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America's New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers

Neil D. Hamilton*

*Drake University Law School

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AMERICA'S NEW AGRARIANS: POLICY OPPORTUNITIES AND LEGAL INNOVATIONS TO SUPPORT NEW FARMERS¹

*Prof. Neil D. Hamilton**

WHY THE NEW FARMER GENERATION IS SO IMPORTANT TO AMERICA'S FUTURE

A strong argument can be made that no issue is more important to the future of U.S. agriculture – and thus to our food supply and social sustainability – than identifying who will be the next generation of farmers who will steward the land and produce our food. The good news is our nation is experiencing a surge in interest of people who want to be farmers – what we can see as a generation of New Agrarians.² The interest of young people in food and agriculture is almost overwhelming, and such a stark difference from past decades when few in the younger generation wanted anything to do with

*Neil D. Hamilton is the Dwight D. Opperman Distinguished Professor of Law and the Director of the Agricultural Law Center at Drake University Law School in Des Moines.

1. This Article grows out of the Center's work on new farmers and is designed to identify ideas for how the USDA and other organizations can consider new initiatives to assist new farmers. It was developed for a symposium held by the Fordham Environmental Law Review. It is the result of extensive travels and research conducted during the 2010-11 school year on a sabbatical from my teaching responsibilities at Drake University Law School. The Article represents the third installment in a related series of essays written during this period, all dealing with the future of America's food and agricultural system. Readers are encouraged to consult the other two companion articles. Neil D. Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. (forthcoming 2011); Neil D. Hamilton, *Farms, Food and the Future: Legal Issues and Fifteen Years of the "New Agriculture,"* 26 J. ENVTL. L. & LITIG. (forthcoming 2011).

2. See, e.g., Isolde Raftery, *In New Food Culture, A Young Generation of Farmers Emerges*, N.Y. TIMES, Mar. 6, 2011, at A19.

farming, raising livestock or working the land.³ But the times are changing and today the nation has a real opportunity to bring new energy, fresh ideas, and young talent to the farm and food sector in rural areas and urban communities alike. This interest on the part of a new generation of potential farmers, many from non-agricultural backgrounds, will challenge the traditional agricultural system and culture in many ways. Interest in organic farming, different views on what is proper and humane in caring for livestock, and less enthusiasm for certain new technologies, such as genetically modified seeds, are just some of the points of difference between the traditional farm community and many in the New Agrarian generation.⁴ This new interest in farming cuts across all economic, geographic, racial, ethnic and educational distinctions. On a November 2010 weekend, over 450 people, mostly black youth and students, gathered at Brooklyn College for the Black Farmers and Urban Agriculture conference to learn about how to be part of the healthy food and urban farming movement.⁵ Less than two weeks later, a sell-out crowd composed of over 250 mostly white, well educated, college graduates from middle and upper income families, gathered for the National Young Farmer Conference at the Stone Barns Center for Food and Agriculture near Tarrytown, less than fifty miles away.⁶ While the audiences were very different, their interests and the forces motivating and attracting them were much the same; as are the challenges and hurdles facing them in their desire to be involved with farming.⁷

3. See Alec Appelbaum, *Growing with the Crops, Nearby Property Values: Organic Farms as Subdivisions Amenities*, N.Y. TIMES, July 1, 2009, at B9; Kim Severson, *Old McDonald Had an Intern? Summer Jobs are Going Organic*, N.Y. TIMES, May 24, 2009, at A1; Elizabeth Weise, *On Tiny Plots, a New Generation of Farmers Emerges*, USA TODAY, July 14, 2009, at A1.

4. See, e.g., Andrew Martin, *Is a Food Revolution Now in Season?*, N.Y. TIMES, Mar. 21, 2009, at BU1.

5. See BLACK FARMERS & URBAN GARDENERS CONF., <http://www.blackfarmersconf.org> (last visited May 6, 2011).

6. See *YF Conference*, STONE BARNS CTR. FOR FOOD & AGRIC., <http://www.stonebarnscenter.org/our-work/young-farmers-initiative> (last visited May 8, 2011). The Young Farmer Conference was part of the Stone Barns initiative on supporting new farmers. *Id.*

7. The Drake Agricultural Law Center has implemented a new research initiative on policies to support the next generation of America's farmers. As part of this work, the Center organized a two-day national conference "The Drake Forum: America's New Farmers: Policy Innovations & Opportunities" held in

The opportunity to focus the nation's attention on the needs of a new generation of farmers and the role they can play in the future of local and regional food systems presents an important opportunity for policy makers and public officials. The people interested in food and farming come from all backgrounds, but there are segments of the population that present special opportunities and challenges. For example, women play a significant role in the nation's healthy food movement and in creating new farms, especially in relation to local foods, small farms, and beginning farms.⁸ Over fifty percent of the speakers and attendees at the Drake Forum were women.⁹ This means women are a critical part of the new farmer agenda, and policy efforts need to recognize and empower them.¹⁰ Another group that presents a unique opportunity to aid in assisting their desire to farm are the nation's young veterans. Helping these potential new farmers – literally turning combat boots into cowboy boots – represents one of the most important and symbolic opportunities for the U.S. to make real a commitment to helping create new farms.¹¹ In addition to

Washington DC on March 4 and 5, 2010. The Forum, cosponsored by USDA Risk Management Agency, Farm Credit, the Leopold Center for Sustainable Agriculture, and others, attracted over 200 attendees from forty states. *See Beginning Farmers*, DRAKE LAW SCHOOL, <http://www.law.drake.edu/centers/agLaw/> (last modified Mar. 17, 2011) (follow “Beginning Farmers” hyperlink) (containing information from the Forum such as pod casts of the fifty speakers, including remarks by Secretary Vilsack). As part of Drake's focus on new farmer issues the Law School offers a one-credit summer class on America's New Farmers – Legal and Policy Opportunities. *Detailed Information for Agricultural Law Curriculum*, DRAKE LAW SCHOOL, <http://www.law.drake.edu/academics/docs/areasofSpecialization-legisAg2011.pdf> (last visited May 15, 2011).

8. *See* FARMER JANE, <http://www.farmerjane.org> (last visited May 3, 2011).

9. *See Beginning Farmers*, *supra* note 7.

10. An example of an organization working to address the economic and policy needs of women farmers and landowners is the Women, Food, and Agriculture Network, headquartered in Iowa. *See* WOMEN, FOOD, & AGRIC. NETWORK, <http://www.wfan.org> (last visited May 7, 2011).

11. *See* Patricia Leigh Brown, *Helping Soldiers Trade Their Swords for Plows*, N.Y. TIMES, Feb. 6, 2011, at A18. There are organizations working to improve the farming opportunities for veterans, for example the Veterans Farmer Coalition. USDA can partner with them to identify other concerns of veterans, as well as coordinate support with the Department of Defense and the Veterans Administration. *See* FARMER VET. COAL., <http://www.farmvetco.org> (last visited May 1, 2011); *see also* 2011 USDA Funded Farmer-Veteran Retreats Set in Four States, BEGINNING FARMERS (Feb. 21, 2011), <http://www.beginningfarmers.org/2011-usda-funded-farmer-veteran-retreats-set-in-four-states>.

traditional ideas of farming, which for most observers is a rural activity, interest is growing in the idea of urban agriculture or expanding food production within and near our cities.¹² In the last year, officials in several major cities have amended their zoning codes to authorize urban farming, creating opportunities for community gardens and local markets.¹³ The interest in urban agriculture or community-based agriculture is burgeoning across the nation – perhaps best symbolized by the growing interest in raising poultry, i.e., the “city chicken” movement.¹⁴

The emergence of a new generation of people interested in farming is important to our nation for many reasons. It is a critical change in attitude to see new people who want to farm, become landowners and even live in rural areas. These new farmers are helping to reverse trends regarding both the number of farmers and the rural population.¹⁵ These people bring a new range of skills, education, talents, and creativity to rural areas as well as entrepreneurial drive. They represent a branch of the ‘cultural creatives,’ people who are savvy with new information technologies and who have the marketing skills to open new economic opportunities.¹⁶ Many of

12. The topic of urban agriculture has been the subject of several recent legal articles. See, e.g., Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225 (2010); Kathryn A. Peters, *Creating a Sustainable Urban Agriculture Revolution*, 25 J. ENVTL. L. & LITIG. 203 (2010). One of the best sources of information about the growth of urban agriculture in the U.S. is the Kansas City Center for Urban Agriculture. KANSAS CITY CTR. FOR URBAN AGRIC., <http://www.cultivatekc.org/> (last visited May 25, 2011).

13. See Neil D. Hamilton, *Farms, Food and the Future: Legal Issues and Fifteen Years of the “New Agriculture,”* 26 J. ENVTL. L. & LITIG. (forthcoming 2011) (discussing at length the issue of urban agriculture and the range of cities taking steps to support it).

14. See Patricia E. Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34 ZONING & PLAN. L. REP. 1 (2011) (providing a comprehensive review of the legal issues associated with urban poultry production).

15. See, e.g., NAT’L AGRIC. STAT. SERV., U.S. DEP’T AGRIC., 2007 CENSUS OF AGRICULTURE 216 tbl.63 (2007), available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf (revealing an increase in the total number of farmers, with the largest increases coming in the categories of lower sales).

16. See RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* (2002) (regarding how new people with different social and personal goals can help transform the economy and personality of a region); PAUL H. RAY & RUTH

them see their farms as food businesses, which can be the basis for other entrepreneurial activities.¹⁷ They represent not just new bodies and new blood, offering new ideas and energy, but also have the capacity and leadership to help fuel local developments.

It may be too easy to generalize about the motivations of these New Agrarians, but they generally bring an enlightened attitude to resource conservation and sustainability and are interested in embracing environmental stewardship. Fortunately, this attitude stands in contrast to many in the traditional farm sector who continue to view environmental issues, such as addressing water quality protection or confronting the challenges of climate change,¹⁸ as an economic burden rather than a social and legal responsibility.¹⁹ Many of the New Agrarians see involvement in food production and agriculture as imbued with a dimension of public service,²⁰ and see producing healthy food and restoring land as an important social good, in addition to being an economic opportunity.²¹ They are committed to the ideal of community and see themselves in relationships with their consumers, neighboring farmers, the land,

ANDERSON, *CULTURAL CREATIVES: HOW FIFTY MILLION PEOPLE ARE CHANGING THE WORLD* (2000) (defining the concept of “cultural creatives”).

17. See BEN HEWITT, *THE TOWN THAT FOOD SAVED: HOW ONE COMMUNITY FOUND VITALITY IN LOCAL FOOD* (2009) (discussing how farms and food-based businesses can help drive local economic development in rural areas).

18. See Neil D. Hamilton, *Farming an Uncertain Climate Future: What COP 15 Means for Agriculture*, 2011 U. ILL. L. REV. 341 (2011) (discussing the views of much of the traditional farm sector to climate change).

19. See, e.g., Perry Beaman, *Farm Runoff Blamed for Fouled Waterways*, DES MOINES REG., Sept. 28, 2010, at B2 (quoting Rick Robinson the environmental policy staffer of the Iowa Farm Bureau Federation as saying “People who point fingers at farmer are behind the times, the discussion has moved on to what is cost-effective”). For a discussion of the role of law in creating a duty of stewardship on the part of landowners see generally Neil D. Hamilton, *Feeding Our Green Future: Legal Responsibilities and Sustainable Agricultural Land Tenure*, 13 DRAKE J. AGRIC. L. 377, 382 (2008).

20. The idea of a “national new farmer corps”, proposed by the author in November 2008, would treat farming as a form of public service and continues to attract considerable interest. See Neil Hamilton, *Obama Should Launch a New Farmer Corps*, DES MOINES REG., Dec. 1, 2008, at 7A. The idea helped generate support for a “Food Corps” initiative now being funded as an Ameri-corps pilot project to place individuals with schools working on farm-to-school and school garden projects.

21. *Id.*

their animals, and the communities in which they live.²² As a result, they see farming as an avenue to economic development and building better futures for their families and their communities. One important component of the New Agrarian movement are older, second career people either returning to their home areas or moving to rural areas, who bring their employment experience and skills, as well as capital and other wealth to their farms, with the goal of retiring in the area.²³ Another component of the new farm movement is focused on urban agriculture, and represents an important force not just for improving food access in their communities, but also stimulating economic development and stabilizing and restoring neighborhoods facing economic decline.²⁴

This Article addresses how law and policy can be employed to create opportunities for new farmers and considers how this relates to the expansion of local and regional food systems. Part I considers the traditional role played by the United States Department of Agriculture (“USDA”) in supporting new farmers and addresses how the work of the USDA can be enhanced. This discussion builds on the leadership of USDA Secretary Thomas J. Vilsack who, in a July 2010 appearance before the Senate Agriculture Committee, articulated a goal of helping create 100,000 new farmers.²⁵ Further, this Article presents an extensive set of ideas and recommendations on how the USDA can achieve this goal. Part II considers three

22. *Id.*

23. *See, e.g.*, Ralph Gardner, Jr., *At Midlife, Called to a New Field*, N.Y. TIMES, July 3, 2008, at F1.

24. *See* Hamilton, *supra* note 20.

25. *See Farm Bill Oversight: Hearing Before the S. Comm. on Agric., Nutrition & Forestry*, 111th Cong. 7-8 (2010) (statement of Hon. Tom Vilsack, Sec’y of U.S. Dep’t of Agric.), available at http://www.farmpolicy.com/wp-content/uploads/2010/07/Senate-Ag-Committee-Hearing_10_June_30-FINAL.pdf. When Secretary of Agriculture Vilsack appeared before the Senate Committee on Agriculture, Nutrition and Forestry at a Farm Bill Oversight Hearing on June 30, 2010, the Secretary departed from his prepared remarks and articulated his concern about the declining farm population and the need to revitalize rural America. The Secretary made a bold proposal to Congress:

Let me suggest one idea that this committee might consider. ...Why not set as a goal for the 2012 Farm Bill the ability to add at least 100,000 additional farmers in the area of the small farming and commercial operations? Why not establish local advisory councils in communities across the country to identify, recruit, encourage and assist young people to consider a life of farming? *Id.*

topics which address key issues facing new farmers. The three topics are: 1) how the local food policy councils proliferating across the nation can incorporate efforts to support new farmers; 2) how a “new farmer fund” generated in part through market-based consumer-oriented support can be used by organizations working to train and assist new farmers; and 3) how a “farm school” model may address the labor law issues associated with traditional models of on-farm “internships” and apprentices” while expanding the opportunities for people interested in learning about farming. The Article concludes with a brief discussion of the connection between efforts to support new farmers and expanding local and regional food systems and how these developments are both part of the growing national interest in healthy food and direct farmer-to-consumer marketing.

I. WHY NEW FARMER ISSUES ARE IMPORTANT FOR THE USDA

A critical challenge for American agriculture and for the USDA is helping identify and support the next generation of farmers and rural landowners. Although the USDA has a long history of programs important to new and beginning farmers, such as targeted Farm Service Agency (FSA) loans to help finance the acquisition of land,²⁶ it is fair to criticize past USDA and Administration efforts for not providing a sharp focus on new farmers. For example, a September 2007 Government Accountability Office (“GAO”) Report to the Senate Agriculture Committee concluded the USDA did not have any way to measure the effectiveness of the financial support for beginning farmers and instead relied primarily on counting the number and amount of FSA loans.²⁷ While support for new farmers

26. See *Farm Loan Programs*, FARM SERV. AGENCY, U. S. DEP’T OF AGRIC., <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=bfl> (last updated May 12, 2011) (for information on the range of lending programs USDA FSA offers to support new and beginning farmers).

27. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-07-1130, BEGINNING FARMERS: ADDITIONAL STEPS NEEDED TO DEMONSTRATE THE EFFECTIVENESS OF USDA ASSISTANCE 4-5 (2007), <http://www.gao.gov/new.items/d071130.pdf>. The USDA response to the GAO suggestions was largely non-responsive. The GAO noted that the

USDA did not discuss the need for further analysis of (1) beginning farmer characteristics, (2) gaps in beginning farmer assistance, and (3) the effects of beginning farmer policies on farm entry and the age of farmers. Such analysis could help USDA define the outcomes it expects its

might be implicit in other departmental efforts to create agricultural opportunities, what has been missing in the past at the USDA has been an intentional effort to treat the topic of new farmers as an integrated theme and provide a clear, strong articulation of the importance of creating new farms as an over-arching (or underpinning) priority for USDA's work. Fortunately, this situation changed with the appointment of Secretary Vilsack and a new team of USDA leaders interested in creating opportunities in America's food system and in addressing the needs of all farmers regardless of their size or type of operation.

Today the USDA administers a variety of programs relating to this topic, many of which were created by the 2008 Farm Bill.²⁸ These programs include new funding for competitive grants under the Beginning Farmer and Rancher Development Program ("BFRDP"), which provided over seventeen million dollars in grants in 2009 and 2010;²⁹ Natural Resource Conservation Service ("NRCS") assistance for new farmers;³⁰ and the new Conservation Reserve Program ("CRP") Transition Incentives Program ("TIP") offering financial incentives to landowners who assist new farmers in obtaining access

beginning farmer assistance to achieve and develop a cross cutting, departmental strategic goal to measure success. *Id.* at 23-24.

28. See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008). In addition to these examples, the USDA has a broad array of other existing programs relating to new farmers, including the Farm Service Agency (FSA) targeted lending programs, a key source of direct and guaranteed lending to farmers, which earmark significant funds for new farmers; youth loans, smaller FSA loans for youth between 12 and 20 for use in supervised agricultural projects; and implementing Departmental Regulation 9700-001, detailing support for small farms and new and beginning farmers. See *FSA Administered Programs*, FARM SERV. AGENCY, U. S. DEP'T OF AGRIC., <http://www.apfo.usda.gov/FSA/stateoffapp?mystate=wa&area=home&subject=prog&topic=landing> (last modified Dec. 16, 2010).

29. See *Grants*, NAT'L INST. OF FOOD & AGRIC., U. S. DEP'T OF AGRIC., www.csrees.usda.gov/fo/beginningfarmerandrancher.cfm (last modified May 19, 2011); see also *Farm Loan Programs: Advisory Committee*, FARM SERV. AGENCY, U. S. DEP'T OF AGRIC., <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=bfl-er> (last modified May 3, 2010) (providing information about the legislative authority for the committee).

30. See *2008 NRCS Farm Bill Conservation Programs*, NAT. RES. CONSERV. SERV., U.S. DEP'T OF AGRIC., <http://www.nrcs.usda.gov/programs/farmbill/2008/index.html> (last visited June 5, 2011).

to land coming out of this popular conservation program.³¹ In August 2010, after a two-year hiatus, the USDA reappointed the Advisory Committee on Beginning Farmers and Ranchers, designed to provide advice and input from external audiences to USDA officials working on new farmers.³² The new Office of Advocacy and Outreach, and the national program leader for new and beginning farmers have responsibility for administering the advisory committee and for leading a focused internal USDA effort to develop wide ranging and effective support for new farming operations.³³ In addition to USDA efforts, other traditional new farmer lending efforts exist across the nation, such as the tax exempt “aggie bonds” issued in twenty states.³⁴ A variety of non-profit organizations and farm groups

31. See FARM SERV. AGENCY, U.S. DEP’T OF AGRIC, FACT SHEET, CONSERVATION RESERVE PROGRAM (CRP) – TRANSITION INCENTIVES PROGRAM (TIP) (2010), available at http://www.fsa.usda.gov/Internet/FSA_File/tip051410.pdf.

32. News Release, U. S. DEP’T OF AGRIC., Secretary Vilsack Appoints Members to Beginning Farmer Committee, (Aug. 12, 2010), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2010/08/0405.xml>. Traci Bruckner from the Center for Rural Affairs in Nebraska was appointed to chair the USDA Beginning Farmer and Rancher Advisory Committee at the December 2010 meeting. See News Release, CTR. FOR RURAL AFFAIRS, Bruckner Named Chair of Beginning Farmer and Rancher Advisory Committee (Dec. 16, 2010), <http://www.cfra.org/newsrelease/2010/12/16/bruckner-named-chair-beginning-farmer-and-rancher-advisory-committee>. The Center for Rural Affairs has a long history of developing innovative programs to support new farmers, many of which have become models for use in other states. See *About the Center for Rural Affairs*, CTR. FOR RURAL AFFAIRS, <http://www.cfra.org/about> (last visited June 4, 2011).

33. See OFF. OF BUDGET & PROGRAM ANALYSIS, U. S. DEP’T OF AGRIC., DEPARTMENTAL MANAGEMENT OFFICE OF ADVOCACY AND OUTREACH EXPLANATORY NOTES 6-1, 6-5 (2011), available at <http://www.obpa.usda.gov/06oao2011notes.pdf>.

34. See *CDFA Spotlight: Aggie Bonds*, COUNCIL OF DEV. FIN. AGENCIES, <http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/cdfafactsheetaggiebonds.html> (last visited June 2, 2011). “Aggie Bonds” are tax-exempt bonds issued in connection with state programs to finance the purchase of land by qualified beginning farmers. *Id.* See IOWA AGRIC. DEV. AUTH., <http://www.iada.state.ia.us> (last visited June 3, 2011) (providing a comprehensive discussion of these programs). Many states offer programs to support new farmers. See, e.g., *Resources for New and Aspiring Farmers*, STATE AGRIC. DEV. COMM., STATE OF N.J. DEP’T OF AGRIC. <http://www.nj.gov/agriculture/sadc/farmlink/resources/newfarmers.html> (last visited June 2, 2011). A discussion of all the various state and local efforts currently in place to support new farmers is beyond the scope of this article. For information about many of these projects see *Beginning Farmers supra* note 7

develop innovative training and education programs, some involving incubator farms, to support new farmers.³⁵

New farmer issues represent an exciting opportunity to revitalize and re-energize the work of the USDA, especially at the field level. The new farmer issue is key to the future of USDA for many reasons, principally because it is forward looking and fundamentally linked to the future of agriculture, i.e. no farms, no food. Efforts to support new farmers are people-focused and based on creating economic opportunities – creating new jobs and farm businesses, building family wealth, and strengthening rural communities. Helping support a new farm family and farm operation is very real and is something other people can identify with – whether it be existing farmers, neighbors, landowners, community leaders or USDA employees. Further, the ability to engage local USDA staff in helping new farmers may offer a more rewarding and satisfying experience when compared to assisting large-scale producers work through the complex, mind-numbing and increasingly artificial rules associated with delivering many USDA programs, like farm subsidies and crop insurance.³⁶ New farmer issues fit all types and categories of agriculture, and new farmers are a key component of the USDA’s “Know Your Farmer, Know Your Food” initiative.³⁷ Talking about new farmers is a versatile way to make the “Know Your Farmer” initiative relevant to all parts of agriculture and may address the skepticism some people have about the economic potential for expanding local food production. It is not just about the food, it is also about the farms and farmers, and creating new opportunities for more people to put their hands in the land. While new farmer issues touch all parts of agriculture, one of the most common ways to help

(Drake Forum on America’s New Farmers: Policy Innovations and Opportunities); *Beginning Farmer Center*, IOWA STATE UNIV. EXTENSION, <http://www.extension.iastate.edu/bfc> (last visited May 29, 2011).

35. See, e.g., *New Farmer Development Project*, GROWN NYC (2010), <http://www.cenyc.org/greenmarket/nfdp> (last visited Apr. 27, 2011). See generally GROWN NYC, 2009 ANNUAL REPORT (2009), available at http://www.grownyc.org/files/FINAL_GrownNYC_Annual_09.pdf (detailing efforts to help new farmers locate available land and access New York City markets).

36. See Chris Edwards, CATO INST., *Agricultural Subsidies*, <http://www.downsizinggovernment.org/agriculture/subsidies> (last visited June 5, 2011).

37. See *Support Local Farmers*, KNOW YOUR FARMER KNOW YOUR FOOD, U. S. DEP’T OF AGRIC., http://www.usda.gov/wps/portal/usda/knowyourfarmer?navtype=KYF&navid=KYF_LOCALFARMER (last visited June 3, 2011).

new farmers get started is by expanding demand for local food and opportunities for direct marketing, such as farmers markets.³⁸ Supporting new farmers and expanding access to healthy food are in line with the healthy eating and improved child nutrition priorities of both the USDA and the White House.³⁹

New farmer issues are largely non-controversial, or at least should be. While some issues illuminate the fault lines or divisions between different segments of agriculture, often on production issues such as livestock care,⁴⁰ assisting new farmers is something all components of agriculture can support. This is true in part because the issue is very real and personal for many people now farming, i.e. who in your family will take over this farm or what will happen to your land when

38. See FARMERS MKT. COAL., <http://farmersmarketcoalition.org/> (last visited June 2, 2011) (containing information about the Farmers Market Coalition, the national organization working to promote the growth of farmer markets). The USDA now estimates over 6000 farmers markets are in operation in the U.S as of 2010. *Farmers Market Growth: 1994-2000*, AGRIC. MKTG. SERV., U. S. DEP'T OF AGRIC., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth&acct=frmrdirnkt> (last modified Aug. 4, 2010).

39. See, e.g., Jesse Lee, *The President & First Lady on Child Nutritional Bill: The Basic Nutrition they Need to Learn and Grow and to Pursue Their Dreams*, LET'S MOVE BLOG (Dec. 13, 2010), <http://www.letsmove.gov/blog/2010/12/13/president-first-lady-child-nutrition-bill-basic-nutrition-they-need-learn-and-grow-a>. First Lady Michele Obama is widely recognized for her efforts to support healthy eating and improvements in childhood nutrition, with many of these initiatives being promoted under her Let's Move initiative. *Id.*

40. The national debate over animal welfare issues, such as the use of cages in egg production and other commonly accepted production practices has generated significant legal controversies, such as Proposition 2 in California. See, e.g., *Proponents, Opponents Debate California Proposition 2 Regarding Treatment of Farm Animals*, KPPC NEWS IN BRIEF (Oct. 10, 2008, 1:27 PM), <http://www.publicradio.org/columns/kpcc/kpccnewsinbrief/2008/10/proponents-opponents-debate-ca.html>. In early July 2010, California added another significant wrinkle to the animal welfare debate when the Governor signed A.B. 1437, a bill that requires all whole eggs sold in the state after January 1, 2015, come from hens that have been raised under the same guidelines as set out in Proposition 2. See Assem B. 1437, 2009 Leg., 10th Reg. Sess. (Cal. 2009), available at http://info.sen.ca.gov/pub/09-10/bill/asm/ab_1401-1450/ab_1437_bill_20100526_amended_sen_v97.html. For commentary on these issues see Neil D. Hamilton, Comment, *One Bad Day: Thoughts on the Difference Between Animal Rights and Animals Welfare*, 106 MICH. L. REV. 138 (2008), available at <http://www.michiganlawreview.org/firstimpressions/vol106/animals.pdf>.

your retire? Similarly, it has a personal connection to agricultural businesses and rural institutions, i.e. who will be your customers, borrowers, or members in the next decade? It is difficult to object to the premise of putting more people back on the land and into rural areas. Of course, the political reality is that some people may object to efforts to support new farmers, perhaps viewing them as competition for land, or as a political threat. There are significant cultural divisions between different groups in agriculture and the same is true for different groups of potential new farmers. For example, there is a significant contrast between the backgrounds, and most likely the attitudes, of FFA members,⁴¹ many who grew up on farms, and the members of the Greenhorns, a New Agrarian group made up primarily of those who did not grow up in agriculture but who are passionate about raising healthy food.⁴² As a result, while some in agriculture might be narrow-minded enough to dislike certain “types” of new farmers, the majority of people will welcome new faces into rural America and urban gardens alike.

New farmer issues offer the USDA a rich array of opportunities for partnerships, whether with traditional farm institutions like Farm Credit,⁴³ or with new partners like land trusts, rural churches and community organizations. Land trusts and rural churches are

41. Because most FFA members are from rural and farming communities it is predictable many reflect the commonly held attitudes about conventional agricultural practices. See *Who We Are*, NAT'L FFA ORG., <https://www.ffa.org/about/whowere/pages/default.aspx> (last visited June 4, 2011). FFA, the new name of the national organization historically known as the Future Farmers of America, is the primary mechanism used for educating millions of American students, from both rural and urban communities, about farming and food production, and about career opportunities in agriculture. *FFA History*, NAT'L FFA ORG., <https://www.ffa.org/About/WhoWeAre/Pages/History.aspx> (last visited June 4, 2011); see generally NAT'L FFA ORG., <https://www.ffa.org> (last visited June 4, 2011).

42. For information about the Greenhorns and the innovative projects they are organizing around the country to identify and motivate new farmers see THE GREENHORNS, <http://www.thegreenhorns.net> (last visited May 20, 2011).

43. Farm Credit is one of the most important sources of private lending for American agriculture, and it has as one of its priorities efforts to support new and beginning farmers. See generally FARM CREDIT COUNCIL, <http://www.fccouncil.com> (last visited May 26, 2011); FARM CREDIT COUNCIL, FACT SHEET: HOW FARM CREDIT SERVES YOUNG, BEGINNING AND SMALL FARMERS AND RANCHERS (2011), available at http://www.fccouncil.com/uploads/YBS_2009.pdf.

important because access to land is a critical concern for new farmers, and many of these organizations own and control significant amounts of agricultural land.⁴⁴ These institutions arguably have a public service dimension to their work, meaning such groups may be more amenable to projects that make land more accessible to new farmers. A similar opportunity exists to partner with some charitable foundations, especially those linked to higher education, such as the land grant university foundations which aggressively seek contributions of farmland from alumni.⁴⁵ New farmer issues are a powerful economic theme and are one way to expand economic opportunities and stimulate the economy through job creation and wealth building. Historically, farming played a central role in building the nation by creating millions of independent land-based, and land-owning, farm businesses.⁴⁶ Creating and supporting new farms can and should be part of the nation's future economic plan. The significant growth in the number of young people interested in farming means thousands of people, many of whom are women, want to address the challenges relating to healthy food, environmental sustainability, and energy production. Creating a new farm is the ultimate green job.⁴⁷ USDA can seize on supporting new farmers as a rallying issue and organizing theme for its employees and partners. Elevating the dialogue and rhetoric regarding the future of farming will help define and illuminate the nation's priorities, in particular, identifying who will produce all the healthy food we need, and who will help steward our environment in the sustainable future we are

44. See generally LAND TRUST ALLIANCE, <http://www.landtrustalliance.org> (last visited June 4, 2011) (providing general information about the work of land trusts); AM. FARMLAND TRUST (AFT), <http://www.farmland.org> (last visited June 4, 2011) (providing information about a land trust working exclusively on issues relating to farmland protection, which includes find new farmers to operate it).

45. See, e.g., *Ways to Give*, IOWA STATE UNIV. FOUND., http://www.foundation.iastate.edu/site/PageServer?pagename=give_cm_noncash (last visited May 29, 2011) (seeking gifts of real estate from its alumni members).

46. See Neil D. Hamilton, *Feeding the World's Future: Agrarian Justice and the Rule of Law*, 13 DRAKE J. AGRIC. L. 545 (2008).

47. How green jobs can help revitalize the American economy and at the same time address serious social justice issues, was the theme of a book by Van Jones, *The Green Collar Economy: How One Solution Can Fix our Two Biggest Problems*. VAN JONES, *THE GREEN COLLAR ECONOMY: HOW ONE SOLUTION CAN FIX OUR TWO BIGGEST PROBLEMS* 131-32 (2008).

building? The following section presents some ideas regarding how the USDA can lead this effort.

II. IDEAS FOR HOW USDA CAN MORE AGGRESSIVELY PROMOTE NEW FARMER ISSUES

The first step in considering how the USDA can act in a more intentional fashion to promote “new farmers” is for the USDA to make “new farmers” a priority, and to build an integrated and coordinated campaign around that theme. Secretary Vilsack’s goal of creating 100,000 new farmers has elevated the topic within USDA and the nation.⁴⁸ The USDA can sustain this momentum by taking several additional steps to coordinate various new farmer-related initiatives. Given the traditional division of USDA programs into different agency silos, deciding who does this and where in the Department is a challenge. However, outside observers see the USDA as one department and not a series of agencies. This means USDA efforts to support new farmers, including those engaged in community based agriculture, may offer an opportunity to help dissolve some of the agency divisions, especially if these efforts help lead to a more unified delivery mechanism for the various agency-based programs.

Second, the USDA should develop a detailed summary of all the programs available for new farms, e.g., the number and amount of FSA loans, the number of new and beginning farmers served, the amount and type of BFRDP grants awarded, and other USDA programs, to provide a baseline of information and set a marker to measure progress. Third, the USDA should outline a series of “next steps” it will take for new farmers, such as plans to utilize the BFRDP, strategic priorities for awarding future rounds of BFRDP grants, and how the Office of Advocacy and Outreach staff will be deployed on new farmer efforts. Fourth, the USDA can announce a series of new initiatives as they are developed, perhaps including some proposals set out in this article, such as: appointing USDA “new farmer agents” at the county level; awards to recognize landowners who assist new farmers; efforts such as creating a USDA

48. See *supra* note 25 and accompanying text.

“office of community based agriculture,”⁴⁹ and proposals to Congress for a “new farmer title” for the 2012 Farm Bill. Taking these steps will let the USDA seize the new farmer issue, fulfill the President’s promise to the “new millennials” who helped him win office,⁵⁰ and show another side of USDA in addition to the traditional programs like nutrition assistance and farm programs.

A. Changing Local Support and Awareness of New Farms

The following are ideas for how the USDA can change the local and national discussion about support for new farmers.

1. Create a Network of New Farmer Agents in Local USDA Offices

The idea here is to have someone at the local USDA level, whether in FSA, Rural Development, Extension, or NRCS who serves as the “go-to” person for new farmers, helps identify the resources and advice the USDA can offer, and guides the new farmers through the Department’s programs. This idea comes from the experience of a young farmer who spoke at the Drake Forum and described her unsuccessful experience with the local FSA office to finance expanding her operation in Oregon.⁵¹ Only after financing the investment on her credit card did she learn that the local NRCS office had loans available for the same purpose.⁵² She asked why the FSA official did not lead her across the hall to the NRCS office and inform her that these folks can help you?⁵³ Serving as the local USDA “new farmer agent” could be a personally rewarding role for local USDA employees and would offer measureable and objective outcomes, most notably progress in adding new farmers to the locality. Many

49. The idea of creating a new Office of Urban Agriculture within the USDA is the subject of legislation, introduced by Representative Kaptur, along with twenty-five co-sponsors. Greening Food Deserts Act, H. R. 4971, 111th Cong. (2010).

50. See NAT’L SUSTAINABLE AGRIC. COAL., *Obama Administration Caves on Agriculture Reform*, SUSTAINABLEAGRICULTURE.NET BLOG (Jan. 6, 2010), <http://sustainableagriculture.net/blog/obama-administration-caves-on-agriculture-reform>.

51. This story was shared by Zoe Bradbury, a young farmer from Langlois, Oregon. See FARM AID, *Zoë Bradbury at Drake Forum on New Farmer Credit Challenges*, YOUTUBE (Mar. 22, 2010), <http://www.youtube.com/watch?v=0PK20fa8u8A>.

52. *Id.*

53. *Id.*

local USDA employees farm, or want to, and are concerned about the future of their communities.⁵⁴ They are in a position to know and understand USDA's programs and can be cross-trained about the new farmer programs of other agencies. The network of "new farmer agents" would provide a targeted audience for further education about USDA priorities, such as local and regional food systems and healthy eating, and could be the outlet for a "new farmer USDA toolkit." USDA county employees know their communities and are familiar with young people who may want to return home to farm, with retiring farmers interested in farm succession planning, or with landowners who want to help a new farm get started.⁵⁵ Local USDA offices and personnel can benefit from greater integration with other community groups and could be energized by leading initiatives to insure the future of farming in their counties and communities. Creating new farmer agents relates to the next two ideas – new farmer advisory councils and award programs to recognize those who assist new farmers.

54. See, e.g., *People's Garden Partnership Grows to New Heights in Delaware*, NAT. RES. CONSERV. SERV. (May 3, 2011, 12:23 PM), <http://www.de.nrcs.usda.gov/news/news2011/PG-Partnership2011.htm>.

55. The idea of creating a new farmer agent within local USDA offices is well received when presented to audiences of new farmers. This is something USDA can do administratively and would be a strong signal to internal and external audiences about the importance of the Secretary's 100,000 new farmer goal and finding the tools to meet it. Many young people interested in becoming farmers are used to the receiving coaching and advising in their education and assistance in navigating the complexities of USDA programs would go a long way in making the department more relevant to new farmers – and would help address what may be a bias or suspicion some have that USDA exists only to help large scale commodity producers. The Secretary has worked tirelessly to make USDA responsive to all citizens and to address the unfortunate legacy of civil rights discrimination associated with many local offices. It is important the Department and its employees not trade one legacy of discrimination against those who were somehow different for a new set of biases against potential new farmers just because they may look or think differently or because their chosen methods of production may not be mainstream or dominant agricultural thinking. While new farmers in some cases may not fit within categories treated as "protected classes" under the law, it is important for USDA to exercise a system of fair and open treatment for all citizens, both in word and action. *USDA Non-Discrimination Statement*, U.S. DEP'T AGRIC. (Mar. 28, 2007), http://www.fsis.usda.gov/Nondiscrimination_Statement/index.asp.

2. Organize Local New Farmer Advisory Councils

While USDA support for new farmers may come primarily from national programs such as FSA lending, the actual creation of new farms is a very individual, local decision. The factors influencing new farmers, such as the interest and willingness of a person to take the risks, the availability of land and other resources, and the existence of markets and enterprise opportunities are as varied as the nation's lands and foods. Even so, the Census numbers indicating the addition of over 100,000 new small farms in the last decade means hundreds of new farms are created each week across the U.S.⁵⁶ Local new farm advisory councils could be patterned to some extent on the successful experience of "food policy councils."⁵⁷ The premise of a food policy council is to bring together local people and representatives of institutions most interested or invested in the future of local farming.⁵⁸ Consider the value of a group which includes USDA officials, the FFA instructor, members of the county board of supervisors, leaders from farm organizations, bankers, farm supply and implement dealers, church leaders, realtors and farm managers, economic development officials, the mayors – and others with a vested interest in the performance of farming. Practically anyone interested in having more people live there, more kids in school, more folks in the pews, more people producing and selling food and commodities, and more customers for services and products, has an interest in whether new farms are being created. The goal needs to be to not just replace existing farms but to add new ones, i.e. not just "no-net loss," but "lets add ten new farms" in the county this year. The value of creating local advisory groups include: showing USDA leadership to the future; gathering people who know the lay of the land, i.e., who wants to be a farmer, who wants to come home after college if there are opportunities, whose land might be coming on the market, and who is interested in helping a new farmer; and localizing the issue of new farms. Basically, it is not a Washington problem to solve but a local issue to address. New farm advisory councils could develop and lead campaigns focusing on the future of farming,

56. See NAT'L AGRIC. STATISTICS SERV., *supra* note 15, at 3.

57. See generally Neil D. Hamilton, *Putting A Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 DRAKE J. AGRIC. L. 407 (2002) (discussing the operation of food policy councils).

58. *Id.* at 443-44.

unleashing the creativity that defines local communities. A great example is Strolling of the Heifers in Brattleboro, Vermont, a local dairy celebration that has evolved to include a new farmer apprentice program, a micro-loan fund with Chittenden bank, and greater awareness of farming's importance.⁵⁹

3. Create Award Programs to Recognize People Who Nurture New Farms

People are motivated to act for many reasons, and receiving awards and recognition can be one way to encourage desired activity. The idea for a "new farm nurturer" award is based on the view that while American agriculture offers farmers many types of awards – Century farms,⁶⁰ local conservationists, "top corn grower," etc., no award program recognizes people for helping support a new farmer. This could be the farm family that creates room for a son or daughter to start farming, the retiring landowner who takes part in a land link and farm-on program, or the landowner who enters a long-term lease with a new or young farmer, such as the new CRP TIP program,⁶¹ rather than auction the land for the highest cash rent. The primary "reward" structure for older landowners now is economic-- selling (or renting) the land for the highest amount possible. There is little incentive for landowners or retired farmers to support the next generation of farms if it means forgoing some immediate economic benefit.

Comments from new farmers participating in the Drake Forum made it clear that while we "talk a good game" about the importance of new farms, in practice we have put little focus on projects to assist them, especially in recognizing how critical current landowners are to the access and availability of land (and its cost) for new farmers.⁶²

59. See *STROLLING OF THE HEIFERS*, <http://www.strollingoftheheifers.com> (last visited Apr. 27, 2011) (providing information about this innovative local program).

60. Century farms are Iowa farms in the same family ownership for over 100 years, recognition for which is provided by the state. See Linda Rosky, *Century Farms Program*, IOWA DEP'T OF AGRIC. & LAND STEWARDSHIP, <http://www.agriculture.state.ia.us/centuryFarmsProgram.asp> (last visited Apr. 27, 2011).

61. The TIP program was authorized in section 2111 of the 2008 Farm Bill. See 2008 Farm Bill, H. R. 6124, 110th Cong. § 2111 (2008); see also FARM SERV. AGENCY, *supra* note 31.

62. The Agricultural Law Center has developed a new project relating to Sustainable Agricultural Law Tenure, designed to provide education to landowners

While some state tax incentives for new farmers exist,⁶³ a social recognition of the importance of this issue is missing. Consider what might happen if USDA worked with partners, such as John Deere, Pioneer Hi-Bred, Farm Credit and other companies and institutions whose future depends on the number and type of farmers, to launch a national award and recognition campaign, such as a “New Farm Nurturer.” Such an award system could begin at the county level, then move to statewide recognition, and conclude with a national ceremony at the USDA, recognizing people for their special efforts to plant the next crop of farmers. The awards could inspire and motivate owners and local officials. Administering the awards could be the job of USDA new farmer agents and new farmer advisory councils. An award program would not need to be costly and any costs could be born by partners and it would also signal USDA’s concern for the future of farming, and get landowners and others to accept their role in creating opportunities for new farms.

B. Addressing the Costs and Economics of New Farms

The following discussion focuses on ideas related to the economic realities of supporting new farmers and the challenges they face in creating profitable ventures.

1. Support New Farmer Training and Incubator Programs

A main theme of the Drake Forum was how projects using business incubator and training models, such as the Farm Beginnings Initiative of the Minnesota based Land Stewardship Project, can be effective in assisting new farmers.⁶⁴ The programs approach the creation of new farms as a form of entrepreneurship, and stress the importance of business planning, marketing, and other ingredients for successful enterprises.⁶⁵ The premise of such efforts is that it cannot be assumed that because people somehow get access to land, their hard

about how to steward their lands, including information on how to assist new and beginning farmers by leasing or selling land. See *Sustainable Farm Lease*, DRAKE AGRIC. LAW CENTER, <http://sustainablefarmlease.org> (last visited Apr. 27, 2011).

63. See *infra* Part III.B.2.

64. See *Beginning Farmers*, *supra* note 7; see also *Farm Beginnings*, LAND STEWARDSHIP PROJECT, http://www.landstewardshipproject.org/programs_farmbeginnings.html (last visited June 3, 2011).

65. See LAND STEWARDSHIP PROJECT, *supra* note 64.

work will produce a successful farm business. The incubator programs are based on classroom experience, but many also provide access to land so people gain real training and experience in production and marketing.⁶⁶ For example the successful Agricultural Land Based Training Assistance (“ALBA”) project in California focuses on training individuals who are now farm workers but who want to become farmers, and does so by combining training with access to individual plots of land.⁶⁷ Some programs have obtained USDA funding through BFRDP grants,⁶⁸ but many are funded through foundations, local governments, and job training efforts.⁶⁹ The “incubator” approach can serve as a model for successful efforts to support new farms and create opportunities for the USDA to partner with non-profits, farm groups, and others like land trusts and churches, which own land to be used as “new farm incubators.” The efforts could be integrated into educational programs like FFA and urban high schools focused on agriculture.

2. Propose Federal Tax Credits for Landowners to Aid New Farmers

The U.S. tax code is used to promote a wide variety of social objectives, including many relating to farming and agriculture.⁷⁰ Section 2032a “special use valuation” is a provision designed to assist farm estate planning by reducing the value of farmland.⁷¹ State agricultural development authorities help finance beginning farmers by issuing what are commonly known as “aggie bonds” which are exempt from federal taxation.⁷² Several states, notably Iowa, have

66. *Id.*

67. See AGRIC. & LAND-BASED TRAINING ASSOC., <http://www.albafarmers.org> (last visited June 3, 2011) (providing information about ALBA and its project).

68. See *Program Synopsis: Beginning Farmers and Rancher*, NAT’L INST. OF FOOD & AGRIC., U.S. DEP’T OF AGRIC. (Mar. 22, 2011), http://www.nifa.usda.gov/funding/bfrdp/bfrdp_synopsis.html.

69. See ANGELIC ORGANICS LEARNING CTR., <http://www.learnrowconnect.org/farmer> (last visited Apr. 27, 2011) (containing information on the center and its efforts in Illinois).

70. See S. AGRIC. COMM., *Tax Code Fix to Boost Agriculture Industry?*, DELTA FARM PRESS (Apr. 1, 2011, 3:22 PM), <http://deltafarmpress.com/government/tax-code-fix-boost-agriculture-industry>.

71. See 26 I.R.C. § 2032A (2006) (valuation of certain farm property).

72. *Types of State Agricultural Finance Programs*, NAT’L COUN. OF STATE AGRIC. FIN. PROGRAMS, <http://www.stateagfinance.org/types.html> (last visited Apr. 27, 2011).

enacted state income tax incentives designed to encourage the transfer of farmland to a new generation of farmer owners.⁷³ Tax incentives address two related factors that make it difficult for new farmers to acquire land – the high costs of land and the increasing concentration of land with older owners, non-farmers, and off-farm heirs.⁷⁴ High land values⁷⁵ combined with tax incentives that may encourage owners to hold farmland until their death to obtain a step-up in basis, i.e. having the land valued at its current higher price rather than the price when acquired to avoid capital gains taxes, create disincentives for land to be marketed or for it to be offered to new or beginning farmers when it is. The Iowa law, which could be a model for federal provisions, offers a tax credit to an owner who sells or leases the land to a qualified beginning farmer.⁷⁶ The potential public cost is the loss of taxes, but if land is not going to come on the market for decades – or be passed through an estate with limited tax exposure – the real costs may be minimal. However, the effect could be significant if it induces more transactions, including inter-family transfers, in which new and beginning farmers (and younger landowners) have access to land. The USDA could study the idea for inclusion in the 2012 Farm Bill “new farmer title.”

3. Support Federal Funding for State “Land Link” Efforts

Perhaps the most widely utilized and successful state based initiatives helping new farmers in the U.S. are the “farm-on” or land-link matching programs, which are designed to pair people interested in becoming farmers with landowners interested in retiring and

73. See IOWA CODE § 175.37 (2010).

74. See, e.g., *Land Ownership Statistics in Iowa*, PRACTICAL FARMERS OF IOWA (May 6, 2010 1:14 PM) <http://practicalfarmers.blogspot.com/2010/05/land-ownership-statistics-in-iowa.html> (containing information about land ownership in Iowa, including the fact that in 2007 more than half the farmland was owned by people over 65).

75. As evidence of the rapid rise in land values, consider that farmland in Iowa increased by 24.5% in 2010. See Dan Piller, *Iowa Farmland Value Jump 24% in Past Year*, DES MOINES REG. March 23, 2011, at 1A.

76. *Iowa Beginning Farmer Tax Credit*, IOWA AGRIC. DEV. AUTH., <http://www.iada.state.ia.us/BFTC/index.html> (last visited May 10, 2011) (containing information about the Iowa Beginning Farmer Tax Credit).

transitioning their farm to a new family.⁷⁷ Many programs, such as those in Pennsylvania, Iowa, and California, have been in existence for twenty years and are patterned after work in Nebraska by the Center for Rural Affairs.⁷⁸ The projects help educate new farmers on creating successful ventures and educate older farmers and landowners about the value of succession planning, i.e. planning for what will happen to the farm and land when the current owners retire or die.⁷⁹ The programs have experienced success, but the number of successful matches is relatively limited due to problems associated with funding for the efforts and the scale of the initiatives based on existing staff, as well as the challenges of creating business transition plans between unrelated individuals and the economics of farming and landownership.⁸⁰

State “land link” programs are funded through a variety of foundation grants, state appropriations, USDA grants such as BFRDP, fees for services, and other sources.⁸¹ In most situations, the funding is neither sufficient nor stable enough to develop the staffing and programs needed to reach either the growing audience of older landowners or those interested in farming. To resolve this problem, one solution may be for the USDA to provide grant or matching funds to states with land link programs. These programs would not be part of the USDA, but would function at the state and local level, using USDA funding to provide the resources needed to expand. The model for the USDA to fund such programs may be the debt

77. See, e.g., *Land Link Services*, CTR. FOR RURAL AFFAIRS, http://www.cfra.org/resources/beginning_farmer/land_link (last visited May 10, 2011); IOWA STATE UNIV. EXTENSION, *supra* note 34.

78. See *Programs for Getting Started with a Livestock Enterprise*, 17 CTR. FOR GRASSLAND STUDIES 1, available at http://grassland.unl.edu/c/document_library/get_file?uuid=f520f9f3-093e-4dbb-b6fc-94f348a4f862&groupId=1980339&.pdf; see also CAL. FARMLINK, <http://www.californiafarmlink.org/joomla/index.php> (last visited May 10, 2011) (a state matching and “farm-on” program).

79. See Kisha Lewellyn Schlegel, *Land Link Programs Connect Elder Farmers with Young Ones*, NEW WEST LIVING (Sept. 18, 2007), http://www.newwest.net/topic/article/land_link_programs/C520/L40/.

80. Paul Fuller Hubbard, *A Land Link for Western Montana: Keeping Land in Agriculture from One Generation to the Next* (Dec. 2006) (unpublished M.S. thesis, Univ. of Mont.) (available at <http://etd.lib.umt.edu/theses/available/etd-12212006-162006/unrestricted/HubbardPProfPaper.pdf>).

81. See *Beginning Farmer and Rancher Development Program*, CTR. FOR RURAL AFFAIRS (May 26, 2010, 9:01 AM), <http://www.cfra.org/renewrural/beginning-farmer-development>.

mediation efforts developed during the 1980's farm crisis, still funded in part through FSA.⁸²

4. Use Existing Authorities Creatively: NRCS High Tunnel Pilot Shows Potential for USDA Innovation

In 2009, the USDA, acting through the Natural Resources Conservation Service ("NRCS"), implemented an innovative three-year pilot program providing small grants and cost sharing to farmers for the construction of high tunnels – or low cost greenhouse structures.⁸³ The program, officially known as the "NRCS Seasonal High Tunnel Pilot Program," was available in the forty-three states that chose to participate.⁸⁴ The program proved to be very popular, and by January 2011 over 2,400 hoop house contracts worth over thirteen million dollars were signed for Fiscal Year 2010.⁸⁵ The pilot program, which includes special incentives for the participation of beginning farmers, is an innovative example of how the USDA can use existing programs, in this case the Environmental Quality Incentives Program ("EQIP"), to assist farmers working to expand their growing season.⁸⁶ It is probably the most important example of recent USDA innovative efforts to support new farmers and producers involved in direct marketing. This program was implemented using existing funding and authority, and because high tunnels are used to extend the season for growing fresh produce, it relates to expanding direct farm marketing opportunities, often by small farmers. The important question raised by the high tunnel example is what other opportunities exist to use USDA programs to support new farmers? The most effective way to help the USDA

82. See *Agricultural Mediation*, FARM SERV. AGENCY, U.S. DEP'T OF AGRIC., <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=oued&topic=ops-am> (last visited June 1, 2011) (information about the FSA program which helps fund state based farm debt mediation programs).

83. See Press Release, *USDA Provides Update on Seasonal High Tunnel Pilot*, NAT. RES. CONSERV. SERV., U.S. DEP'T OF AGRIC. (Jan. 7, 2011) (available at http://www.nrcs.usda.gov/news/releases/2011/high_tunnels_1.7.2011.html).

84. *Id.*

85. *Id.* States with over 100 participating farmers include: Alabama, Alaska, Iowa, Minnesota, Missouri, Pennsylvania and Wisconsin. *Id.*

86. EQIP is the main USDA program for funding an array of soil and water conservation related initiatives. See *Environmental Quality Incentives Program*, NAT. RES. CONSERV. SERV., U.S. DEP'T OF AGRIC. (Apr. 26, 2011), <http://www.nrcs.usda.gov/programs/eqip/index.html>.

answer this question is to engage USDA employees, perhaps using the same type of intra-agency initiative used to develop the Know Your Food, Know Your Farmer campaign.⁸⁷

III. CHALLENGES AND OPPORTUNITIES FOR NEW FARMER POLICY INITIATIVES: THREE EXAMPLES OF INNOVATIVE LEGAL APPROACHES

Efforts to support new farmers face a variety of policy challenges, including: helping them build the equity needed to begin farming, providing training and education for people with no background in farming, increasing their access to farmland through innovative leases or purchases, and developing profitable marketing opportunities for their products. In many ways, efforts to create opportunities for new farmers reflect the full range of legal issues involved in food and agriculture. As a result, policy makers are faced with significant challenges when considering what to do, or at least what to do first. While the challenges relating to new farmer policy are broad, the good news is that all across the nation individuals and organizations are working to address particular dimensions of the new farmer policy puzzle. This section presents three examples of innovative legal and policy developments that may address aspects of the new farmer challenge: 1) developing comprehensive local policies to support new farmers through the work of food policy councils, 2) creating a market based and consumer driven initiative to generate financial support for new farmers, and 3) creating incentives for farmers to offer intentional training and education for prospective new farmers while satisfying state labor law requirements for farm employees.

A. Ten Ways Local Food Policy Councils Can Support for New Farmers

One result of the growing consumer and political interest in food is that in the last year a number of major U.S. cities, including New York, Baltimore, Seattle, San Francisco, Kansas City, Memphis and Los Angeles, have undertaken policy initiatives designed to promote

87. See KNOW YOUR FARMER KNOW YOUR FOOD, U.S. DEP'T OF AGRIC., <http://www.usda.gov/wps/portal/usda/knowyourfarmer?navid=KNOWYOURFARMER> (last visited May 11, 2011) (containing information about the "Know Your Farmer, Know Your Food" program).

urban agriculture and encourage people interested in producing food.⁸⁸ These cities have all enacted new “urban agriculture” zoning ordinances,⁸⁹ or announced studies of their food systems.⁹⁰ Many of these efforts involve creating a “food policy council,” an officially sanctioned body of representatives consisting of both public officials and private citizens, drawn from across the local food and agriculture sector.⁹¹ The council is typically charged with evaluating the economic and political landscape relating to the community’s or region’s food system, and providing reports and policy recommendations to the responsible political body.⁹² New food policy councils and attention to urban agriculture combine to create an opportunity to examine how efforts to support new farmers can be made part of that work. These developments present new audiences and officials who may be able to assist the USDA and others in working to support new farmers.⁹³ Important work using food policy councils is also underway by many Native American tribes, who see

88. See, e.g., ALEXA DELWICHE, L.A. FOOD POL’Y TASK FORCE, THE GOOD FOOD FOR ALL AGENDA: CREATING A NEW REGIONAL FOOD SYSTEM FOR LOS ANGELES 26 (2010) (available at http://goodfoodlosangeles.files.wordpress.com/2010/07/good-food-full_report_single_072010.pdf) ; see also Mary MacVean, *Panel Urges More Access to Fresh Food; An L.A. Task Force Aims to Make Local Produce Available to Low-Income Residents*, L.A. TIMES, Oct. 4, 2010, at 1.

89. See Hamilton, *supra* note 1 (discussing many of these various municipal actions relating to food).

90. *Id.*

91. See generally Hamilton, *Putting A Face on Our Food*, *supra* note 57.

92. *Id.* at 442.

93. Efforts to address urban agriculture present a challenge and opportunity for USDA. The challenge is the Department has little presence in most urban areas, with the exception of food assistance programs, and much of USDA’s infrastructure is rural based and focused. The opportunity for USDA is clear – the growth and interest in urban agriculture creates new demand and audiences of citizens for the department to serve, as well as new avenues for inter-departmental initiatives related to food with those departments such as Housing and Urban Development traditionally working in urban areas. USDA needs to designate someone to inventory and coordinate with the various municipal food and farming policy efforts. The current work by the Agricultural Marketing Service (AMS) to study and assist farmers markets, many in large urban areas, is a possible point of entry for working with municipal food policy leaders. One way for USDA to defuse possible concerns about department efforts to address urban farming issues is to use the more encompassing and accurate term “community-based agriculture,” as done in this Article.

the councils playing key roles in developing policies to promote healthy eating and food access, and support for new farmers.⁹⁴

The increase in the number of local food policy councils and the attention to urban agriculture within communities creates an important opportunity to consider how supporting new farming operations can be part of that work. The question is, how can a food policy council create opportunities for new farmers? Below are ten possible answers.

1. Identify New Farmers as One of the Key Issues or Priorities

As food policy councils work on healthy food access questions related to creating new food enterprises and supporting new farmers, the underlying issue remains who will raise (and market) all this healthy food? Identifying the “new farmer” issue as being within the jurisdiction of the council is an important first step to raise awareness and attention. A follow-up step could then be to focus a task force or committee on the topic, depending on how the council organizes its work.

2. Include Creating Financial Opportunities For Farmers, Both Existing and New, as a Goal

For there to be healthy food there must be farmers. For farmers to thrive they need real income and profits. This means efforts to expand the markets and income producing opportunities for farmers, such as through direct marketing, are central to any local food system. A council should not let the tension between improving food access and the price of food (which some people may equate with the prices and profits farmers receive) prevent it from paying attention to the needs of farmers. By focusing on the expansion of direct marketing, a council can address food access, and at the same time focus on marketing techniques that are attractive to new farmers. To successfully create new farmers, existing farmers must succeed financially. The experience in most communities is that efforts to

94. See THE NAT'L CONG. OF AM. INDIANS, SUPPORTING FOOD SOVEREIGNTY AND TRIBAL FOOD POLICY COUNCILS DEVELOPING SUSTAINABLE AGRICULTURE AND COMMUNITIES, Res. #ABQ-10-04 (Nov. 2010) (available at http://www.ncai.org/fileadmin/resolutions/ABQfinal/ABQ-10-048_rev.pdf).

expand direct marketing for farmers help generate additional markets and opportunities for food access.⁹⁵

3. Survey and Identify Existing New Farmer Related Efforts

There may already be groups or organizations focusing on new farmer issues in an area, such as community gardening and urban agriculture efforts, the work of the local USDA Extension office, or a local school FFA chapter. By identifying the existing capacity and interest in serving new farmers, the council can partner with other groups and incorporate their work into the more comprehensive goals of the council. If there is a “buy fresh buy local” food marketing initiative in the region or a state-run “land link” program to match landowners with prospective farmers, there may already be some form of new farmer effort for the council to contact for information.⁹⁶

4. Inventory the Remaining Agricultural Infrastructure

To understand what opportunities may exist to expand local food production and support new farmers, it is important to understand the health and structure of the existing farming economy. By studying what resources are in place – for example processing, markets, needed services such as feed and veterinarians, USDA county offices, farm organizations, agricultural lenders, and Extension programs – the council can better understand the potential to help create and support new farmers, as well as identify the resources and institutions in place for future cooperation. It is important to remember that supporting new farms takes more than just farmers; it also requires a whole system and infrastructure of services and suppliers that make it possible for farms to operate efficiently.

5. Inventory and Identify Available Land Resources

Land is the key to farming and food production, and land access is a critical barrier for new farmers.⁹⁷ The council can identify land that

95. See, e.g., FRESHFARM MARKETS, <http://www.freshfarmmarket.org> (last visited Apr. 27, 2011) (regarding farmers markets in the Washington DC area and the involvement with programs to expand food access).

96. See *supra* text accompanying notes 77-82.

97. See, e.g., LAND FOR GOOD, <http://www.landforgood.org/> (last visited April 27, 2011) (mentioning the critical role land access plays for new farmers). Land for Good focuses on new farm and farmland preservation in New England. *Id.*

may be available for farming. For example, the council could do an inventory of available public land, such as the “Diggable City” study conducted by students from Portland State University for the Portland-Multnomah County Food Policy Council.⁹⁸ The land may be in the city or nearby and it may be under private ownership. Additionally, it could be land held by the public, such as local schools. Sometimes “vacant” land may be owned by an institution, such as a land trust or church, interested in supporting new farmers and food production. The council can consider trying to implement a local version of a “land link” program that creates a way for owners of farmland, such as farmers planning to retire, to be put into contact with people interested in trying to farm.

6. Create a Robust Urban Agriculture Policy

One motivation for creating many local food policy councils has been the desire to focus official attention on the opportunities to expand urban agriculture and producing food within the city.⁹⁹ While urban agriculture may function on a smaller scale than typically considered when thinking about new farmers, one of the opportunities associated with urban agriculture is to expand the context and understanding of who is a farmer and what a farm may look like. By considering how urban agriculture can create new farm and food enterprises, the policy can be much broader than simply expanding opportunities for more community garden plots. The example of Will Allen and Growing Power in Milwaukee is vivid proof of how urban agriculture efforts can offer the city many opportunities and how urban farms can be important assets for a stronger, more sustainable community.¹⁰⁰

98. KEVIN BALMER ET AL., *DIGGABLE CITY: MAKING URBAN AGRICULTURE A PLANNING PRIORITY* (2005) (available at http://diggablecity.org/dcp_finalreport_PSU.pdf); see also *The Diggable City Project: Information*, DIGGABLE CITY PROJECT, <http://www.diggablecity.org> (last visited April 27, 2011) (containing information on the project and the report).

99. Urban agriculture has been the subject of several recent legal articles. See, e.g., Peters, *supra* note 12; LaCroix, *supra* note 12.

100. See GROWING POWER, INC., <http://www.growingpower.org> (last visited Feb. 25, 2010) (providing information about Growing Power and its programs); see also Barbara Miner, *An Urban Farmer's Dream Rewarded*, N.Y. TIMES, Oct. 1, 2008, at F6 (concerning Will Allen being awarded a MacArthur Genius Grant).

7. Develop Programs to Recruit and Train New Farmers

If the council can successfully identify opportunities for new farmers, then a key step will be to recruit, train and support new farmers. There are many examples of successful new farmer incubator and training projects in the country, many working in urban areas, such as the Angelic Organic Learning Center near Chicago.¹⁰¹ In some communities farmers markets are leading efforts to recruit and train new farmers, such as the work of New York City Grows and the Greenmarkets with the New Farmer Development Project.¹⁰² Cities can also develop innovative programs designed to attract new farming residents, such as low cost access to vacant lots or a new urban homestead effort.

8. Link with Schools in Efforts to Support New Farmers

A key component of any food policy council's work will be attention to the food systems of local schools, both from the perspective of nutrition and education but also as potential markets for locally grown food, known as "farm to school" efforts.¹⁰³ Schools can provide an important market for institutional purchases of locally grown and processed food and can be important partners in helping grow a local farm and food sector.¹⁰⁴ The schools may also be able to take part in programs like the new Food Corps Initiative, under which AmeriCorps volunteers help support school gardens and food related projects.¹⁰⁵ These gardens can be important training grounds for new farmers.

101. See ANGELIC ORGANICS, *supra* note 69.

102. See e.g., *New Farmer Development Project*, *supra* note 35.

103. *FarmToSchool.org: About Us*, NAT'L FARM TO SCHOOL NETWORK, <http://www.farmto school.org> (last visited June 1, 2011) (the National Farm to School Network is a joint project of the Community Food Security Coalition and the Center for Food and Justice, a division of the Urban & Environmental Policy Institute of Occidental College).

104. See *Id.* (containing descriptions of the current initiatives now underway in the U.S. dealing with "farm-to-school" programs); *National Farm to School Program*, CMTY. FOOD SECURITY COAL., http://www.foodsecurity.org/farm_to_school.html (last visited June 6, 2011).

105. See *Vision*, FOOD CORPS, <http://www.food-corps.org> (click-on "Our Vision") (last visited Feb. 25, 2011).

9. Expand Opportunities for Direct Marketing

It is difficult to overstate the importance of direct marketing, such as farmers markets and community supported agriculture (CSA or subscription farms), in the efforts to improve local food systems. These versatile and flexible marketing techniques provide ways to help improve access to food, to bring food into neighborhoods where traditional markets don't exist, and to connect local residents with farmers. Communities are increasingly using various forms of direct marketing to improve access to healthy food and to provide various forms of food assistance such as Supplemental Nutrition Assistance Program (SNAP) benefits, or what are often referred to as food stamps.¹⁰⁶ Because direct marketing has low barriers to entry, meaning it does not cost much to be involved, this form of marketing is especially important to new farmers and to food entrepreneurs.¹⁰⁷ A council can undertake a study of the forms and distribution of direct marketing outlets to identify how they can be best expanded. Many city policies, such as when and where to run bus lines and the process for accessing public property to start a farmers market, can have a direct impact on the success of direct farm marketing.¹⁰⁸

10. Address New Food Entrepreneurs and Artisans as Well as New Farmers

While there is a growing interest on the part of many people, young and old, to become farmers, many others are taking an interest in food production and marketing.¹⁰⁹ The idea of opening a bakery,

106. For information about the SNAP program see *FNS Supplemental Nutrition Assistance Program (SNAP)*, FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC. (May 26, 2011), <http://www.fns.usda.gov/snap/>.

107. See LEWIS W. JETT & MARY HENDRICKSON, UNIV. OF MO. EXTENSION, *MARKETING VEGETABLES IN MISSOURI*, 1, 2 (Apr. 2010), available at <http://www.foodcircles.missouri.edu/mktveg.pdf>.

108. One interesting development in relation to farmers markets is the number of cities expanding the availability of markets to include winter months, rather than just the typical mid-summer markets. See, e.g., Tim Carman, *In Winter, Farmers Markets Turn Into Value (Added) Villages*, WASH. POST (Jan. 12, 2011, 12:00 AM) <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/11/AR2011011103169.html>.

109. See, e.g., *Edible Communities – Local Food Magazines*, EDIBLE COMMUNITIES, INC. <http://www.ediblecommunities.com> (the network of Edible

making wine or cheese, being a beekeeper, or any of the many other ways food can be processed and marketed is a dream held by a countless number of people, including many looking for second careers or the chance to turn a hobby into a business as they consider retirement. By keeping in mind how local policy impacts the ability and willingness of people to invest in new food based businesses, as well as influence the success of new entrepreneurs, a food policy council can help expand the food system and stimulate additional jobs and economic opportunities.

B. The New Farmer Fund – Innovation to Support Private Funding for New Farmers

Insights from the Drake Forum make it clear there are several common issues associated with current efforts to support new farmers, regardless of the size, type or location of the farms involved.¹¹⁰ These issues include: access to land on affordable terms; the amount of equity new farmers can bring to the enterprise; and the availability of training and educational programs to give new farmers the skills and tools, including business planning, marketing, and risk management, needed to create and operate successful businesses. These issues are especially challenging when working with non-traditional audiences of potential new farmers, such as urban gardeners and people coming from a non-farm background. Tribal members, immigrants and minorities, many who come from an agrarian tradition, may also experience significant challenges in accessing land, equity and training. Another critical obstacle facing efforts to support new farmers concerns the funding and institutional support of the organizations taking leading roles in this work. The capacity of non-profit organizations to develop innovative programs, such as incubator farms and new farmer training, is limited by funding. The new BFRDP grant program from the USDA has opened an important source of possible funding, but it is still limited.¹¹¹

The Drake Agricultural Law Center's work on new farmer issues suggests a growing public recognition of the need to help and assist new farmers. News reports about trends in land ownership mean the

Communities Publications magazines which exist around the nation are an example of the growing and wide-spread interest in local food systems).

110. See *supra* text accompany note 62.

111. See NAT'L INSTIT. OF FOOD & AGRIC., *supra* note 68.

public is becoming aware of the aging farm population, and how the challenges faced by new farmers may compromise efforts to maintain a vibrant farm and food sector in the U.S.¹¹² This public sentiment may be favorable to innovative efforts to generate and provide support for new farmers, if such mechanisms can be developed. Part of the public interest in assisting new farmers is directly related to the surging consumer interest in purchasing local foods, such as from farmers markets. However, there are currently few, if any, direct or effective ways for consumer interest in supporting new farmers to be channeled to support such efforts. While consumers can shop at farmers markets or look for other ways to identify and buy from individual farmers, such as at road-side farm stands, there is no mechanism for a consumer to make market choices in conventional grocery stores to support new farmers.

As a result, there is an opportunity to research, develop, and test a prototype for a consumer-oriented and market driven (and funded) initiative to support a wider range of innovative training, education, land access, and equity building programs for new farmers. Such a fund would supplement the existing, but limited, public sources of support at the local, state and federal level for new farmer initiatives. It may promote efforts affecting potential audiences of new farmers who have not traditionally received significant public attention or support, including minorities, tribal members, immigrants, women, and urban farmers and gardeners.

The Drake University Agricultural Law Center is now working to develop such a “New Farmer Fund” (the “Fund”).¹¹³ The idea for the Fund is that it will be generated through the support of consumers, businesses, and others, largely through the involvement of companies marketing foods, agricultural inputs, and related products, and through the involvement of other businesses, corporations and foundations with a stake in the future of American agriculture. The funding mechanism may employ the concept of “eco-labeling,” i.e. a

112. See, e.g., *New Farmers Face Unique Challenges, Part I*, FOODNUTRITIONSCIENCE.COM (Apr. 25, 2011), <http://www.foodnutritionscience.com>; Zoe Bradbury, *The Need for New Farmers*, 4 OR. ST. EXTENSION SERVICE 1 (2009), available at <http://smallfarms.oregonstate.edu/sfn/w09NewFarmers>.

113. See *Drake Convenes National Discussion on America's New Farmers*, DRAKE.EDU (Feb. 22, 2010), <http://www.drake.edu/news/db/official/archive.php?article=5367> (discussing Drake University's recent focus on the obstacles facing new farmers, including the availability of finance and credit).

label designation noting the participation in the fund, and other forms of social marketing to create an identifiable logo or point of purchase mechanism whereby consumers know that a portion of the proceeds from their purchase will support new farmer initiatives. Companies and marketers can participate in the New Farmer Fund through adding the designation on the label of products or through other advertising and communication methods. The involvement of companies and products will be non-exclusive, meaning a variety of participating members, and flexible, meaning the Fund can be focused by geography, type of new farmer organization, or other factors. This flexibility means a national company could use the label, but local companies could also participate and see that the funds they help generate are used to support new farmer initiatives in their area. The overarching goal is to create public awareness and support in the market place for “new farmer” activities.

The Fund’s purpose will be to provide a potential source of financing for non-profits and other organizations serving new farmers. These groups include organizations operating new farmer training programs and incubator farms, as well as state and local programs linking retiring farmers and landowners with new farmers. The Fund will supplement existing funding sources the organizations are able to access, to support their work through fund raising, public funding or charging fees for services. The Fund will be non-exclusive and scale-able, meaning it can expand as the range of companies and products participating in it grow. Similarly, access to the Fund can be expanded both geographically and in the number of new farmers served based on the growth of the Fund. Organizations supporting new farmers could be able to access the Fund by meeting a set of project requirements Established by the organizers. Similarly, new farmers may be able to participate in the Fund directly through involvement in the education and training efforts conducted by participating organizations. Existing farmers who are offering training programs for new farmers, such as through apprenticeships and internships may also participate in the Fund.

The exact details of the Fund’s operation, including the funding mechanism, the design and operation of the consumer support mechanism, the eligibility guidelines for participation by non-profits, and the nature of the new farmer support efforts, will be developed and refined over the course of the project. The Fund may include a program to provide matching funds for groups working with

individual new farmers participating in qualified individual development account (“IDA”) equity building initiatives.¹¹⁴ IDAs supplement the savings of the participating new farmers to build equity to make a significant investment in the farming operation, such as land or equipment.¹¹⁵ New farmers who complete a training and education program and who save the required amount are provided with matching funds to leverage their equity. Several groups working with new farmers, such as the Practical Farmers of Iowa and California Farm Link¹¹⁶ have developed IDA programs and this model appears to be a promising and successful method for building equity for new farmers. Congress included the IDA approach in the 2008 Farm Bill as a pilot program but it has not yet been funded.¹¹⁷ Another financing mechanism the Fund may employ is in the form of micro-enterprise loans, such as the project developed by the Harvest Initiative for small businesses at the Crow Creek Sioux Reservation in South Dakota.¹¹⁸ The organizations participating in the Fund will be expected to offer education and training programs in connection with their efforts, and will be required to include education on various aspects of risk management, record keeping and business management in the programs. By linking the provision of supplemental IDA funding to the delivery of education and training, the efforts to support new farmers should be more successful in creating viable farming operations. In addition, other ideas for

114. The IDA approach is designed to provide incentives for individuals to save money for future use, such as a down payment on land, by providing matching funds from the sponsoring organization. The 2008 Farm Bill authorized creation of a pilot IDA program in 15 states, but Congress has not provided funding for the effort. See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 5301, 122 Stat. 924 (2008); *Beginning Farmer & Rancher Individual Development Account (BFRIDA)*, NAT’L SUSTAINABLE AGRIC. INFO. SERV. (ATTRA), NAT’L CTR. FOR APPROPRIATE TECH. (Jan., 26, 2010), http://www.attra.org/guide/a_m/bfrida.html.

115. *The Beginning Farmer and Rancher Individual Development Account (IDA) Program*, CTR. FOR RURAL AFFAIRS, (Apr. 7, 2010, 6:42 PM), <http://www.cfra.org/renewrural/IDA>.

116. See CAL. FARMLINK, *supra* note 78; *PFI Supports Policy Involvement*, PRACTICAL FARMERS OF IOWA, <http://www.practicalfarmers.org/programs/PFI-Supports-Policy-Involvement.html> (last visited April 29, 2011).

117. See Food, Conservation, and Energy Act of 2008 § 5301.

118. See *Services - Socially Responsible Business Development*, THE HARVEST INITIATIVE, <http://www.harvestinitiative.org/services.asp> (last visited April 29, 2011).

utilizing the Fund, such as possible support for existing farmers who offer internships and apprentice training opportunities, will be examined in the project.

The New Farmer Fund project seeks to develop a prototype for testing the potential to generate market-based financial support to supplement private efforts for identifying, training and supporting new farmers. Creating an identifiable market-based mechanism recognized by consumers, businesses, and others should help support a wide range of groups and organizations working to identify, train and assist new farmers. Testing the Fund prototype with food companies, agricultural businesses, and foundations will help create new partners for these organizations while developing stronger links between different components of the food and agricultural sectors interested in supporting new farmers. Integrating education and training on business skills, risk management and marketing will assist new farmers and improve their likelihood for success.

C. Farm School Idea – Addressing the Legal Challenges of On-Farm Intern Relations

Many of the people interested in farming did not grow up in agriculture, and did not receive the training and education that accompanies growing up in a farm family. This means many potential new farmers have a steep learning curve when it comes to food production. This lack of experience places a premium on the existence of programs that give prospective farmers opportunities for hands-on experience, while testing their interest and desire to become farmers. At the same time, many farmers involved in producing fruit and vegetables for local markets face challenges in locating dependable and affordable labor.¹¹⁹ These producers know there are many people who want experience growing food, often because these people contact the farmers seeking the chance to learn how to farm. As a result, many U.S. farms now offer “internships” or

119. See, e.g., Paul Hollis, *Produce Industry Faces Many Challenges*, SE. FARM PRESS (Dec. 4, 2009, 11:12 AM), <http://southeastfarmpress.com/vegetables/produce-industry-faces-many-challenges> (noting that harvest labor is one of the biggest challenges facing produce growers).

“apprenticeships” to people who want to work on the farm and learn how to raise and market food.¹²⁰

These “internships” typically involve some form of payment or stipend, as well as housing.¹²¹ In most cases the internships are not considered employment, at least by the farmers and the interns involved, but instead are considered to be a form of education.¹²² As a result, farmers don’t typically comply with state or federal wage and hour laws.¹²³ The argument is twofold, in that 1) the interns do not deserve a full wage because they are essentially trainees, and 2) part of the value of the internship is the opportunity to learn how to farm. While both arguments are valid, for most purposes state labor officials generally view these “internships” as employment relationships, and take a dim view of the farmers’ failure to comply with the wage and hour laws.¹²⁴ In the last year, labor officials in a number of Western states have taken action against farms using “internships,” and as a result farmers in many states are concerned about their ability to utilize this form of assistance.¹²⁵ Similarly,

120. See, e.g., *Sustainable Farming Internships and Apprenticeships*, NAT’L SUSTAINABLE AGRIC. INFO. SERV. (ATTRA), NAT’L CTR. FOR APPROPRIATE TECH. (Mar. 9, 2011), <http://www.attra.org/attra-pub/internships/> (containing a listing of farm internships maintained by ATTRA).

121. See, e.g., *id.* (select geographic area; then select “Details” for any of the available internships).

122. One of the most well known farm internship education programs is at the Center for Agroecology and Sustainable Food Systems at the University of California at Santa Cruz. See CTR. FOR AGROECOLOGY & SUSTAINABLE FOOD SYS., U. OF CA. AT SANTA CRUZ, <http://casfs.ucsc.edu> (last visited Apr. 29, 2011).

123. See NEW ENG. SMALL FARM INST., THE “ON-FARM WORKSTAYS” PROJECT - ON-FARM MENTORS AND LABOR LAW: YEAR-END REPORT 1 (2008) (*available at* <http://www.smallfarm.org/uploads/uploads/Files/On%20Farm%20Workstays%20Project.pdf>) (noting many farmers are unaware of their obligations as agricultural employers).

124. See, e.g., Cassidy Freeman, *Marin’s Organic Farms Wilt Under Labor Laws*, THE BAY CITIZEN (June 24, 2010, 1:00 PM) <https://www.baycitizen.org/labor/story/marins-organic-farms-wilt-under-labor>.

125. See Allison Condra, Article, *And on that Farm There was an Intern, E-I-E-I-O: Labor Issues in Training a New Generation of Farmers*, 26 J. ENVTL. L. & LITIG. (forthcoming 2011) (addressing the subject of the legality of farm internships) (Allison Condra is a third year student at Drake and researcher in the Center. The article won the University of Oregon Journal of Environmental Law & Litigation’s Spring 2011 writing contest.); *Making a Farm Apprenticeship Meet Minimum Wage Standards*, SMALL FARM COMMONS (Apr. 27, 2011)

many young people who want the opportunity to learn how to farm are concerned their opportunities to do so are being foreclosed.

The nation needs new models focused on educating and training new farmers, rather than simply meeting the labor needs of existing farms. There is a critical need for farm training, and farmers need access to renewable sources of committed workers. Internships have become the most direct and significant way to “train” new farmers, especially in areas related to direct farm marketing and organic production.¹²⁶ While internships are common, there is great variation in how they are structured and what interns “learn.”¹²⁷ As a result, there is a need to increase and standardize the “education” content of internships to make them more valuable for the interns, while limiting the “exploitive” potential. Regardless of the arguments in favor of offering unpaid internships, if the people are in fact “employees” then farmers must comply with state and federal labor laws concerning: record keeping, registering workers, wage and hours, withholding, workers compensation, and housing rules.¹²⁸ Farmers need to avoid the legal risks and costs associated with the threat of labor investigations and enforcement. This means there is reason to identify responsible ways to structure internships. Doing so may increase the number and diversity of internships available, helping both the interns and the farm community address labor and training issues.

One approach is to amend the state labor laws to provide an exception for farm internships. Washington used this approach in 2010, when it enacted a two-year pilot program that legally sanctions on-farm internships.¹²⁹ But the Washington program’s restrictions and cumbersome application process resulted in no farms using the

<http://smallfarmcommons.org/2011/04/27/making-a-farm-apprenticeship-meet-minimum-wage-law>.

126. See, e.g., *UT Organic Crop Production*, U. OF TENN. INST. OF AGRIC., <http://organics.tennessee.edu> (last visited Apr. 29, 2011).

127. See DOUG JONES, CAROLINA FARM STEWARDSHIP ASSOCIATION, *INTERNSHIPS IN SUSTAINABLE FARMING: A HANDBOOK FOR FARMERS* (Mar. 2011), available at http://www.carolinafarmstewards.org/docs/Internship_Farm_Mentor_Handbook_2011.pdf (last updated March 2011).

128. See NEW ENG. SMALL FARM INST., *supra* note 123.

129. See Farm Internship Program, 2010 Wash. Sess. Laws ch. 160, SSB 6349 (2010).

law in 2010.¹³⁰ Another approach is to increase the education and awareness about the application of state laws to farm internships, as in Oregon, where the state department of agriculture provides an extensive web site addressing the common questions in the relations.¹³¹

Another possible answer is for farms or organizations to consider developing a “farm school” system combining legal employment with an intentional education program. The intern is treated and paid as an employee for the work, but the intern also pays the farm some form of tuition for the training. For example, a “farm-school” model could be based on the intern being “employed” and paid according to state law for the majority of the week, e.g. thirty-two hours. The intern is also considered a “student” on the farm and is paying some form of tuition or payment in exchange for the education, training and experience, e.g. eight hours of class each week and market experience. Under this model, the farmer develops a “curriculum” and plan for the education and internship, taking the student through the range of activities and experiences on the farm. The farmer could use a portion of the income from the training and education to comply with labor laws and pay required wages. To make the model work, the parties should enter into an employment and education contract, detailing the plan for the labor, education and training. The education and training could be provided by an affiliated non-profit organization or nearby educational institution, if one exists.

People interested in developing a farm school model must consider many legal issues such as: state labor laws and minimum wage laws; state employee registration rules; record keeping and withholding requirements; state regulation of educational activities and registration/licensing requirements associated with farms offering classes; developing the employment and education contract detailing the relationship; land use regulations (such as zoning laws and whether farms will be treated as businesses for zoning purposes if they become schools); business creation and registration issues and the possible need to create a separate business; insurance issues in

130. See generally *Small Farm Internship Pilot Program*, WASH. ST. DEP'T. OF LABOR & INDUS., <http://www.lni.wa.gov/WorkplaceRights/agriculture/smallfarminternship/default.asp> (last visited April 29, 2011) (containing information about the Washington program).

131. See *Farm Internships in Oregon*, OR. DEP'T OF AGRIC., http://www.oregon.gov/ODA/farm_internships.shtml (last visited May 17, 2011).

relation to the employee-students and for the business; housing issues (if the relationship includes some form of housing and compliance with housing codes); and the relation between the farm and any institution or non-profit involved with the internship, as to liability for accidents, provision of the education, and insuring compliance with legal requirements.¹³²

IV. CONCLUSION - HEALTHY FOOD AND DIRECT MARKETING ARE VITAL FOR NEW FARMERS

This Article has focused on the exciting opportunities presented by a generation of New Agrarians who want to be part of America's food and farming future. In the context of a symposium focused on expanding regional foodsheds and local food systems, support for new farmers represents a bridge to the future. Many who are interested in becoming farmers today will be the people producing the healthy food tomorrow that will drive local economies and satisfy consumer demand for fresh local food. While this Article considers the issue of new farmers largely through a national lens and examines the role of the USDA, it is important to recognize the work at the state and local levels to develop innovative food policies and programs. The New York City region is an excellent example of the convergence of innovative programs by local food related institutions, notably the New York City Greenmarkets, New Farmer Development Project and the work of the Glynwood Center to

132. Farming apprenticeships are the subject of an interesting web site that provides a directory and method for farmers and interns to connect. See NAT'L SUSTAINABLE AGRIC. INFO. SERV., *supra* note 120. The site also has new information about a farm intern curriculum guide and related materials prepared by a farm in Oregon, including information about complying with Oregon state labor laws. See MAUD POWELL, NAT'L SUSTAINABLE AGRIC. INFO. SERV. (ATTR), NAT'L CTR. FOR APPROPRIATE TECH., WESTERN SUSTAINABLE AGRICULTURE RESEARCH & EDUCATION (SARE) FARM INTERNSHIP CURRICULUM AND HANDBOOK (2010), *available at* http://attra.ncat.org/intern_handbook/#oregon. Another interesting organization working on farm internships is MESA – Multinational Exchange for Sustainable Agriculture which offers an approved J-1 visa program to recruit foreign students to come to the US for up to one year placements on US farms. See MULTINATIONAL EXCH. FOR SUSTAINABLE AGRIC., <http://www.mesaprogram.org> (last visited May 17, 2011).

support farming and food production in the Hudson Valley.¹³³ However, in addition to these groups, the city and state are awash with policy statements, reports, and proposals from city and state officials to improve the food and farming system of the city and region.¹³⁴

This surge in food policy activity is further evidence of how the awareness of the importance of access to healthy foods and improving America's diet and nutrition is bringing new energy to our food and farm policy discussions. Promoting local food production and direct farm marketing improves the nutritional health of the nation. There is a critical link between expanding opportunities for direct farm marketing and supporting new farmers. Many of those interested in farming are motivated by the opportunity to raise food and sell it to members of their communities.¹³⁵ Many see food production as a form of public service, and want to enlist in providing a better food future for the nation.¹³⁶ In this regard it is possible to view new farmers as essential partners in the work many individuals and institutions are doing to improve America's health. Policies that expand direct marketing of fresh produce and improve food access, especially for low-income citizens and under-served communities, are central to the future of food and farming in the U.S.

133. See, e.g., GLYNWOOD CTR., LAND TRUSTS AND AGRICULTURAL LAW: PROTECTING FARMLAND OR FARMING? (2008), available at <http://www.nycwatershed.org/pdfs/GlynwoodLandTrustAgEasements5-08.pdf>; *Glynwood's MHS Solving the Regional Slaughterhouse Problem Now*, GLYNWOOD CTR., <http://www.glynwood.org/programs/modular-harvest-system/> (providing information about the Glynwood Center, and the mobile livestock harvest project) (last visited May 17, 2011).

134. See, e.g., Establishing State Policies for the Promotion of Sustainable Local Farms and the Protection of Agricultural Lands, N.Y. Executive Order No. 39, Nov. 4, 2010; SARAH BRANNEN, NEW YORK CITY COUNCIL, FOOD WORKS: A VISION TO IMPROVE NYC'S FOOD SYSTEM (2010), available at http://council.nyc.gov/html/food/files/foodworks_fullreport_11_22_10.pdf; SCOTT M. STRINGER, FOOD IN THE PUBLIC INTEREST (2009), available at http://www.citylimits.org/images_pdfs/pdfs/StringerFood.pdf; ANDREW CUOMO, FARM NY GROWTH THROUGH INNOVATION, (2010), available at http://www.andrewcuomo.com/system/storage/6/9c/f/1232/andrew_cuomo_farm_ny_agenda.pdf.

135. See *supra* text accompanying notes 16-22.

136. See *supra* note 20.