

FINDING FIELDS: OPPORTUNITIES TO FACILITATE AND INCENTIVIZE THE TRANSFER OF AGRICULTURAL PROPERTY TO NEW AND BEGINNING FARMERS

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I.	Introduction	211
II.	The New Farmer Issue.....	213
	A. Social and Economic Value of New Farmers	213
	B. New Farmer Fiscal Factors	215
	C. The Capital Challenge: Finding Affordable Farmland	216
III.	Current Landowners	219
	A. An Aging Agricultural Sector and an Impending Transition.....	219
	B. Trepidation in Transferring	220
	C. New Farmers and the Farm Tenancy Alternative	222
IV.	Transfer Mechanisms	224
	A. Social Value: The Mentorship Model.....	224
	B. Income Incentives	227
	1. Contract Payments.....	227
	2. State Tax Credit Systems.....	231
V.	Conclusion	236

I. INTRODUCTION

In an October 2011 presentation on the future of federal farm policy, United States Secretary of Agriculture Tom Vilsack stressed the importance of making economic assistance programs accessible and effective for new and beginning farmers.¹ Calling for “a community effort to recruit, train, and support

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1. Thomas J. Vilsack, Sec’y of Agric., USDA, Agriculture Secretary Vilsack on Priorities for the 2012 Farm Bill (Oct. 24, 2011), *available at* <http://www.usda.gov/> (search “Priorities for the 2012 Farm Bill”; then select “Agriculture Secretary Vilsack on Priorities for the 2012 Farm Bill” hyperlink).

[a] new generation of farmers and ranchers,” the Secretary underscored the value of comprehensive federal policies in ensuring future American agricultural productivity and farm viability.² The Secretary’s comments reflect a growing realization among policymakers that continued agricultural efficiency must look ahead to the next generation of producers, and necessarily take into account the needs and concerns of new and beginning farmers and ranchers.³ Starting with the loan and credit programs of the 1990s, the federal government has sought to develop various mechanisms to foster the growing interest in food security and sustainability, and to make careers in agriculture accessible and economically viable to young people.⁴ Under authorization provided in the 2008 Farm Bill, USDA created the Office of Advocacy and Outreach with the express purpose of supporting new and beginning farmers, and improving their access to USDA programs and assistance.⁵ Indeed, in testimony before Congress, Vilsack encouraged a target of creating at least 100,000 new farmers with the 2012 Farm Bill.⁶

As access to productive land is arguably the core of the agricultural industry, much attention has been given to processes by which land ownership can be made more affordable.⁷ With the support and enthusiasm of state governments and environmental and sustainability interest groups, Congress has explored various opportunities to assist new farmers and provide a competitive edge to a group generally lacking much of the equipment, capital, and bargaining power of established agricultural operations.⁸ Through the development of loan financing and credit systems, policymakers have sought to offset this significant, if not prohibitive, hurdle facing new farmers, and provide start-up operations with a competitive boost in an aggressive real property market.⁹ Yet while much

2. *Id.*

3. *See id.*

4. *See* Steven R. Koenig, *Title XVIII—Credit*, in *ECON. RESEARCH SERV., USDA, AIB-624, PROVISIONS OF THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990*, at 96, 96, 100 (Susan L. Pollack & Lori Lynch eds., 1991).

5. 7 U.S.C. § 6934(b) (Supp. V 2011); Press Release, USDA, Agriculture Secretary Vilsack Announces New USDA Office of Advocacy and Outreach (Dec. 9, 2009), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2009/12/0606.xml>.

6. *Expanding Our Food and Fiber Supply Through a Strong U.S. Farm Policy: Hearing Before the S. Comm. on Agric., Nutrition, & Forestry*, 111th Cong. 6 (2010) (statement of Tom Vilsack, Sec’y, USDA).

7. *See, e.g.*, Beginning Farmer and Rancher Opportunity Act of 2011, H.R. 3236, 112th Cong. § 202 (2011) (outlining commitments for guaranteed lending to beginning farmers and ranchers); Koenig, *supra* note 4, at 100.

8. *See* Koenig, *supra* note 4, at 100.

9. *See generally id.* at 96–101 (describing credit assistance and outreach to new farmers).

focus has been given to financing assistance for beginning farmers,¹⁰ the interests of the other, equally vital party to the land access arrangement—the transferring landowner—often tends to be absent from the picture. This Note steps back from direct financing assistance to new farmers and instead evaluates efforts to incentivize landowners to enter transfer agreements with these upcoming producers. By examining the identity and concerns of current farmers, ranchers, and agricultural landowners, as well as existing efforts to encourage participation in the transition framework, this Note identifies areas for consideration in future agricultural policy and new farmer assistance.

II. THE NEW FARMER ISSUE

A. *Social and Economic Value of New Farmers*

Before focusing on the issues involved in beginning farmer land transfers, it may be helpful to understand the identity and perceived value of new farmers. For the purposes of most new farmer policy, a “beginning farmer” is described as an individual at least eighteen years old who has never owned farmland or materially participated in the operation of a farm business in which they have had an ownership interest.¹¹ USDA extends this title to a new farmer for up to ten consecutive years,¹² and to both individuals and entities if at least fifty percent of the entity members or stockholders meet the eligibility requirements.¹³ This definition casts a broad net and encompasses a diverse group of agrarians. Ranging from the children of current farmers to urban college graduates with non-agricultural upbringings, and with interests in everything from traditional commodity production to organic and niche market specialization, new farmers

10. See, e.g., *Hearing Before the Subcomm. on Agric., Rural Dev., Food and Drug Admin., and Related Agencies of the H. Comm. on Appropriations*, 112th Cong. 6 (2012) (statement of Bruce Nelson, Adm’r, Farm Serv. Agency) (testifying that the Farm Service Agency increased its lending to beginning farmers by sixty-three percent, providing over one billion dollars in direct loans, and another \$735 million in loan guarantees in FY 2011); IOWA AGRIC. DEV. AUTH., IOWA BEGINNING FARMER LOAN PROGRAM: PROGRAM SUMMARY 12 (2013), available at http://www.iada.state.ia.us/images/2013/BFLP_Summary_2013.doc [hereinafter BFLP SUMMARY] (describing a variety of lending options available to beginning farmers); Press Release, USDA, USDA Finalizes New Microloan Program (Jan. 15, 2013), available at <http://www.usda.gov/wps/portal/usda/usda/home?contentid=2013/01/0010.xml> (announcing a new USDA program to assist beginning farmers in obtaining loans under \$35,000).

11. See, e.g., 7 C.F.R. § 1410.2(b) (2013); BFLP SUMMARY, *supra* note 10, at 12.

12. 7 C.F.R. § 1410.2(b); FARM SERV. AGENCY, USDA, LOANS FOR BEGINNING FARMERS AND RANCHERS, FACTSHEET, 1 (2011), available at http://www.fsa.usda.gov/Internet/FSA_File/beginningloansoct11.pdf.

13. 7 C.F.R. § 1410.2(b).

and new farmer issues appear in all aspects of agriculture.¹⁴ In a very fundamental sense, new farmers are important in ensuring continuity in the agricultural production sector and maintenance of a steady food supply.¹⁵ From a social perspective, they “represent not just new bodies and new blood,”¹⁶ but a revitalization of local agricultural communities and “the cornerstone to a vibrant rural America.”¹⁷

While often associated with an idealized vision of the American family farm, beginning farmers are more pragmatically viewed as a means of achieving rural development and sustainability goals.¹⁸ Beginning farmers tend to be involved in small-scale or family businesses, a type of operation often favored by state legislators.¹⁹ Unlike large commercial farming operations, small farms (common among new and beginning farmers) tend to deal locally, providing more patrons for community businesses and supporting the rural economy.²⁰ For agricultural communities experiencing decline, particularly in light of corporate consolidation of farming operations, the introduction of beginning farmers and small-scale producers has a direct impact on the economic revitalization and the restoration of an active rural social network. As Drake Agricultural Law Center’s Neil Hamilton summarizes, “[p]ractically 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.”²¹

14. See Neil D. Hamilton, *America’s New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers*, 22 FORDHAM ENVTL. L. REV. 523, 523–24 (2011).

15. See *id.*

16. *Id.* at 527.

17. Press Release, USDA, Secretary Vilsack Appoints Members to Beginning Farmer Committee (Aug. 12, 2010), available at <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2010/08/0405.xml&printabl=1&contentidonly=1> (quoting Tom Vilsack, Sec’y of Agric.); Tanya Brown, *Access to Land, Capital Biggest Obstacle for Beginning Farmers*, USDA BLOG (Jan. 31, 2013, 11:00 AM), <http://blogs.usda.gov/2013/01/31/access-to-land-capital-biggest-obstacle-for-beginning-farmers/>.

18. See Beginning Farmer Tax Credit Act, NEB. REV. STAT. ANN. § 77-5202 (LexisNexis, 2010); see also, e.g., Beginning Farmer and Rancher Opportunity Act of 2011, H.R. 3236, 112th Cong. § 111(1)–(2) (2011).

19. See IOWA CODE § 175.4(3)–(4) (2011) (describing the inability of nonestablished farmers to acquire agricultural property as a “serious problem,” that is “conducive to consolidation of acreage of agricultural land with fewer individuals resulting in a grave threat to the traditional family farm”).

20. Matthew Wilde, *The Rising Cost of Farmland Is a Double-Edged Sword*, CEDAR VALLEY BUS. MONTHLY ONLINE (Nov. 16, 2011), http://wfcourier.com/business/local/the-rising-cost-of-farmland-is-a-double-edged-sword/article_89a131a4-c75e-5f10-88aa-8ec9b4a176ac.html.

21. Hamilton, *supra* note 14, at 539.

State officials are well aware of this—the legislative findings of Nebraska, for example, emphasize the local economic value of new farmers and their role in achieving state development goals.²² Citing “unemployment, outmigration of people, loss of agricultural jobs, and difficulty in attracting and retaining farm operations” throughout Nebraska, the legislature viewed assistance to new farmers as a means of fostering rural development and “accomplish[ing] economic revitalization.”²³ Supporting new and beginning farmers and encouraging young people to enter agricultural occupations, the legislature recognized, would also help to make local agricultural industry “competitive with other states involved in economic revitalization and development of agriculture.”²⁴

B. *New Farmer Fiscal Factors*

Policy looking to support new farmers must necessarily factor in their financial concerns and challenges. Like any fledgling business enterprise, financial stability can be problematic for beginning farming operations. According to USDA, nearly a third of beginning farms do not report any positive value of production, and the agency warns that a new farmer “should expect to have low returns in the startup phase.”²⁵ Indeed, most new farms actually lose money in their first years of operation.²⁶ In the face of increasing input costs for fertilizer, chemicals, and equipment, as well as fluctuations in commodity prices, all producers are challenged to be economically stable.²⁷ For most modern production agricultural businesses, scale of operation and volume of output are the keys to obtaining adequate income.²⁸ Others have turned to alternative farming practices, niche markets, and direct sales to remain viable, compensating for increased ex-

22. See NEB. REV. STAT. ANN. § 77-5202.

23. *Id.* § 77-5202(1)(a)–(b).

24. *Id.* § 77-5202(1)(b)–(2).

25. ECON. RESEARCH SERV., USDA, ECON. BRIEF NO. 22, BEGINNING FARMERS AND RANCHERS AT A GLANCE: 2013 EDITION, at 4 (2013) [hereinafter BEGINNING FARMERS AT A GLANCE], available at <http://www.ers.usda.gov/media/988138/eb-22.pdf>; TIMOTHY PARK ET AL., ECON. RESEARCH SERV., USDA, AIS-91, AGRICULTURAL INCOME AND FINANCE OUTLOOK 26 (2011), available at http://www.ers.usda.gov/media/246635/ais-91_3-1-12.pdf.

26. See, e.g., MARY AHEARN & DORIS NEWTON, ECON. RESEARCH SERV., USDA, EIB-53, BEGINNING FARMERS AND RANCHERS 8 (2009), available at http://www.ers.usda.gov/media/156049/eib53_1_.pdf.

27. Gary A. Hachfeld, *What Does It Take to Earn a Living on the Farm?*, UNIV. OF MINN. EXTENSION, 1 (Apr. 2013), <http://www.cffm.umn.edu/Publications/pubs/FarmMgtTopics/earnlvfarm.pdf>.

28. See *id.*

penses and labor inputs by pursuing markets that bring in premium prices and reduce the profit shares of middle-men and processors.²⁹

Another way to make up the gap in income is to farm part-time.³⁰ It is not uncommon for new farmers and their families to seek employment outside of agriculture in addition to their farming operation; approximately eighty percent of farmers' household cash income comes from off-farm income, and new farmers and their spouses are more likely to work off-farm jobs in order to meet living expenses.³¹ Although an extra job prevents a new farmer from devoting full-time attention to the operation, such an arrangement can carry a number of benefits. An additional job can provide much-needed income security while the farm business works to recoup investment expenses.³² Perhaps more importantly, outside employment can provide health care and insurance benefits that would be costly for independent purchase.³³ Overall, a number of tactics may be employed to cut costs and save money while the business becomes financially stable, but it is important to recognize that new farmers, particularly those without established connections to the rural community, may have limited resources to finance their operations. While a lack of start-up capital may be addressed through a variety of lending practices and financial mechanisms, recognition of these challenges on the part of landowners, and programs to facilitate connections between parties, can greatly improve a new farmer's situation.³⁴

C. *The Capital Challenge: Finding Affordable Farmland*

Most efforts to assist new farmers thus far have focused on the heart-and-soul of the agricultural industry—land.³⁵ Suitable land is an obvious and integral

29. *Id.*

30. *Id.*

31. BEGINNING FARMERS AT A GLANCE, *supra* note 25, at 3.

32. See PARK ET AL., *supra* note 25, at 21 & tbl.2.1.

33. See AHEARN & NEWTON, *supra* note 26, at 9 (discussing prevalence of health insurance among new farmers).

34. See, e.g., 7 U.S.C. § 1936 (Supp. V 2011) (guaranteeing land contract sale loans made to beginning farmers); IOWA CODE § 175.13(1) (2011) (granting the Iowa Agricultural Development Authority the power to make secured loans and mortgages to beginning farmers to finance agricultural land, improvements, and depreciable agricultural property); see also Press Release, Farm Serv. Agency, USDA, USDA Announces Greater Flexibility and Additional Tools for Beginning Farmers and Ranchers (Jan. 20, 2012), available at http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20120120_rel_0011.html (describing various programs and policy initiatives to tailor federal assistance to the needs of beginning farmers).

35. See, e.g., Koenig, *supra* note 4, at 100 (describing government outreach to assist socially disadvantaged individuals on the path to farm ownership).

part of production agriculture and, from a business aspect, tends to be the farmer's most valuable possession. USDA reports that farmland and buildings represent nearly eighty-five percent of total American farm assets.³⁶ Estimates from 2007 put the value of agricultural land in Iowa alone at well over \$123 billion, and the aggregate value of all U.S. real estate (including improvements) is estimated at \$1.85 trillion.³⁷ When it comes to crop production, quality acreage is a finite resource, and a combination of low interest rates, high commodity prices, and increased individual production capacity has greatly increased demand for quality land among farmers and investors.³⁸ In fact, with annual value increases in eleven of the past twelve years, investors have seen agricultural land generally outperform the stock market, providing competitive and, in some cases, even superior returns.³⁹ In Iowa, the price of agricultural land averaged from \$5119 to \$10,181 per acre in 2012—an approximately forty-seven percent hike and over \$4000 per acre value increase from 2007, a mere five year span.⁴⁰ Landowners have been receiving premium prices; in October of 2012, a single eighty acre tract of farmland in northwest Iowa hauled in a record-setting auction price of \$21,900 per acre,⁴¹ toppling the previous state record of \$20,000 per acre set on a

36. *Land Use, Land Value & Tenure*, ECON. RESEARCH SERV., USDA, <http://www.ers.usda.gov/topics/farm-economy/land-use,-land-value-tenure.aspx#.UVioJo48m0w> (last updated Aug. 2, 2012).

37. MICHAEL DUFFY ET AL., IOWA STATE UNIV. EXTENSION, FARMLAND OWNERSHIP AND TENURE IN IOWA 2007, at 3 (2008) [hereinafter DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007], available at <http://www.extension.iastate.edu/publications/pm1983.pdf>; *Land Use, Land Value & Tenure*, *supra* note 36.

38. MICHAEL D. DUFFY, IOWA STATE UNIV. EXTENSION & OUTREACH, 2012 IOWA FARMLAND VALUE SURVEY 1 (2013) [hereinafter DUFFY, 2012 IOWA FARMLAND VALUE SURVEY], available at <https://www.extension.iastate.edu/agdm/wholefarm/pdf/c2-70.pdf>; see also DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 20 tbl.6.3 (indicating that over seventy percent of agricultural land is owned for income and long-term investment purposes); LAND INVESTMENT EXPO, <http://landinvestmentexpo.com/index.php> (last visited May 7, 2013) (providing details on the “Land Investment Expo,” an annual conference hosted by real estate development, lending, and legal groups, offering industry knowledge and advice to individuals and entities looking to invest in agricultural land, particularly in Iowa).

39. Michael D. Duffy, *Comparing the Stock Market and Iowa Land Values: A Question of Timing*, AG DECISION MAKER (Iowa State Univ. Extension, Ames, Iowa), Mar. 2013, available at <http://www.extension.iastate.edu/agdm/articles/duffy/DuffyMar13.html>.

40. DUFFY, 2012 IOWA FARMLAND VALUE SURVEY, *supra* note 38, at 5 tbl.2; see also Sano Shimoda & Terry Jones, *Agriculture's Value Equation: Farmland Values*, CROPLIFE (Nov. 14, 2011), <http://www.croplife.com/article/23164/agricultures-value-equation-farmland-values>; Matthew Wilde, *Farmland Still in Demand Despite Record Asking Price*, CEDAR VALLEY BUS. MONTHLY ONLINE (Nov. 14, 2011), http://wcfcourier.com/business/local/farmland-still-in-demand-despite-record-asking-price/article_1f87b692-881f-5f1b-8ea0-a21b7057c76c.html.

41. Victor Epstein, *Farmland Investors Talk of Possible Iowa Bubble*, DES MOINES REG., Jan. 19, 2013, at 8B, 9B.

seventy acre tract the previous year.⁴² Though perhaps more the product of anomalous auction conditions than representative of overall market conditions,⁴³ other properties in that area have recently fetched similarly shocking prices, and “[s]ales above \$15,000 or more have been common.”⁴⁴ Such prices are illustrative of the competitive tenor in agricultural real estate transactions. These transfers underscore the reality that the cost of land ownership can be prohibitive for a new or beginning farmer with limited financial resources looking to break into the industry. The highest bidder prevails at public auction, and such general unaffordability is frequently cited as a factor in the consolidation of land ownership under large commercial farming operations.⁴⁵ Indeed, according to the 2012 Iowa Land Value Survey conducted by Iowa State University Extension Services, new farmers represented a mere three percent of farmland purchases during the 2011–2012 survey period.⁴⁶ Nearly seventy-eight percent of farmland sold in this period was to current operators, with investors accounting for an additional eighteen percent.⁴⁷ Because of this competitive land-grab atmosphere, it may be beneficial to look beyond lending and direct financial assistance for beginning farmers and evaluate alternative means aiding in the pursuit of ownership. Prospective transferring landowners must be encouraged to consider the limited resources of beginning farmers.

42. Molly Montag, *Price Paid for Farmland Believed to Set New Iowa Record*, SIOUX CITY J., Dec. 7, 2011, http://www.siouxcityjournal.com/news/local/price-paid-for-farmland-believed-to-set-new-iowa-record/article_d5d0087f-2de9-5726-a65b-dad21b529f75.html.

43. Whether these prices reflect a real estate bubble is beyond the scope of this Note, though the issue has been taken up by economists and real estate investors. *See generally* DUFFY, 2012 IOWA FARMLAND VALUE SURVEY, *supra* note 38, at 3–4 (discussing key variables to watch in land speculation and value collapse); Epstein, *supra* note 41 (indicating that an agricultural land bubble exists, but whether the bubble bursts will depend on a variety of economic and social factors).

44. Dan Piller, *Land Goes for \$17,000 Per Acre*, DES MOINES REG., Jan. 5, 2013, at 8B, 9B; *see also* Montag, *supra* note 42 (describing an October 2011 auction which was thought to have set an Iowa record at \$16,750, but the price was surpassed only two months later).

45. *New Bill Would Extend Tax Breaks to Beginning Farmers in Iowa*, THE GAZETTE, Feb. 4, 2013, <http://thegazette.com/2013/02/04/new-bill-would-extend-tax-breaks-to-beginning-farmers-in-iowa/> [hereinafter *New Tax Breaks*] (“[W]hen retiring farmers sell their land to established operators, it consolidates the land and can reduce workers in an area, hurting nearby communities.”); *see also* Wilde, *supra* note 20. For commentary on the increasing prevalence of land sales by auction and its consequences for perceived Iowa agricultural land values, see MICHAEL DUFFY, IOWA STATE UNIV. EXTENSION & OUTREACH, 2011 IOWA LAND VALUE SURVEY: OVERVIEW 4 (2011) [hereinafter DUFFY, 2011 SURVEY OVERVIEW], available at http://www.extension.ias-tate.edu/Documents/landvaluesurvey/2011_Land_Value_Survey_OverviewFinal.pdf. Duffy particularly highlights the role of emotion in auction bidding, and the impact the competitive nature of such sales may have on Iowa land values. *Id.*

46. DUFFY, 2012 IOWA FARMLAND VALUE SURVEY, *supra* note 38, at 2.

47. *Id.* “Other Purchasers” accounted for the remaining one percent. *Id.*

III. CURRENT LANDOWNERS

A. *An Aging Agricultural Sector and an Impending Transition*

The new farmer issue becomes especially pressing when we consider the age breakdown of existing agricultural operators—an overview of farmer, rancher, and agricultural property owner demographics indicates that a significant portion of American farmland will likely be transferred in the near future. In Iowa, for example, more than half of “career farmers,” identified as those who consider farming their primary occupation, are over the age of fifty-five.⁴⁸ This is a somewhat alarming statistic, as Iowa, like much of the upper-Midwest, tends to have a comparatively younger farm population than southern and western states.⁴⁹ Iowa is in keeping with the greater national trend, however, which places the average American agricultural operator at 57.1 years old.⁵⁰ This age has been increasing approximately one year with each census cycle, and, more concerning, the sixty-five plus group has been the fastest growing demographic.⁵¹ Indeed, surveys of landowner demographics indicate this increasing age trend “shows no signs of abating.”⁵² The result has been a disproportionately top-heavy age distribution among farmers; USDA’s most recent Census of Agriculture indicated that 289,999 operators were over the age of seventy-five, while only 54,147—roughly one-fifth as many—were under the age of twenty-five.⁵³ When we include landowners in the mix (who are not necessarily involved in the actual farm operation but may merely serve as landlords in farm tenancy arrangements), it appears that over half of Iowa’s agricultural land is owned by persons over sixty-five years old, with approximately twenty-eight percent belonging to persons over the age of seventy-five.⁵⁴

48. See NAT’L AGRIC. STATISTICS SERV., USDA, AC-07-A-51, 2007 CENSUS OF AGRICULTURE: UNITED STATES SUMMARY AND STATE DATA, at 621 tbl.46 (2009) [hereinafter 2007 CENSUS OF AGRICULTURE], available at http://www.agcensus.usda.gov/Publications/2007/Full_Report/usv1.pdf.

49. See NAT’L AGRIC. STATISTICS SERV., USDA, 2007 CENSUS OF AGRICULTURE: FARMERS BY AGE, at 4 fig. (2009) [hereinafter FARMERS BY AGE], available at http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Demographics/farmer_age.pdf. New Mexico (37%), Arizona (35%), Texas (35%), and Mississippi (34%) have the highest percentages of operators over sixty-five years old. *Id.* Minnesota, Wisconsin, and Indiana number among the states with the average youngest operators. *Id.*

50. 2007 CENSUS OF AGRICULTURE, *supra* note 48, at 220 tbl.63; see also FARMERS BY AGE, *supra* note 49, at 1.

51. FARMERS BY AGE, *supra* note 49, at 1.

52. DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 29.

53. FARMERS BY AGE, *supra* note 49, at 3.

54. DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 11.

These statistics are particularly important when evaluating the future of the agricultural production sector. As the population of agricultural owners and operators continues to age, the transfer of farmland appears inevitable. Though it seems a morbid thought, the average U.S. life expectancy is approximately seventy-eight years;⁵⁵ whether by devise, descent, gift, or conveyance, over half of Iowa's landowners are poised to part with their land in the very near future.⁵⁶ This substantial turnover should provide policymakers an incentive and opportunity to reflect on the new farmer issue, and consider the structure of the American agricultural sector and goals in rural development and sustainability.

B. *Trepidation in Transferring*

One of the primary factors contributing to the nationwide aging of rural populations has been landowners' general reluctance to retire and/or sell the farm. Nearly a third of Iowa operators have claimed that they will *never* retire, and only twenty-three percent actually have a firm and conscious intent to fully retire someday.⁵⁷ This attitude, literally a "work-to-death" mentality, has been documented across the country, and can typically be traced to the farmer's own financial situation—many farmers feel themselves fiscally unable to fully leave the business, opting instead for semi-retirement to provide a security net of continued income later in life.⁵⁸ A survey of current farm owners indicates a substantial expectation that the farm will provide their primary source of retirement income.⁵⁹ Others opt to cease their production activities, but choose to still retain land and take on the mantle of landlord, securing an annual income through cash rental agreements with other farmers.⁶⁰ Important for new farmers, these agreements tend to shift risk entirely to the lessee (often a younger farmer), providing regular revenue for the landowner without requiring them to assume a share of

55. Kenneth D. Kochanek et al., *Deaths: Preliminary Data for 2009*, NAT'L VITAL STATISTICS REPORTS, Mar. 2011, at 3 tbl.A, available at http://www.cdc.gov/nchs/data/nvsr/nvsr59/nvsr59_04.pdf.

56. See DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 11.

57. ETHAN EPLEY ET AL., IOWA STATE UNIV. EXTENSION, PM 2074, IOWA FARMERS BUSINESS AND TRANSFER PLANS 7 (2009), available at <http://www.extension.iastate.edu/bfc/sites/www.extension.iastate.edu/files/bfc/Farm%20Business%20Transfer%20Plan.pdf>. The report indicates that Iowa's percentage of farmers who never intend to retire may actually be lower than many other states. *Id.*

58. *Id.* at 7, 9, 17 fig.4.17.

59. *Id.* at 17 fig.4.17.

60. See DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 17 & tbl.5.3.

the burden of production or loss.⁶¹ Indeed, retiring farmers are not the only ones to spot this opportunity—from a pure profit standpoint, agricultural land ownership is often seen as a valuable economic investment and is increasingly included in diversified retirement plans among individuals with no prior connection to the agricultural industry.⁶²

On a more personal or psychological level, cash rental agreements may also appear of special appeal to landowners who are emotionally unprepared to leave their land. Rather than economic considerations, many landowners in this category hold on to their property for sentimental reasons; the sense of heritage, self-worth, and pride evoked, in part, through independent land ownership and the concept of the family farm and home, makes many holders unwilling to sell property on the open market or at auction.⁶³ In spite of the high price agricultural land may potentially fetch, these more emotionally-minded owners represent a significant portion of retiring farmers: surveys of Iowa farmers indicate that nearly a quarter choose to keep their land for sentimental reasons,⁶⁴ and more than half of retiring farmers and ranchers choose to remain living at or nearby the farm homestead after they have ceased operation of their farming businesses.⁶⁵ For such farmers, retirement and relocation is of little appeal, and more frequently results as the product of health and medical concerns than mere age or planned retirement.⁶⁶ As a report from economists at Iowa State University points out, “farming has been described as a way of life, not just an occupation, [and] retirement is seen as not only a loss of occupation but also a loss of a way of life.”⁶⁷ Such personhood and self-identification with agriculture can result in a “grieving process” when that livelihood is given up.⁶⁸ As the report summarizes, “[s]emi-retirement provides the best of both worlds,” allowing a farmer to continue operation on a more limited basis and maintain that emotional attachment to the farm and business.⁶⁹

This emotional factor can be especially relevant for new farmers, as the properties of these landowners are generally transferred to heirs by devise or de-

61. See EDWARD COX, DRAKE UNIV. AGRIC. LAW CTR., *THE LANDOWNER’S GUIDE TO SUSTAINABLE FARM LEASING* 12 (2010), available at <http://sustainablefarmlease.org/wp-content/uploads/2010/08/The-Guide2.pdf>.

62. Gary A. Hachfeld et al., *Should You Sell Your Real Estate?*, AG BUS. MGMT., UNIV. MINN. EXTENSION, 1 (Sept. 2009), <http://www.extension.umn.edu/distribution/businessmanagement/components/M1177-5.pdf>; see also DUFFY, 2011 IOWA LAND SURVEY, *supra* note 45, at 2.

63. EPLEY ET AL., *supra* note 57, at 5.

64. DUFFY ET AL., *FARMLAND OWNERSHIP IN IOWA 2007*, *supra* note 37, at 20 & tbl.6.3.

65. EPLEY ET AL., *supra* note 57, at 17 & fig.4.15.

66. *Id.* at 8.

67. *Id.*

68. *Id.*

69. *Id.*

scent, with the goal of keeping the property within the family line.⁷⁰ While these conveyances do not account for a particularly large portion of land transfers (the bulk of agricultural land, especially in Iowa, is passed by purchase),⁷¹ they do underscore the potential disadvantage to new agrarians who may lack an agricultural background and social network in their efforts to obtain access to land, as well as implicate issues in non-traditional farm ownership and farm tenancy relationships.

Whatever the underlying reason—and it may be naïve to attempt to isolate a single motivating factor—this inability or unwillingness to part with farmland in a market with plentiful ready and willing buyers can play a role in driving demand for agricultural land and, subsequently, the increase in market value for agricultural property and the prevalence of farm tenancy arrangements.⁷² Accordingly, a beginning farmer and rancher policy which seeks to promote a transition to a new generation of farmers must be comprehensive in scope and address, or at least consider, these primary landowner concerns.

C. *New Farmers and the Farm Tenancy Alternative*

Before analyzing mechanisms to facilitate land transfers to new farmers, it may be helpful to address farm tenancy arrangements as potential alternatives in promoting beginning farmer land access. Farm tenancy is increasingly becoming the norm in agricultural production—over half of Iowa’s farmland is operated under a rental agreement.⁷³ Interestingly, USDA reports that beginning farmers are less likely to lease their agricultural property than established farmers, though they tend to operate smaller businesses with higher levels of indebtedness.⁷⁴ Even so, lease arrangements can prove beneficial to both the landowner and the

70. *Id.* at 5.

71. DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 9 tbl.3.6. Duffy’s research of Iowa agricultural land transfers indicates that inheritance accounts for approximately twenty-three percent of transfers, while purchases account for approximately seventy-three percent. *Id.* Inter vivos gifts likely serve the same aims as inheritance transfers—namely, keeping property within a familial line—but represent a mere three percent of Iowa farmland transfers. *Id.*

72. *See* DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 7 tbl.3.1, 17 tbl.5.3. Approximately fifty-four percent of Iowa farmland is under tenancy, and over seventy percent of that rented land is held by a landowner over the age of sixty-five. *Id.*

73. DUFFY ET AL., FARMLAND OWNERSHIP IN IOWA 2007, *supra* note 37, at 7 tbl.3.1; *see also* J. GORDON ARBUCKLE, IOWA STATE UNIV. EXTENSION, RENTED LAND IN IOWA: SOCIAL AND ENVIRONMENTAL DIMENSIONS 2 (2010), *available at* <http://store.extension.iastate.edu/Itemdetail.aspx?ProductID=13272> (follow “Download” hyperlink).

74. AHEARN & NEWTON, *supra* note 26, at 12.

agrarian, providing rental income for the owner while offering new farmers a more immediate or short-term access to agricultural land.

A landowner may make an agricultural lease “new farmer-friendly” by drafting the agreement with the needs and special situation of new farmers in mind. Security in tenure is a particularly significant factor in leasing to a new farmer. As this group traditionally lacks capital or alternative access to land, security is important in maintaining financial stability for these upstart businesses.⁷⁵ Long-term agreements add predictability to the lease arrangement and allow the new farmer to make future plans with security in their access to agricultural land.⁷⁶ Additionally, the inclusion of an option to purchase at the conclusion of the lease term or a right of first refusal in the sale of the leased property can bring about an ultimate transfer to the beginning farmer.⁷⁷

Taking a more hands-on approach, landlords can work directly with new farmers through crop-share lease arrangements and share in production-related expenses by contributing capital or equipment.⁷⁸ Such investment in a new farming operation reduces costs from both the potential risk of loss, as well as the financial burdens associated with operation inputs.⁷⁹ Tax credit programs, as will be discussed later, may also be available to provide added incentives to landowners engaging in such risk-sharing structures.⁸⁰ Employing reduced or graduated rent provisions (for example, a percentage reduction that is gradually eliminated over the course of a few years) may provide a substantial advantage for beginning farmers by easing their financial burden under cash rental agreements while their operations are still in the early stages.⁸¹ Of course, a landlord needs to evaluate his or her own financial situation before agreeing to such a reduction—these types of arrangements may be less desirable for retiree landowners dependent upon cash rent for annual income.

Yet, even if an increased number of landowners would be willing to implement such provisions, a sympathetic approach to leasing is not by itself a solu-

75. COX, *supra* note 61, at 49.

76. *Id.*

77. *Id.*

78. *Id.* at 50.

79. Kent D. Olson & Christie Wyman, *Farm Leases and Rents*, UNIV. CAL. COOP. EXTENSION, http://sfp.ucdavis.edu/Pubs/Family_Farm_Series/Farmmanage/leases/ (last updated June 15, 2012).

80. See, e.g., IOWA CODE § 175.37(5)(b) (2013) (giving the taxpayer a tax credit of fifteen percent of the amount paid from crops or animals sold).

81. See COX, *supra* note 61, at 42–43, 50 (discussing rent reductions as a cost and risk-sharing mechanism between lease parties). Cox offers the following as a sample graduated rent provision: “The total rental amount for the first year shall be reduced by 20%. This reduction shall be applied to the total for each subsequent year, but the reduction shall be decreased by 5% each year until the full rental amount is being paid.” *Id.* at 50 fig.

tion to new farmer land access. While rental agreements may offer an additional land access option for beginning farmers in light of prohibitive land prices, rental prices have not been immune to the influences of the real estate market. Increasing commodity prices and property values have driven up the price of agricultural rent as well—cash rent prices in Iowa have doubled, and, in some cases, quadrupled over the past decade, thereby implicating many of the same affordability problems as land ownership.⁸² As Steve Ferguson, Executive Director of the Iowa Agricultural Development Authority explains, “‘A lot of big, wealthy farmers drive-in [sic] with a big checkbook and say I’ll cash rent your farm for an extremely high amount of money.’”⁸³ The rental real estate market can be just as competitive, and established operations with greater access to capital can meet rental rates that many starting farmers just cannot match.⁸⁴ What’s more, tenancies do not carry the same level of stability and predictability as land ownership—a tenant has no guaranteed right to farm beyond what contract and state law afford, and the tenant’s rights remain subject to the landlord’s ability to terminate the lease or transfer the property to someone else. Like any contract, if the parties are not careful in their drafting of the agreement and expression of their expectations, a lease can carry a strong potential for conflict and litigation between the parties. While tenancy might carry some advantages, especially for beginners who cannot afford to buy, it does not solve the land access issue.

IV. TRANSFER MECHANISMS

A. *Social Value: The Mentorship Model*

Although many aging farm owners and operators plan to retain legal title to their agricultural land in retirement, most current farmers support the expansion of assistance programs for new and beginning farmers through outreach, mentorship, and land-link programs.⁸⁵ Linking programs, which are typically implemented by state and/or non-profit groups, operate to “match” (or create matching opportunities between) a beginning farmer and a landowner looking to retire.⁸⁶ The primary purpose of these programs is to facilitate negotiations, provide information and educational services, and counsel the parties through the

82. Wilde, *supra* note 20.

83. *New Tax Breaks*, *supra* note 45.

84. *See id.*

85. *See* EPLEY ET AL., *supra* note 57, at 25 (positive suggestions from survey respondents).

86. *Ag Link*, BEGINNING FARMER CTR., IOWA STATE UNIV. EXTENSION & OUTREACH, <https://www.extension.iastate.edu/bfc/farm> (last visited May 7, 2013).

transaction and transition.⁸⁷ Overall, the benefits provided by these programs are social and informational, rather than financial. Ag Link, for instance, is an Iowa matching service that maintains a database of potential parties to beginning farmer property transactions.⁸⁸ It operates to bring the retiring landowner and the new farmer together to exchange personal and financial references, discuss their respective expectations and goals, complete financial analyses of the farming operation, and, if a compatible match is made, to facilitate the parties in planning the transition of the farming business.⁸⁹ Iowa is one of many states to tout such a program, and a nation-wide version is available as well.⁹⁰ Overall, these types of programs are praised for their ability to address the interpersonal mechanics of farm succession by providing non-economic benefits and fostering social and mentor relationships.⁹¹ They may be particularly valuable for farmers from socially-disadvantaged groups, or for people with non-agricultural backgrounds lacking the social resources and network of an established farmer.⁹²

Despite the good-will nature of these resources, however, this social value and mentorship model might not deliver large scale results. Though these programs may be eligible for assistance through the Beginning Farmer Development Program, overall reliance on soft-money grants and limited funding act as a substantial constraint on program activities.⁹³ More problematic, however, is the

87. See IOWA CODE § 266.39E(1)(a)–(c); see also *About the Network*, INT’L FARM TRANSITION NETWORK, <http://www.farmtransition.org/aboutnetw.html> (last visited May 7, 2013).

88. *Ag Link*, *supra* note 86.

89. *Id.*

90. See, e.g., *About the Network*, *supra* note 87; *Land Link Services*, CTR. FOR RURAL AFFAIRS, <http://www.cfra.org/landlink> (last visited May 7, 2013) (national matching program); *Network Participants*, INT’L FARM TRANSITION NETWORK, <http://www.farmtransition.org/netwpart.html> (last visited May 7, 2013) (providing links to over twenty state matching programs across the country).

91. Jason Blevins, *Program Could Match Colo.’s Next Generation of Farmers with Land, Expertise*, DENVER POST, Nov. 3, 2009, http://www.denverpost.com/ci_13699230; see also *About the Network*, *supra* note 87; *Transfer Strategies for Beginning & Retiring Farmers*, CTR. FOR RURAL AFFAIRS, http://www.cfra.org/resources/beginning_farmer/success_stories (last visited May 7, 2013).

92. See generally Hamilton, *supra* note 14, at 553 (identifying the disadvantage of new farmers with non-agricultural backgrounds and proposing educational assistance mechanisms to build experience and connections).

93. *Program Synopsis: Beginning Farmers and Rancher*, NAT’L INST. OF FOOD & AGRIC., USDA, http://www.nifa.usda.gov/funding/bfrdp/bfrdp_synopsis.html (last updated May 20, 2011) (grant program to fund educational and training opportunities for beginning farmers, including assistance in land acquisition); Marion Bowlan, *Establishing a Linking Program* (2006), <http://www.farmtransition.org/print.html> (follow “Establishing a Linking Program” hyperlink) (“[These programs] are competing for [scarce] resources no matter how [they] are organized.”); see also Karin R. Zeigler, Note, *Who Will Teach Our Farmers: Learning the Value of Mentor Programs from State and Private Programs*, 5 DRAKE J. AGRIC. L. 279, 302 (2000).

lack of participation by transitioning landowners in these resources. The Beginning Farmer Center, established eighteen years ago to serve as an educational, informational, and matching resource for new and retiring farmers, and the funding and outreach resource behind Iowa's Ag Link and FarmOn programs, indicated in its 2013 update that, while the program was in the process of working 617 active beginning farmer files, it only had twenty-four active retiring farmer files.⁹⁴ While the Center fielded 810 calls on beginning farmer programs in 2012, it facilitated only four actual matches between landowners and new farmers that year.⁹⁵ In addition to financial constraints, such mentorship and matching programs cannot function without willing participants to the transaction; unlike more traditional new farmer assistance (guaranteed lending, for example), land link programs require direct participation, cooperation, and involvement from the landowner. Without a retiring farmer willing to partner with a new one, these programs are one-sided and cannot achieve their "matching" purpose. Yet numbers alone may not be an accurate indicator of the value or success of these programs—transitions can be complicated and finding a good match can be tricky,⁹⁶ and the programs serve an important outreach purpose for individuals from non-farming backgrounds to get into the business. Of course, transactions may be facilitated independently of these programs; beginning farmer transfers among relatives, for instance, would have little need to use linking services. Yet given the prevalent use of land sale auctions and current price tags on agricultural property, it seems that financial considerations are going to be a more likely motivator than a desire to assist young farmers.⁹⁷ As competition between buyers drives land prices to new heights, landowners are facing market conditions that would allow them to cash-out quickly. This immediate economic gain may be particularly appealing to retiring farmers or to the beneficiaries of their estate who have no intention of farming and want to convert their inheritance to a more liquid form.⁹⁸ Thus, though many current farmers profess to support these programs on paper, the actual program sign-up sheets are conspicuously lacking any landowner involvement. While linking service websites offer examples of a

94. IOWA STATE UNIV. EXTENSION & OUTREACH, BEGINNING FARMER CENTER 1 (Jan. 2013), available at <https://www.extension.iastate.edu/bfc/sites/www.extension.iastate.edu/files/bfc/2012%20Beginning%20Farmer%20Center%20Annual%20Report.pdf>.

95. *Id.*

96. Bowlan, *supra* note 93, at 7 (cautioning program developers that "[f]arm [t]ransfers are complicated, they happen once in a lifetime, and they are fraught with human problems").

97. Hamilton, *supra* note 14, at 540 ("There is little incentive for landowners or retired farmers to support the next generation of farms if it means forgoing some immediate economic benefit."); see DUFFY, 2012 IOWA FARMLAND VALUE SURVEY, *supra* note 38, at 1; DUFFY, 2011 SURVEY OVERVIEW, *supra* note 45, at 4.

98. See Hamilton, *supra* note 14, at 540.

number of success stories from happy matches,⁹⁹ overall participation levels combined with present economic realities support a conclusion that something more may be required to promote transition of agricultural land to new farmers. Especially in a tight economy where landowners expect substantial returns on the disposition of their agricultural property, it appears necessary to offer some greater incentive to participate beyond the value of “helping out” a beginning farmer.

B. *Income Incentives*

1. *Contract Payments*

As altruistic intentions do not appear sufficient alone to attract the attention of landowners looking at top-dollar land prices, various governmental entities have experimented with economic incentives to promote conveyances to new and beginning farmers.

USDA’s Transition Incentives Program (TIP) represents recent federal economic-based action to encourage land transfers.¹⁰⁰ This program, authorized under the 2008 Farm Bill and administered by the Farm Services Agency (FSA), creatively combines the new farmer issue and long-term land stewardship goals.¹⁰¹ The Conservation Reserve Program (CRP) provides payments to the owners of environmentally-sensitive land who remove it from agricultural production.¹⁰² A typical CRP contract is ten years in duration.¹⁰³ As these contracts expire, and land and commodity prices continue to rise, it is not unrealistic to expect that much of this CRP land will be returned to production. The TIP program plays upon this eventuality and operates to extend the landowner’s payment rights an additional two years beyond the expiration of the CRP contract if the land is sold or rented to a beginning or socially-disadvantaged farmer.¹⁰⁴ If the property is rented, TIP requires that it be under a long-term lease (a minimum of five years) and that the rental agreement obligate the tenant farmer to utilize sus-

99. See, e.g., *Transfer Strategies for Beginning & Retiring Farmers*, *supra* note 91 (providing brief summaries of successful land links and highlighting various transfer strategies).

100. 7 C.F.R. § 1410.64 (2013); see 16 U.S.C. § 3835(c)(1)(B)(iii)–(iv) (Supp. V 2011) (authorizing CRP contract modifications for owner/operators transitioning their property to beginning or socially disadvantaged farmers).

101. See FARM SERV. AGENCY, USDA, FACT SHEET: CONSERVATION RESERVE PROGRAM (CRP)–TRANSITION INCENTIVES PROGRAM (TIP) (2010) [hereinafter TIP FACT SHEET], available at http://www.fsa.usda.gov/Internet/FSA_File/tipfactsheet.pdf.

102. 7 C.F.R. §§ 1410.3, .6.

103. *Id.* § 1410.7(a).

104. *Id.* § 1410.64(e).

tainable and resource-conserving production practices in keeping with the environmental protection goals of the CRP.¹⁰⁵ The payments are not applicable for landowners who transfer to family members (even if they are beginning or new farmers), offering a marketability advantage to individuals who do not have a family farming background or possess a broad network of connections in the agricultural industry.¹⁰⁶ Although the program's 2010 Interim Rule indicated that USDA would not serve a land-link role between prospective parties, the agency has since produced "TIP Net," a networking service which, similar to some of the basic matching programs, is used to identify interested parties in the transaction.¹⁰⁷

Through the inclusion of a retroactivity clause dating back to June 18, 2008, the program seeks to compensate in part for the 2008 Farm Bill's mandated decrease in total enrolled CRP acreage.¹⁰⁸ With the expiration of an estimated 6.5 million CRP acres in 2012 alone,¹⁰⁹ TIP has received praise from groups like the National Sustainable Agriculture Coalition as a means for transitioning land back into production while still promoting the sustainability and stewardship goals of the CRP, as well as other programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Reserve Enhancement Program (CREP), which also seek to incentivize implementation of environmental conservation measures on agricultural property.¹¹⁰

In the few short years since its creation, FSA has found TIP to be "very successful."¹¹¹ Indeed, with over 1500 contracts obligated, and an additional one million dollars-worth of requests pending, program sign-up was suspended in

105. *Id.* § 1410.64(a)(2); TIP FACT SHEET, *supra* note 101, at 1.

106. 7 C.F.R. § 1410.64(e); *see* TIP FACT SHEET, *supra* note 101, at 1.

107. Conservation Reserve Program; Transition Incentives Program, 75 Fed. Reg. 27,165, 27,167 (May 14, 2010) (codified at 7 C.F.R. § 1410.64); *TIP Net*, FARM SERV. AGENCY, USDA, <http://www.fsa.usda.gov/FSA/webapp?area=online&subject=landing&topic=tin> (last modified Aug. 6, 2012); *see also* TIP FACT SHEET, *supra* note 101.

108. 7 C.F.R. § 1410.64(f); *see also* *USDA Rolls out Conservation Reserve Program Incentive for New Farmers and Ranchers*, NAT'L SUSTAINABLE AGRIC. COAL. (May 14, 2010), <http://sustainableagriculture.net/blog/usda-rolls-out-conservation-reserve-program-incentive-for-new-farmers-and-ranchers/> [hereinafter *USDA Rolls out Incentive*].

109. Press Release, USDA, USDA Announces CRP General Sign-Up (Feb. 1, 2012), available at <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2012/02/0037.xml>.

110. *USDA Rolls out Incentive*, *supra* note 108; *CRP Transition Incentives Program*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/farming-opportunities/crp-transition-option/> (last visited May 7, 2013).

111. *Hearing Before the Subcomm. on Agric., Rural Dev., Food and Drug Admin., and Related Agencies of the H. Comm. on Appropriations*, *supra* note 10, at 5 (statement of Bruce Nelson, Adm'r, Farm Serv. Agency).

February of 2012 to ensure that “the magnitude of interest in this program” would not exceed the statutory funding limit.¹¹²

The Beginning Farmer and Rancher Opportunity Act of 2011 (BFROA) proposed to modify and continue TIP.¹¹³ A marker to 2012 Farm Bill legislation, the BFROA was introduced to the House by Minnesota Representative Walz and Nebraska Representative Fortenberry in October of 2011,¹¹⁴ while Iowa’s Senator Harkin introduced an identical companion bill in the Senate.¹¹⁵ The bills represented a “strategic collaboration” by various advocacy groups to introduce “a national strategy for addressing [existing obstacles to entry into farming by] focusing on the issues that consistently rank as the greatest challenges for beginning producers.”¹¹⁶ The legislation covered a variety of forms of new farmer assistance, including proposed modifications to guaranteed direct financing programs and conservation programs.¹¹⁷ In an effort to revive TIP, these bills called for continued extension of the CRP with two years of continued payments to qualified landowners participating in transactions with new farmers.¹¹⁸ They proposed to reach further than the original TIP, however, by expanding beyond the CRP to promote other stewardship programs, such as EQIP, the Grassland Reserve Program, or the Farmland Reserve Program.¹¹⁹

Perhaps the most significant feature of this legislation was the removal of the eligibility restriction for related parties.¹²⁰ The BFROA would have authorized transactions between related parties, provided that the beginning farmer receive title to the property at the end of the contract.¹²¹ This transfer requirement would likely serve an important role in curbing “bad faith” participation by related parties, and would certainly provide stability and predictability for the new farmer, though it would do little to assist individuals from non-farming back-

112. *Id.*

113. *See* Beginning Farmer and Rancher Opportunity Act of 2011, H.R. 3236, 112th Cong. (2011).

114. *Id.*

115. Beginning Farmer and Rancher Opportunity Act of 2011, S. 1850, 112th Cong. (2011).

116. *See Beginning Farmer and Rancher Opportunity Act*, NAT’L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/our-work/beginning-farmer-bill/> (last visited May 7, 2013) (describing the 2013 BFROA, the National Sustainable Agriculture Coalition’s latest attempt to pass the legislation).

117. H.R. 3236, §§ 133, 202, 211.

118. *Id.* § 102(2)(B); Press Release, Nat’l Sustainable Agric. Coal., Conservation Reserve Program’s Transition Incentive a Success (Feb. 28, 2012), *available at* <http://sustainableagriculture.net/blog/conservation-reserve-programs-transition-incentive-a-success/>.

119. H.R. 3236, § 102(2)(B).

120. *Id.*

121. *Id.*

grounds. This attempt to extend TIP through the BFROA stalled in Congress, and no significant action was ever taken on the bills. The effort continues, however, and a 2013 incarnation of the BFROA was introduced in April 2013 with the hope of authorizing TIP through 2018.¹²²

Although this contract payment model touts a number of positive implications for the new farmer issue, its life has been brief and its future is uncertain. Created under a provision of the 2008 Farm Bill, with one million dollars in funds allocated for the 2008 and 2009 years, the Farm Services Agency failed to implement the TIP program for two successive years.¹²³ Administrative arguments over the necessity of an environmental impact analysis delayed the drafting of the regulations and guidelines and clouded the process.¹²⁴ An interim rule was not issued until May 14, 2010, and sign-up for the program did not begin until May 17, 2010.¹²⁵

The greatest challenge to programs like TIP, however, is the fact that the future viability of such programs is heavily conditioned on the allocation of federal funding, and current budgetary constraints will likely pose a significant obstacle to any economic-based incentives program.¹²⁶ Efforts to expand and reauthorize TIP through the 2011 BFROA proved unsuccessful; the bills died in committee.¹²⁷ The one-year extension of agricultural programs at the expiration of the 2008 Farm Bill did not provide any continued funding for the program.¹²⁸ In light of mounting national debt, the CRP itself may face the budgetary butcher block, and its conservation subsidies have been shrinking in recent years as fewer funds have been allocated to the program.¹²⁹ Such cuts paint a bleak picture for programs like TIP—as funding is trimmed from the “parent” program, it seems more likely that TIP would fall to the wayside. The attempt to continue the program through the 2011 BFROA proved unsuccessful, and although proposing to

122. Beginning Farmer and Rancher Opportunity Act of 2013, H.R. 1727, 113th Cong. (2013); Beginning Farmer and Rancher Opportunity Act of 2013, S. 837, 113th Cong. (2013).

123. *CRP Transition Incentives Program*, *supra* note 110; see 7 C.F.R. § 1410.64 (2013).

124. *CRP Transition Incentives Program*, *supra* note 110.

125. 75 Fed. Reg. 27,165; *USDA Rolls out Incentive*, *supra* note 108.

126. See Press Release, Nat'l Sustainable Agric. Coal., *supra* note 118.

127. See Beginning Farmer and Rancher Opportunity Act of 2011, H.R. 3236, 112th Cong. § 102 (2011); Beginning Farmer and Rancher Opportunity Act of 2011, S. 1850, 112th Cong. § 102 (2011).

128. See American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 701, 126 Stat. 2313, 2362 (2013).

129. Justin Ellison, *Conservation Contracts to Expire Soon*, FARM PLUS FIN. (Nov. 27, 2011), <http://www.farmloans.com/blog/general-farm-loans/conservation-contracts-to-expire-soon/>.

provide funding to keep it afloat the full farm bill cycle, neither the House nor Senate included the program in their draft versions of the 2012 Farm Bill.¹³⁰

Ultimately, while such payment programs may offer a more tangible incentive to landowners, the price tag in implementing these programs is also very real. Given the overall budgetary concerns facing the federal government and likelihood of economic concessions in a future Farm Bill, the burden of developing and implementing incentive-based transition mechanisms may be better left to, or by lack of funds necessarily fall to, other actors.

2. *State Tax Credit Systems*

The federal government is not alone in its efforts to provide economic incentives to landowners; Iowa and Nebraska have each enacted state tax credit programs for asset owners who enter into qualifying land contracts with new and beginning farmers.¹³¹

These programs, like TIP, are relatively new. Iowa's Agricultural Assets Transfer Tax Credit-Agreement was enacted by the state legislature in 2006 as a means of incentivizing landowners to "keep land in production agriculture."¹³² Implementation of the program was given over to the Iowa Agricultural Development Authority (IADA), which had been "established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property for the purpose of farming."¹³³ In creating the IADA, the Iowa General Assembly noted the disadvantage to "nonestablished farmers" in purchasing agricultural property.¹³⁴ The 2006 tax credit program was specifically targeted at this group,¹³⁵ and has been relatively successful—from January 1, 2007 to December 31, 2012, the IADA received over 1190 applications and issued over \$20 million-worth of tax credits.¹³⁶

130. See Federal Agriculture Reform and Risk Management Act of 2012, H.R. 6083, 112th Cong. (2012); Agriculture Reform, Food, and Jobs Act of 2012, S. 3240, 112th Cong. (2012).

131. IOWA CODE § 175.37 (2011); NEB. REV. STAT. ANN. §§ 77-5201 to -15 (LexisNexis 2010 & Supp. 2012); see also 91 NEB. ADMIN. CODE §§ 001-011 (2010).

132. IOWA CODE § 175.37; IOWA AGRIC. DEV. AUTH., BEGINNING FARMER TAX CREDIT PROGRAM 1 (2013) [hereinafter IOWA TAX CREDIT BROCHURE], available at http://www.iada.state.ia.us/images/2013/2013_Tax_Credit_Brochure.pdf.

133. IOWA CODE § 175.3(1)(b).

134. *Id.* § 175.4(3).

135. See IOWA TAX CREDIT BROCHURE, *supra* note 132, at 1.

136. IOWA AGRIC. DEV. AUTH., SUMMARY OF LOAN PROGRAMS: 2012 SEMI-ANNUAL MAPS REPORT 7 (2012) [hereinafter 2012 MAPS REPORT], available at <http://www.iada.state.ia.us/images/2011/2011%20Semi-Annual%20MAPS%20Report.pdf>.

As with TIP, environmental responsibility is an underlying concern of the Iowa program. Although the statute does not expressly require the beginning farmer to implement sustainable farming practices, a landlord who has been classified by the Department of Natural Resources as “a habitual violator” of state animal feeding operation (AFO) laws is automatically disqualified from receiving tax credits.¹³⁷ Further, any landlord party to a *pending* action regarding an alleged AFO violation is also prohibited from collecting.¹³⁸

For non-offending landlords, the requirements for a landowner to receive tax credits under the program are relatively minimal: first, the owner must lawfully be able to own, acquire, or lease Iowa agricultural property.¹³⁹ This means that the ownership must comply with Iowa’s restrictions on corporate and non-resident land holdings.¹⁴⁰ Secondly, that owner/asset holder must sign a valid written contract (“transfer agreement”) with a qualifying beginning farmer.¹⁴¹ Such an agreement must provide for the cash or crop-share lease of agricultural land (and any improvements on it) of between two and five years in duration.¹⁴² Above the real estate requirement, an “agricultural asset” is also defined to include other “depreciable agricultural property, crops, or livestock,”¹⁴³ and the agreement may include rental of farming equipment.¹⁴⁴ The beginning farmer

137. IOWA CODE § 175.37(8)(b)(2).

138. *Id.* § 175.37(8)(b)(1).

139. *Id.* § 175.37(2)(a).

140. *See generally id.* §§ 9H.1–.5, 9I.1–.12. Section 9H.4 restricts a corporation’s ability to acquire or lease agricultural land within the state unless it can meet the statutory definition of a “family farm” or other “authorized” farm operation, which includes limitations on the number and citizenship of stockholders and beneficiaries. Under Chapter 9H, even “authorized” operations are limited in ownership to a maximum of 1500 acres, and violators face forced divestiture of land as well as civil penalties. *Id.* § 9H.5(1), (4)(a)–(b). Chapter 9I places additional limitations on the ability of non-resident aliens and foreign entities to acquire agricultural property, though they are not restricted from obtaining ownership interests in other forms of Iowa real estate. *Id.* §§ 9I.2, .3. Although the incorporation of these statutes into Iowa’s Beginning Farmer Tax Credit was likely intended to curb corporate participation in the program, it must be noted that these provisions raise Dormant Commerce Clause questions. *See generally* Anthony B. Schutz, *Corporate-Farming Measures in a Post-Jones World*, 14 DRAKE J. AGRIC. L. 97 (2009); Grant Wilson, Note, *Reforming Alien Agricultural Landownership Restrictions in Corporate Farming Law States: A Constitutional and Policy View from Iowa*, 17 DRAKE J. AGRIC. L. 706 (2012).

141. IOWA CODE § 175.37(2)(b).

142. *Id.* § 175.37(4).

143. *Id.* § 175.2(1)(a).

144. *Id.* § 175.37(4). It should be noted that the act *does not* extend credits to leased or rented agricultural equipment if it is intended to be a security. *Id.* § 175.37(4)(b). *See generally id.* § 554.1201(ai) (Iowa’s codification of the Uniform Commercial Code).

must meet the eligibility requirements for age, ownership, farming skill/knowledge, and maximum net worth.¹⁴⁵

The IADA issues credits based upon the gross amount paid to the landowner through the transfer agreement and, although non-transferable, credits in excess of the holder's tax liability may be carried forward for up to five years.¹⁴⁶ The calculation of credits under this program is particularly noteworthy, as valuation is determined by the type of lease arrangement between the parties. A cash rental agreement will receive credits equal to five percent of the rental income, while a crop-share or production-proceeds arrangement will garner fifteen percent.¹⁴⁷ Thus far, participation in the tax credit program has been split fairly evenly between cash and crop-share agreements.¹⁴⁸

The program's distinction between lease structures in credit issuance may, in part, address the differences in risk allocation and financial obligation between these types of arrangements. As mentioned earlier, the cash-rent model places the risk of loss squarely upon the lessee;¹⁴⁹ a higher credit amount for crop-share agreements may, to some extent, reflect compensation for the added burden assumed by the lessor.¹⁵⁰ Viewed another way, this may serve as an incentive for landlords to take a more active role in the establishment of a beginning farmer's operation. The program gives special treatment to landlords who go above a mere cash-based lease arrangement and actually invest their own resources (at the very least, their potential profits) in new farming businesses, providing extra support to beginning farmers by mitigating some of the risk of loss faced while the operation is less-established. Further, the program gives extra protection and security to the tenant farmer by punishing landlords who breach their lease agreement or are otherwise "at fault" in terminating the contract. Not only is an offending landowner stripped of any previously unredeemed tax credits, the violator is also required to make immediate repayment of any credits redeemed in prior tax years.¹⁵¹ This provision enhances the position of the beginning farmer (whose primary benefit from the tax credit is derived from an enhanced marketability to potential landlords) and prevents landlords from abusing

145. *Iowa Beginning Farmer Qualifications*, IOWA AGRIC. DEV. AUTH., <http://www.iada.state.ia.us/BFTC/index.html> (last visited May 7, 2013); IOWA CODE § 175.2(g). The net worth restriction is adjusted annually. IOWA CODE § 175.2(m). For 2013, the cap was set at \$366,324. *Iowa Beginning Farmer Qualifications*, *supra*.

146. *Id.* § 175.37(7).

147. *Id.* § 175.37(5)(a)–(b).

148. 2012 MAPS REPORT, *supra* note 136, at 7.

149. COX, *supra* note 61, at 12.

150. *See id.* at 43–44.

151. IOWA CODE § 175.37(9)(b).

their control over the agricultural assets or the new farmer agreement merely for personal tax benefits.

Nebraska's tax credit program operates similarly to Iowa's, with some minor variations: a set three-year duration for qualifying leases, a higher credit allotment for cash-rent agreements (ten percent), and a substantially lower net-worth cap for qualifying beginning farmers (fixed at \$200,000).¹⁵² One important difference with potentially significant long-term consequences, however, is the treatment of prior relationships between the parties. Under the Nebraska program, relatives of the property owner are prohibited from receiving Beginning Farmer tax credits unless the transfer agreement is part of a legally binding and certified succession plan.¹⁵³ The Nebraska Beginning Farmer Board, the agency entrusted with implementation of the program, has promulgated specific requirements for succession plans used to fulfill the exemption criteria.¹⁵⁴ The Iowa program, however, places no such restriction on familial relationships, and in its informational literature to prospective program participants, the IADA specifically indicates that transactions involving immediate family members (siblings, grandparents, and parents) are eligible for credit.¹⁵⁵ The IADA has indicated, however, that although these transactions are permissible under the Act, they may face more stringent review than other, non-related applicants.¹⁵⁶ To this end, the IADA recommends that related parties supplement their credit application with references and other documentation and evidence speaking to the legitimacy of the arrangement.¹⁵⁷

Although concerns about tax fraud appear to be the subtext of such restrictions and extra requirements, providing credits for transfers within the immediate family raises some questions about long-term objectives for new farmer policy. It is not the position of this Note that a beginning farmer with a pre-existing relationship or connection to the agricultural community is any less deserving or less in need of assistance. It must be noted, however, that authorizing tax credit incentives for transactions among family members does little to assist

152. Compare NEB. REV. STAT. ANN. §§ 77-5209(1)(a), 5211(2), 5213(1) (LexisNexis 2010), with IOWA CODE § 175.37(4)(b), (5)(a), and *Iowa Beginning Farmer Qualifications*, *supra* note 145 (net worth capped at \$366,324 for 2013).

153. NEB. REV. STAT. ANN. § 77-5211(5) (borrowing definition for "relative" for the purposes of this statute from the Uniform Fraudulent Transfer Act, NEB. REV. STAT. ANN. § 36-702(11), which is defined to include relatives, and relatives of spouses, by consanguinity within the third degree, spouses, and individuals related by adoption within the third degree).

154. See 91 NEB. ADMIN. CODE § 004.10 (2010).

155. IOWA CODE § 175.37(8); IOWA TAX CREDIT BROCHURE, *supra* note 132, at 1.

156. IOWA TAX CREDIT BROCHURE, *supra* note 132, at 1.

157. *Id.*; see also IOWA CODE § 175.37(8) ("The authority may require that the parties to an agricultural assets transfer agreement provide additional information as determined relevant by the authority.").

new agrarians who have not grown up with an agricultural background. When the credit is given to family members who would likely be heirs to the property regardless of whether the program existed, it undercuts the effectiveness of the credit as a marketability factor for other, unrelated new farmers. A landlord has no incentive to transfer to a traditionally-disadvantaged new farmer over one that may possess a broader network and personal background within the agricultural industry. While it may not be necessary to give preferential treatment to a new farmer without a broader network, policymakers should be considerate of the operation of family transfers. The situation of traditionally-disadvantaged new farmers may represent an opportunity to utilize resources of land-link and mentorship models; a matching program rolled into or more closely identified with the tax credit program might increase the efficacy of both systems.

The popularity of the beginning farmer tax credit program has recently caused Iowa legislators to consider broadening its scope. In February of 2013, Iowa state representatives Pat Grassley and Bobby Kaufmann, themselves young farmers, introduced H.S.B. 69 to expand the program to include credits to the beginning farmers, as well as the retiring landowners.¹⁵⁸ The bill proposed to effectively double the size of the program by raising the cap on issued credits from \$6 million to \$12 million per fiscal year¹⁵⁹ to increase the Beginning Farmer Tax Credit from five to seven percent, and provide for a non-transferable “Expansion Tax Credit” for beginning farmers who make “improvements” to the land they lease.¹⁶⁰ “Improvements” in this context refers to purchases of farm machinery or animals which are used and kept on the leased property.¹⁶¹ Thus, this credit would provide support and incentive for beginning farmers already in business to expand their operation.¹⁶²

The proposed change received mixed reviews. On one hand, the expansion credit does offer additional support for beginning farmers, helping small businesses “to get established in a cut-throat industry.”¹⁶³ As rising input costs and extreme weather events, like the drought of 2012, place increased pressures on American producers,¹⁶⁴ providing assistance directly to the farmer carries

158. H.S.B. 69, 85th Gen. Assemb., Reg. Sess. (Iowa 2013); *New Tax Breaks*, *supra* note 45.

159. Compare IOWA CODE § 175.37(10), with Iowa H.S.B. 69, § 6.

160. Iowa H.S.B. 69, §§ 5(3), 5(8)(e).

161. *Id.* § 5(6)(a).

162. *Id.* at cmt.

163. *New Tax Breaks*, *supra* note 45 (quoting Brent Drey, an Iowa State University student hoping to take over and expand a 1800 acre farm).

164. See Rick Barrett, *Drought May Force Some Farmers out of Business*, J. SENTINEL, Sept. 4, 2012, <http://www.jsonline.com/business/drought-may-force-some-farmers-out-of-business-ts6o5hp-168554076.html>.

added significance. This type of program doesn't address prohibitive land prices, or "solve the problem[,] but it helps."¹⁶⁵ On the other hand, as the Beginning Farmer Center's David Baker points out, the state already has significant interest from prospective beginning farmers, but no comparable enthusiasm from land-owners; the credit, in his view, is "aiming at the wrong target."¹⁶⁶ The bill was unanimously approved by the Agriculture Committee, and an amended version was passed by the House and Senate on May 16, 2013.¹⁶⁷

Overall, tax credit programs appear the most flexible incentive mechanism, with the greatest perceivable and local impact. These appear to be the best tool for achievement of state development goals. Iowa's tax credit program, for instance, underscores the position of new farmer issues in the greater scheme of Iowa's agricultural policy. New farmer assistance may operate as a vehicle in achieving overarching objectives; assisting new businesses in obtaining access to land, while target problems in rural development and promoting future economic sustainability and social stability.¹⁶⁸ Although an economic incentive, and thus subject to the same budgetary issues facing federal programs, the tax credit program operates on a local level and provides state officials the opportunity to craft legislation specifically to their rural conditions and development goals. This model is flexible and has a lot of potential utility in furthering a wide variety of objectives. In the future, it would not be unrealistic to incorporate stronger environmental sustainability requirements into the program. Contract provisions such as first refusal rights or purchase options might be made a mandatory component of the qualifying transfer agreements, ensuring that the land was transferred in a timely manner and that the transition was appropriately mapped out. In short, the flexibility and variety of uses a tax credit incentive program can provide makes it a worthwhile consideration for states looking to assist new and beginning farmers.

V. CONCLUSION

As the plight of new farmers continues to garner attention from legislators and government officials, it is important to keep a broad, long-term focus. This means recognizing that access to land is only one facet of the new farmer issue, but that it is also a challenge that potentially affects all new farmers, re-

165. *New Tax Breaks*, *supra* note 45 (quoting Brent Drey, a prospective beginning farmer).

166. *Id.*

167. H.F. 599, 85th Gen. Assemb., Reg. Sess. (2013); S. JOURNAL, 85th Gen. Assemb., Reg. Sess. 1016 (2013); H. JOURNAL 85th Gen. Assemb., Reg. Sess. 1071 (2013).

168. *See* IOWA CODE § 175.4(3)–(5), (16) (2011).

ardless of the size or scope of their operation. It would be irrational to presume that a guarantee of affordable land access would make new farming operations profitable, or even successful. As Washington farmer Jesus Limon cautions, “beginning farmers and ranchers need to take their time and make sure farming is what they want to do” before making the capital investments in farmland.¹⁶⁹ Many variables play into an ag-business’ ultimate success, and once land is obtained, the challenges may snowball. Even so, dealing with the farmland access barrier can provide new farmers with a solid foundation to start from, and appears a necessary first step in helping the industry transition. While new farmer programs providing education, outreach, and networking/marketing functions could provide more rounded support for these beginning business owners and help maximize their potential, their utility is undercut by a difficulty in finding land to farm at a reasonable price. To paraphrase the frustrations of one prospective purchaser, even with transition assistance programs, it is not as though USDA itself has an abundance of abandoned farmland for sale or lease.¹⁷⁰ Finding a field at an affordable price requires building connections, keeping an eye on the market, and seizing the right opportunities to break into the business.¹⁷¹ Financing assistance may place a new farmer on a more even footing with established producers in competition for property. Subsidizing new farmer debt, however, cannot guarantee access, certainly does not guarantee affordability, and is not a total solution.

American agricultural land is poised to undergo a mass “changing of hands,” and we should give special consideration to our ultimate aims in rural development and the status of the agricultural industry. If we value small farming operations and local businesses, and wish to restore the vitality and stability of rural communities and economies, the establishment of new farmers can play a significant role. If consumers desire niche market products or locally sourced food systems, new farmers can step up. Even if we do not find these interests particularly compelling, however, the agricultural industry cannot ignore the inevitable transition in workforce and asset ownership. Succession needs to be in the minds of agricultural policymakers. This transition represents an opportunity to shape how the agricultural labor force will look in the future, while increasing awareness of the challenges facing new farmers can help us identify our goals and expectations in development. With agricultural land prices reaching record highs, affordability and availability of land remains a substantial challenge to

169. Brown, *supra* note 17.

170. See Warraich, Comment to Mary Ahearn, *Beginning Farmers and Ranchers at a Glance*, USDA BLOG (Jan. 30, 2013, 3:56 PM), <http://blogs.usda.gov/2013/01/30/beginning-farmers-and-ranchers-at-a-glance/>.

171. See Brown, *supra* note 17.

beginning agrarians. Encouraging landowners to participate in the transitioning agricultural industry and bringing them into the dialogue of new farmer issues can help smooth the path.