fruit and vegetable farmers could “face unfair competition if producers of [commodity] program crops were allowed to plant [fruits and vegetables] on program base acres and still receive government payments” by way of commodity subsidies.⁸³

Despite the concerns voiced by fruit and vegetable growers, sustainable agriculture and environmental advocates have strongly urged Congress for more than two decades to lift these growing restrictions on the tens of thousands of farms enrolled in the commodity program because of the enormous conservation and health benefits that would result from the ability to diversify crops, enhance stewardship efforts, and bolster local food systems and farm-to-consumer sales. Indeed, some farmers who have attempted to expand their sustainable farming operations by leasing land formerly enrolled in the commodity program for organic fruit and vegetable production have found themselves subject to stifling financial penalties simply “[b]ecause national fruit and vegetable growers based in California, Florida and Texas fear competition from regional producers . . . [and] they have been able to virtually monopolize the country’s fresh produce markets” regardless of the ecological impacts of that monopolization.⁸⁴

To close this loophole, there have been renewed calls during the 2012–2013 farm bill cycle to reexamine and greatly expand planting flexibility for farmers enrolled in commodity (or crop insurance) programs.⁸⁵ Research has indicated the need for more flexible planting requirements: A 2010 study indicated that, in order to meet the USDA’s daily recommended nutritional guidelines for each American, the United States needs an additional 13 million acres of farmland growing fruits and vegetables.⁸⁶ However, at the time of writing, Congress has elected to ignore those requests in favor of supporting the status quo at the expense of a more sustainable, transparent, and balanced food system.

82. *Id.*

83. *Id.* at CRS-4.

84. Jack Hedin, *My Forbidden Fruits (and Vegetables)*, N.Y. TIMES (Mar. 1, 2008), <http://www.nytimes.com/2008/03/01/opinion/01hedin.html>.

85. *See, e.g.*, Local Farms, Food, and Jobs Act of 2011, S. 1773, 112th Cong. § 1001.

86. Press Release, Am. Farmland Trust, The United States Needs 13 Million More Acres of Fruits and Vegetables to Meet RDA (July 7, 2010), *available at* <http://www.farmland.org/news/pressreleases/13-Million-More-Acres.asp>.

C. Reestablishing Conservation Compliance Conditions on Federal Crop and Revenue Insurance Payments

Conservation compliance is not a stand-alone conservation program in which a farm may choose to enroll, but rather imposes certain environmental requirements on all farms that participate in most other farm bill programs, and thus receive federal incentives through those programs.⁸⁷ The two key conservation compliance provisions “encourage greater soil conservation and wetland protection,” and those respective provisions are commonly referred to as Sodbuster and Swampbuster.⁸⁸

Thus, to maintain eligibility for the various programs to which conservation compliance attaches (e.g., direct payments and countercyclical payments through commodity programs, payments through disaster programs, and incentives through working lands conservation programs), a farm *must*: (1) implement a soil conservation plan on “highly erodible” land that has been approved by the USDA’s Natural Resources Conservation Service (NRCS); (2) refrain from planting and harvesting on highly erodible land without implementing a conservation plan approved by NRCS; and (3) refrain from draining any wetlands for crop production purposes.⁸⁹ If a farm violates any of these conditions, it “could lose some or all of [its] commodity, conservation, and disaster payments; access to USDA farm loan and loan guarantee programs; and other agriculture-related benefits,” which is why conservation compliance is such “a potent incentive for soil and wetland conservation.”⁹⁰ Conservation compliance is of critical importance in terms of agriculture-related conservation efforts because approximately 100 million acres of U.S. cropland, or roughly 25% of cropland in production, is highly erodible and thus subject to these conditions, and because more than 1.5 million acres of wetlands have been saved from crop production through these provisions.⁹¹

The one glaring omission in major farm bill programs subject to conservation compliance is the crop insurance program, which provides annual crop and revenue insurance payments to approximately 80% of eligible acres for the four major commodity crops (corn, wheat, soybeans,

87. See, e.g., ROGER CLAASSEN, U.S. DEP’T OF AGRIC., ECON. RESEARCH SERV., THE FUTURE OF ENVTL. COMPLIANCE INCENTIVES IN U.S. AGRIC.: THE ROLE OF COMMODITY, CONSERVATION, AND CROP INSURANCE PROGRAMS, ECON. INFO. BULL. NO. 94 iii (Mar. 2012), available at <http://www.ers.usda.gov/publications/eib-economic-information-bulletin/eib94.aspx>.

88. *Id.* at 1.

89. *Id.*

90. *Id.*

91. *Id.*

and cotton), thereby significantly reducing their insurance premiums.⁹² When Congress enacted the conservation compliance provisions in 1985, crop insurance payments were subject to them. However, in 1996, in an effort to appease large commodity growers, Congress decoupled conservation compliance from crop insurance payments, meaning that for the past seventeen years farms have collected crop insurance subsidies without complying with the conditions set forth above concerning highly erodible land and wetlands.⁹³

Because there is currently a strong push towards reallocating the farm bill's incentives from direct payments to risk management incentives heavily dependent on crop and revenue insurance payments, it is vital that Congress reestablish the link between conservation compliance and crop insurance.⁹⁴ Indeed, crop insurance payments "are now the largest farm program public benefits" and as a result must "be part of the same social contract as commodity and conservation support."⁹⁵ A recent study commissioned by the USDA found that if Congress moves to a more risk management based system (i.e., abandoning direct payments in lieu of crop insurance) without relinking conservation compliance to crop insurance payments, at least 181,000 farms consisting of 141 million acres, or 36% of U.S. cropland, would no longer be subject to any of the conservation compliance provisions which have had invaluable ecological benefits since their inception in 1985.⁹⁶ Accordingly, it is crucial that Congress reestablish the link between these two programs in order to avoid potentially devastating environmental effects to our nation's soils and wetlands when that reallocation occurs.

D. Ensuring Adequate Funding for the Conservation Stewardship Program and Eliminating Barriers to Enrollment in the Program

In the 2008 farm bill, Congress created the Conservation Stewardship Program (CSP) (successor to the Conservation Security Program), a small environmental protection program to pay farmers for "operation-level environmental benefits they produce[;] . . . the higher the operational

92. *Id.* at 4.

93. *Id.* at 4 n.3.

94. See NAT'L SUSTAINABLE AGRIC. COAL., FARMING FOR THE FUTURE: A SUSTAINABLE AGRICULTURE AGENDA FOR THE 2012 FOOD AND FARM BILL 41 (Mar. 2012), available at http://sustainableagriculture.net/wp-content/uploads/2008/08/2012_3_21NSACFarmBillPlatform.pdf ("The 2012 Farm Bill should re-establish compliance requirements for federal crop and revenue insurance benefits so that all existing or new crop and revenue insurance or other risk management programs are subject to conservation compliance provisions.").

95. *Id.*

96. CLAASSEN, *supra* note 87, at 5.

performance, the higher their payment.”⁹⁷ The program is small (a total of 12.8 million new acres each year, added to existing CSP-enrolled acres from previous years). Enrolled farmers participate under five-year contracts, and CSP payments are “capped at \$200,000 over the life of a five-year contract, which is equivalent to \$40,000 per year.”⁹⁸ Program payments are made based on a ranking system of the most critical conservation needs, with allotments for such activities as converting cropland to grass-based forage, employing continuous cover cropping, extending riparian buffers, and establishing windbreaks or shelterbelts.⁹⁹ CSP incorporates many of the ideas that would be included in any fundamental and immediate reform of the farm bill commodity provisions (such as described above), although the current CSP operates on a much smaller scale and without any correlative dramatic changes to the commodity payment structure that would be part of a fundamental shift from incentivizing commodities to encouraging sustainable practices. Nor, at the time of writing, was CSP funded at levels that allow all (or even most) interested farmers to enroll in the program.¹⁰⁰ It is important that Congress continue to support this ecologically protective approach in future farm bills by funding it at no less than current levels and, in better financial times, at significantly enhanced levels to open enrollment to more of our nation’s farms to encourage widespread conservation practices.

A significant omission with CSP as designed in the 2008 farm bill is that the program does not have a minimum annual per-contract payment.¹⁰¹ Therefore, while “CSP is size-neutral,” meaning that smaller farms are eligible to apply for enrollment in the program, very small farms “even if producing very high value conservation per acre . . . still can only earn a certain amount of environmental benefit payment points when multiplying value times acres.”¹⁰² The end result of this omission is that a small farm “may only be able to earn a few hundred dollars per year from CSP . . .

97. *Conservation Stewardship Program*, U.S. DEP’T AGRIC., NATURAL RES. CONSERVATION SERV., <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/> (last visited Apr. 29, 2013).

98. *New Conservation Stewardship Program*, CTR. FOR RURAL AFFAIRS, <http://www.cfra.org/csp-new-improved> (last visited Apr. 29, 2013).

99. CSP 2011 Ranking Period, *supra* note 29.

100. See NAT’L SUSTAINABLE AGRIC. COAL., FARMERS’ GUIDE TO THE CONSERVATION STEWARDSHIP PROGRAM: REWARDING FARMERS FOR HOW THEY GROW WHAT THEY GROW 12 (2009), available at <http://sustainableagriculture.net/wp-content/uploads/2011/09/NSAC-Farmers-Guide-to-CSP-2011.pdf> (explaining that only 64% of “beginning, social disadvantaged and limited resource farmers and ranchers” that applied to CSP in 2009 and 2010 received grants, and that the overall grant ratio for all farmers was significantly lower than 64%).

101. *Id.* at 17.

102. *Id.*

[which] may not be worth the paperwork” involved in enrolling in the program.¹⁰³ Congress has already eliminated this barrier for socially disadvantaged,¹⁰⁴ beginning, and limited-resource farmers by ensuring a minimum annual payment of \$1,000 for CSP-enrolled farms meeting any of those three criteria.¹⁰⁵ In the future, efforts to expand this minimum annual payment for these farmers, as well as measures to extend the predetermined minimum annual payment to *all* farmers to ensure that CSP does not inadvertently discriminate against small farms engaged in sustainable practices, would support a more ecologically balanced and transparent food system.

Likewise, it would bolster the program’s goals if Congress amended CSP contract terms to allow for more than a single contract renewal. At present, CSP contracts are for five years, and a farm that has increased its environmental benefit score during the contract term may apply for and receive a single five-year renewal contract.¹⁰⁶ But once the contract renewal period ends, farms are precluded from any additional renewals, even if they have satisfied all contractual obligations and increased their environmental benefit scores.¹⁰⁷ Because the CSP is oriented towards encouraging *long-term* programs that enhance the natural environment, the one-renewal limit “is counter-productive to the program’s goal to advance ongoing, iterative land stewardship to improve and maintain environmental performance.”¹⁰⁸ Therefore, it is imperative that Congress revisit CSP contract renewal terms in order to harmonize them with the underlying purpose of the program.

E. Prioritizing Organic Agriculture Through Funding, Research, and Targeted Set-Asides

The conservation benefits, and even arguably the nutrient benefits, of organic agriculture are now well understood in the scientific community.¹⁰⁹ In the face of strong political pressure from conventional growers who want

103. *Id.*

104. 7 U.S.C. § 2003(e) (2006) (defining “socially disadvantaged farmer or rancher” as an individual belonging to “a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities”).

105. *Id.*

106. See NAT’L SUSTAINABLE AGRIC. COAL., FARMING FOR THE FUTURE, *supra* note 94, at 54 (highlighting issues of contract renewals and proposing changes).

107. *Id.*

108. *Id.*

109. See, e.g., *Nutritional Considerations*, ORGANIC TRADE ASS’N, <http://www.ota.com/organic/benefits/nutrition.html> (summarizing 20 recent scientific studies that have all found measurable increases in nutrients in organically produced foods compared to conventional counterparts) (last updated Sept. 26, 2011).

to maintain the status quo, the primary challenge is redirecting precious commodity dollars from support of wealthy megafarms to programs that benefit organic growers committed to earth-friendly practices, and to research ways to make organic production even more competitive in the market. In addition, efforts to create set-asides for organic growers in existing programs (i.e., a predetermined amount of money only available to a subset of organic producers meeting certain eligibility requirements) would serve to expand the proportion of organic agriculture within our nation's food system.

The National Organic Certification Cost-Share Program (NOCCSP) partially reimburses farms and ranches for the cost of USDA organic certification, making it more likely that those farms can afford certification and thus have a better chance for financial security.¹¹⁰ The 2008 farm bill funded NOCCSP at \$22 million, or approximately \$4.4 million per year, during the life of the legislation, which was a substantial increase from the \$5 million (\$1 million annually) authorized for the same program during the life of the 2002 farm bill.¹¹¹ Sustainable agriculture advocates have called for funding at \$30 million in the 2012–2013 farm bill, or an increase of 36%.¹¹²

Another key requirement to provide stability for organic producers is an equitable organic insurance scheme. In the 2008 farm bill the insurance plans and premiums offered to organic farmers differed little from those available to conventional farmers, which wholly failed to account for the unique risks and challenges facing organic producers. As the Organic Farming Research Foundation explains:

USDA currently does not provide appropriate risk management tools for organic producers. The agency charges an unjustified surcharge to organic farmers, and does not pay organic farmers at the organic price after a loss for most commodities. The agency does not provide appropriate tools for diversified farmers.¹¹³

110. *Organic Certification Cost Share*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/organic-production/organic-certification-cost-share/> (last visited Apr. 29, 2013).

111. *Id.*; Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 10301, 122 Stat. 923, 1346.

112. Press Release, Organic Farming Research Found., Opportunities to Invest in the Growing Organic Sector through the 2012 Farm Bill, *available at* <http://ofrf.org/sites/ofrf.org/files/pdf/flyer-opportunities-to-invest.pdf> [hereinafter Organic Farming Research Found. Press Release].

113. *Id.*

It is critical to remedy this inequity so that organic producers can compete on the open market with conventional farmers who are also backed by government insurance, and have organic insurance plans that sufficiently protect their crop investments in the event of disaster or crop loss. In the end, the result of a policy change on this front would result in organic producers being paid fair market *organic* prices for their crops when insurance claims are paid out in the event of covered crop losses or disasters, as opposed to lower prices that reflect the conventional values (i.e., price of nonorganic counterparts) as is currently the case.

Another centerpiece of reform that would demonstrate Congress's commitment to organic agriculture would be setting aside certain mandatory funding in existing competitive programs for organic producers. CSP exemplifies this need. Indeed, because CSP rewards farmers undertaking substantial conservation efforts—generally a key tenet of organic production in any event—“organic producers are very likely to have extensive conservation systems in place Thus organic farmers may rank high and earn good payments” under CSP.¹¹⁴ However, despite the clear match between CSP goals and organic producers, “CSP does not have a separate pool of funds for organic producers,” which means that many eligible organic producers are excluded from the program because “CSP has proven to be very popular, and thus entry is quite competitive.”¹¹⁵ This could be cured, to some extent, by authorizing a set-aside for organic farmers, just as Congress has already done for beginning farmers (5% set-aside within CSP) and for socially disadvantaged or resource-limited farmers (5% set-aside within CSP).¹¹⁶ Such a set-aside would ensure that organic producers are being compensated in some way for the choices they make in production methods to better the planet.

One last crucial piece of the organic puzzle is increasing funding for research. An organic research initiative that has produced invaluable information is the Organic Agriculture Research and Extension Initiative (OREI), which is “[u]nique in its scope and function,” which “funds innovative research and extension projects to help meet the production, marketing, and policy needs of the growing organic industry,” and which helps farmers be successful and improve and increase production.¹¹⁷ OREI is a competitive grant program, and only funds a small percentage of eligible proposals each year.¹¹⁸ The 2008 farm bill authorized \$18 million in

114. NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 100, at 19.

115. *Id.* at 19, 20.

116. *Id.* at 12.

117. Organic Farming Research Found. Press Release, *supra* note 112.

118. *Id.*

2009, and \$20 million annually in 2010–2012.¹¹⁹ To address the number of innovative organic research projects turned away at that funding level, leading scientific and advocacy organizations called for \$30 million of mandatory annual funding for OREI in the 2012–2013 farm bill.¹²⁰ Whether Congress will agree to fund the program at that level remains to be seen, but the intense competition for OREI grants in the past indicates that organic research is sorely needed to protect our ecosystems and organic producers, and taxpayer funding is necessary to ensure that these research vehicles are prioritized.

F. Bolstering Local and Regional Food Systems

Finally, there are many laudable farm bill programs in their relative infancy that if sustained and funded adequately have the potential to support a drastically different food system—one that is based, in large part, on local and regional production and distribution rather than the industrial model promoted by the farm bill for the past several decades. Congress allocated funding for the Farmers' Market Promotion Program (FMPP) in the 2008 farm bill, authorizing \$3 million in 2008, \$5 million annually in 2009 and 2010, and \$10 million annually in 2011 and 2012.¹²¹ FMPP is a competitive grant program targeted “to help improve and expand domestic farmers' markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer market opportunities,” which inevitably results in less environmental damage due to reduced transportation and a fresher and more nutritious end product for the consumer.¹²² In particular, “[s]pecific grant uses include developing relevant financial and marketing information, business planning, improving market access and education for consumers, organizing markets and direct marketing networks, and supporting innovative approaches to market management and operations.”¹²³ Because FMPP is essential to ensuring that local and regional food systems can persist against the competition of cheap processed supermarket foods, this is a program that is worthy of congressional support through future funding increases. During

119. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 7206(f), 122 Stat. 923, 1238.

120. Organic Farming Research Found. Press Release, *supra* note 112.

121. Food, Conservation, and Energy Act § 10106.

122. *Farmers Market Promotion Program*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., <http://www.ams.usda.gov/AMSV1.0/FMPP> (last visited Apr. 29, 2013).

123. *Farmers' Market Promotion Program*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/farmers-market-promotion-program/> (last visited Apr. 29, 2013).

consideration of the 2012–2013 farm bill, several members of Congress and policy advocates requested that FMPP be “refashioned” to “do everything FMPP does, but also [to] provide grants to scale up local and regional food enterprises, including processing, distribution, aggregation, storage, and marketing,” with the money equally allocated between traditional direct-market FMPP activities and scaled-up activities for local and regional food systems, such as retail and institutional markets.¹²⁴

Another competitive grant program that bolsters local (as well as nonlocal) food systems is the Value-Added Producer Grant program (VAPG), which provides grants to farmers to produce “value-added” products.¹²⁵ What constitutes a value-added product is quite expansive; examples that fall within the definition and are thus eligible for grants include wine, flour, cheese, jam, organic grass-fed beef, GE-free foods, non-rBGH dairy products, or business entities selling directly from farm to institution (for example, to schools, prisons, and hospitals).¹²⁶ Congress authorized \$40 million annually under the 2008 farm bill, with grants of up to \$50,000 per grantee, although it ultimately appropriated only \$20.4 million in 2010 and just under \$19 million in 2011, meaning that legislative funding fell short of what the farm bill promised.¹²⁷ This program has been instrumental in helping various organic and other sustainable farms and businesses add value to their products and maintain thriving operations without compromising their environmental ethics, and many of these products (although not all) are sold in local and regional food markets.¹²⁸ Accordingly, securing additional funding from Congress for this program—since farmers selling locally can submit grants to take advantage of these incentives—is critically important.

Yet another creative policy solution to enhance local and regional food systems are community food projects (CFPs), which are funded through competitive grants as “proactive approaches to making communities more self reliant at maintaining their food systems while addressing food, nutrition, and farm issues.”¹²⁹ These projects are “designed to increase food

124. Press Release, National Sustainable Agriculture Coalition, Local and Regional Farm and Food Bill Introduced in Congress (Nov. 1, 2011), <http://sustainableagriculture.net/blog/lffja-introduced/>.

125. *Value-Added Producer Grants*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/value-added-producer-grants/> (last visited Apr. 29, 2013).

126. *Id.*

127. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 6202, 122 Stat. 923, 1207; see also *Value-Added Producer Grants*, NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 125 (describing the additional \$40 million per year in discretionary funding provided by the 2008 farm bill).

128. *Value-Added Producer Grants*, NAT'L SUSTAINABLE AGRIC. COAL., *supra* note 125.

129. *Community Food Projects*, U.S. DEP'T OF AGRIC., NAT'L INST. OF FOOD & AGRIC., http://www.csrees.usda.gov/nea/food/sri/hunger_sri_awards.html (last updated Mar. 18, 2009).

security in communities by bringing the whole food system together to assess strengths, establish linkages, and create systems that improve the self-reliance of community members over their food needs.”¹³⁰ Congress authorized approximately \$1 million annually in the 2008 farm bill, and a CFP grant can last up to three years.¹³¹ To make CFPs even more effective, several senators and congressmen introduced a bill in 2011 calling for a doubling of mandatory annual funding to \$10 million in the 2012–2013 farm bill, as well as an increase in the term of CFP grants from three years to five years to allow time for proper implementation of ideas developed under the grants.¹³²

One legislative step for which support is needed is an amendment to the National School Lunch Program (NSLP) to allow schools participating in the program to utilize a certain amount of their allocated entitlement dollars—which are normally used to purchase highly processed foods made from surplus commodities such as corn and soybeans¹³³—to instead purchase locally produced fruits and vegetables, as well as local value-added products, in lieu of highly processed commodities that travel thousands of miles. While this type of local and value-added set-aside does not currently exist in the NSLP, there is growing pressure on Congress from sustainable agriculture organizations and progressive elected officials for precisely this type of “local food credit program,” which, if adopted, would enable schools to spend up to 15% (or some other defined percentage) of their entitlement dollars on locally produced foods.¹³⁴ If such a program were created, our nation’s school foods would take a significant step towards better nutritional, environmental, and economic sustainability.

IV. CONCLUSION

The alarming environmental, health, and economic toll of our nation’s industrialized food system is reason enough to wish for a radical change in the status quo whereby our elected representatives appear to favor agribusiness interests at the expense of the needs of the American public

130. *Community Food Projects Competitive Grants*, U.S. DEP’T OF AGRIC., NAT’L INST. OF FOOD & AGRIC., http://www.csrees.usda.gov/nea/food/in_focus/hunger_if_competitive.html (last updated Mar. 18, 2009).

131. Food, Conservation, and Energy Act § 4402.

132. Local Farms, Food, and Jobs Act of 2011, S. 1773, 112th Cong. § 3008.

133. *See generally* USDA NAT’L INST. OF FOOD AND AGRIC., WHITE PAPER: USDA FOODS IN THE NATIONAL SCHOOL LUNCH PROGRAM (May 2010), *available at* <http://www.fns.usda.gov/fdd/foods/healthy/WhitePaper.pdf> (detailing the products states can order against their entitlements).

134. Local Farms, Food, and Jobs Act of 2011, S. 1773, 112th Cong. § 3004.

and our shared natural resources. While a truly green revolution could be achieved if the will of the American people were to fully endorse it (which at this time seems unlikely), the more likely pathway to solving many problems that directly or indirectly result from our agricultural policies is to embrace the longstanding policy structure and to gradually mold and shape that omnibus policy until our food system mirrors the system that reflects a true “green.” There are myriad existing programs and creative ideas for new programs that have extraordinary potential to reward farmers for implementing sound ecological practices and cultivating nutritious products for consumers, to fund research on key scientific and economic objectives to ensure a stable and fair farm economy, and to establish the critical connection between consumers, their farmers, and the lands upon which our daily meals are grown. If we succeed in breathing renewed life into the farm bill in such a manner after having endured decades of legislative bias towards a certain form of agriculture and of our communal unlearning of our nation’s agrarian roots, we will shed the outdated and antiquated mid-20th century farming and food model, and instead build a more equitable, just, and sustainable 21st century food system unlike any the modern world has ever seen.