



## Investigating the Possibility of a Beginning Farmer Loan Program or Tax Incentive in Connecticut



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***THIS PAPER IS ONE IN A SERIES PRODUCED THROUGH THE  
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A collaboration between American Farmland Trust (AFT), Conservation Law Foundation (CLF) and Land For Good (LFG), the New England Land Access Policy Project facilitated dialogue in each New England state to identify policy barriers and opportunities around land access and farm transfer.

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## I. Delaware: Young Farmers' Farmland Purchase & Preservation Loan Program

### A. Background & Motivation

As in many other states, agriculture in Delaware continues to be threatened by an ever-aging farmer population and encroaching suburban sprawl. In 1991 Delaware followed the lead of neighboring Maryland and New Jersey, and established an Agricultural Lands Preservation Foundation, referred to internally as simply the Foundation. The statute that formed the Foundation begins with a Legislative Intent section and reads,

Thirty-nine percent of the agricultural land in Delaware disappeared in the last 70 years due to commercial and population expansion... These figures impact all Delawareans because agriculture employs more people than any other industry in Delaware and is a leading contributor to the State's economy. If the loss of farmland continues at the current rate, then the State of Delaware will be in danger of losing its number one industry, agriculture.<sup>1</sup>

The statute declares its state policy "to conserve, protect and encourage improvement of agricultural lands within the State for the production of food and other agricultural products useful to the public which are grown, raised or harvested on land and water in the State of Delaware."<sup>2</sup> The Foundation is an administrative entity within the Delaware Department of Agriculture, responsible for promoting a viable future in agriculture and working lands, providing economic incentives to farmers, developing infrastructure, and chief among the rest, purchasing private landowners' development rights to preserve prime farmland in perpetuity.<sup>3</sup> Politically, the successful initiative to establish the Foundation set the stage for further investment in securing a resilient agriculture in Delaware.

Ten years later, the state's Secretary of Agriculture Ed Kee released a statistical profile of farming in Delaware, in which it is proudly declared that, "Delaware ranks #1 nationally in the value of agricultural products sold per farm ... and value of agricultural production produced per acre of land."<sup>4</sup> Additionally, the profile states, "Delaware is #1 in the U.S. in percent of its land in farms preserved."<sup>5</sup> This was the same year (2011) in which a subchapter was added to Delaware's farmland preservation statute, and the Young Farmers' Loan Program ("YFLP") was born. On a subsequent page of Secretary Kee's profile, in a section on demographics, he praises the inception of this "Young Farmers' Program." Indeed, what good is a thriving agricultural

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<sup>1</sup> "Legislative Intent." 3 Del.C., §701, see: <http://regulations.delaware.gov/AdminCode/title3/700/701.shtml>

<sup>2</sup> *Id.*

<sup>3</sup> "Purpose, policy and intent." 3 Del.C., §901, see: <http://delcode.delaware.gov/title3/c009/sc01/index.shtml>

<sup>4</sup> "Delaware Agriculture," USDA, NASS DE, see: [http://www.nass.usda.gov/Statistics\\_by\\_State/Delaware/Publications/DE%20Ag%20Brochure\\_web.pdf](http://www.nass.usda.gov/Statistics_by_State/Delaware/Publications/DE%20Ag%20Brochure_web.pdf)

<sup>5</sup> *Id.*

economy and a State reserve of prime agricultural lands conserved as such in perpetuity, if all of Delaware's farmers retire and expire in the coming decades?

### B. *Legislative History*

The Young Farmers' Loan Program was introduced to the Delaware State Legislature by State Senator George Bunting, as Senate Bill No. 117, "AN ACT TO FACILITATE THE ACQUISITION AND PRESERVATION OF AGRICULTURAL LANDS BY YOUNG FARMERS."<sup>6</sup> SB 117 was first assigned to the State Senate Agriculture Committee on June 8th, 2011, through which it travelled with all committee members voting favorably. Within a week of being reported out of Committee, SB 117 was passed by the State Senate and moved on to the State House. Eighteen State Senators voted for the bill, with two absent and only one opposition vote.<sup>7</sup> Next, SB 117 made its way through the State House of Representatives, where it passed through the State House Agriculture Committee, again unopposed by all members, and passed by the State House, again within one week, all 41 members present and supportive of the bill. When Delaware Governor Markell signed SB 117 into law, just under two months had passed since the bill's introduction.<sup>8</sup>

By any legislative standards, SB 117 made a brisk and efficacious path from bill to law. The Delaware State Legislature's session does close at the end of June, meaning SB 117 would have been pushed through eagerly in order to avoid being derailed or postponed by the recess. However, in speaking with Mike Parkowski, the author of the bill's text, and Austin Short, the Deputy Secretary responsible for implementation of the program, SB 117 was widely popular on its merits. It breezed to the Governor's desk and into the law books due to the internal balance of the statute, what seemed to be a mutually beneficial law, and political inertia for the program driven by the well-liked Delaware Secretary of Agriculture Ed Kee.

Mike Parkowski is Director of the firm Parkowski, Guerke & Swayze, P.A., and wrote both SB 117 and the 1991 bill authorizing the Foundation. In Mr. Parkowski's words, SB 117 was a white hat, pro-bono project of his, and resulted from "one Saturday afternoon and a six-pack."<sup>9</sup> Casual as Mr. Parkowski may be about the statutory provenance of Delaware's Young Farmers' Loan Program, his history with the Delaware Department of Agriculture and the role of Secretary Kee are not to be underestimated. Again, in 1991 Mr. Parkowski drafted House Bill 200, which established Delaware's Agricultural Lands Preservation Foundation.

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<sup>6</sup> DE 146th General Assembly, Senate Bill No. 117, see:

[http://www.legis.delaware.gov/LIS/lis146.nsf/vwLegislation/SB+117/\\$file/legis.html?open](http://www.legis.delaware.gov/LIS/lis146.nsf/vwLegislation/SB+117/$file/legis.html?open)

<sup>7</sup> The one 'No' vote came from State Senator Colin Bonini. According to conversation with Deputy Secretary Austin Short, Bonini did not explicitly oppose the bill, rather, Bonini more or less systematically votes 'No' on anything that might be perceived to expand the government.

<sup>8</sup> Bill Tracking, DE 146th General Assembly, Senate Bill No. 117, see:

<http://www.legis.delaware.gov/LIS/LIS146.NSF/vwLegislation/SB+117?Opendocument>

<sup>9</sup> Phone conversation with Mr. Parkowski, March 2015

Before serving as Delaware's Secretary of Agriculture, Mr. Kee had a long career working as a University of Delaware Cooperative Extension specialist, and according to both Mr. Parkowski and Deputy Secretary Short, Secretary Kee knew well the barriers and difficulties of the young and beginning farmers in Delaware. Secretary Kee explicitly identified that the state had successfully preserved a substantial portion of its prime farmland in perpetuity, yet the farmer stock was dwindling fast and young farmers were struggling to get a foothold. Furthermore, Secretary Kee was appointed in 2009 with incoming Governor Markell, and pushed for the introduction and passage of SB 117 as an important contribution to their combined legacy. Mr. Parkowski stated that Governor Markell urged his cabinet Secretaries to take on specific projects and usher them to fruition early in their tenure. Both Deputy Secretary Short and Mr. Parkowski attributed the genesis of SB 117 and its basic tenets to Secretary Kee, and suggested that his championing of the program was a major factor in the lack of any real opposition to the bill and the alacrity with which it was signed into law. Worth mentioning is that although Secretary Kee spearheaded the endeavor as a personal mission, he met with farmers across the state in addition to the area's primary lender, Farm Credit, early on in the process in order to confirm that SB 117 would work out for all stakeholders, as intended. Also voiced by Deputy Secretary Short and Mr. Parkowski was a generally positive and productive working relationship across political players in Delaware, where appropriate, effective and well-communicated bills regularly become law in their state.

The design of SB 117 is such that YFLP would sit within, and be administered by, Delaware's Agricultural Lands Preservation Foundation. The Foundation itself was originally modeled after neighboring state programs. Maryland's Agricultural Land Preservation Foundation was created by the 1977 Maryland General Assembly, and New Jersey was one of the earliest adopters of legal measures to curtail suburban encroachment, first with tax incentives through the Farmland Assessment Act of 1964, and subsequently through the Agriculture Retention and Development Act of 1981, which provided the framework for what is today New Jersey's Farmland Protection Program.<sup>10</sup> Both of these precedents hinge upon first establishing a state interest in seeking to purchase agricultural preservation easements, and to restrict development in perpetuity on prime farmland. For Delaware, vesting this state power did not initially go unopposed.

In the first iteration, in 1990, Governor Michael Castle in fact vetoed the bill that was to establish Delaware's own Farmland Preservation Program. Governor Castle believed that the program created too many tax breaks for agricultural districts, even though in 1989 the task force he appointed to set about studying the future of agriculture in Delaware came back with dire projections.<sup>11</sup> Delaware at that time was surprisingly both one of the top eight states in

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<sup>10</sup> For New Jersey's "Right to Farm Act," N.J.S.A. 4:1C-11, see: <http://www.nj.gov/agriculture/sadc/rules/ARDA.pdf> and for Maryland Code Subtitle 15 of the Agriculture Title 15, see: [http://www.dsd.state.md.us/comar/subtitle\\_chapters/15\\_Chapters.aspx#Subtitle15](http://www.dsd.state.md.us/comar/subtitle_chapters/15_Chapters.aspx#Subtitle15)

<sup>11</sup> Farmland Preservation Report, July-August 1995, page 2

percentage of landmass being farmed, and also one of the top six states in percentage of landmass in urban use, and suburban sprawl was posing an imminent crisis for agriculture in the state, particularly their broiler production industry.<sup>12</sup> Ultimately, after some small adjustments were made, the bill was reintroduced and Governor Castle signed HB 200 into law, formally establishing the Foundation. It would not actually be funded, however, until 1995, after a Democratic Governor was elected and a windfall of \$220 Million came to Delaware through a Supreme Court settlement with New York State.<sup>13</sup> Since making this circuitous path to adequate funding appropriations, the Foundation has proven itself a worthy and important cause for the state, and has now put over twenty percent of all agricultural land in Delaware under permanent farm preservation.<sup>14</sup> With this impressive acquisition of permanent agricultural easements, Delaware is now the highest-ranking state in percent of its land in preserved farms.<sup>15</sup> It is within this important context that SB 117 so easily came to pass and form the YFLP.

### C. *Structure of Program & Statutory Authority*

Today, under the Foundation, YFLP receives a portion of the general funds allocated by the state legislature for all Foundation activities. According to Deputy Secretary Short, YFLP receives roughly 20% or 30% of total Foundation funding, depending on what the state legislature has appropriated. Most recently however, no funding was allocated to YFLP because total state appropriations for the Foundation were limited to \$2 Million, cut from an expected annual budget of \$10 Million, and down from \$6 Million in the previous year.<sup>16</sup>

With SB 117, the YFLP is written into law as an amendment to Chapter 9 of Title 3, in the Delaware Code. Title 3 is dedicated to Agriculture in the state generally, with Chapters 1-10 creating the framework for the State Department of Agriculture. Chapter 9 is the Delaware Agricultural Lands Preservation Act, as established by HB 200. SB 117 creates a new Subchapter VI, entitled “Farmland Purchase and Preservation Loan Program” and consists of sections 942-949.<sup>17</sup>

Section 944 lays out the eligibility requirements for the loan program. Eligible young farmers are here defined as those between the ages of 18 and 40 years old; \$500,000 is the maximum loan amount permitted; the land being purchased must consist of at least 15 arable

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<sup>12</sup> *Id.*

<sup>13</sup> *Delaware v. New York*, 30 March 1993, see: <https://www.law.cornell.edu/supct/html/91-111.ZS.html>

<sup>14</sup> Current Situation Report, 14 April 2015, see: [http://dda.delaware.gov/aglands/downloads/current\\_situation\\_report.pdf](http://dda.delaware.gov/aglands/downloads/current_situation_report.pdf)

<sup>15</sup> “Delaware Agriculture,” USDA, NASS, DE, see link above.

<sup>16</sup> According to Deputy Secretary Short, this is in no way reflective of changing views of the Foundation or YFLP, but rather the result of a generally troubled state budget. Unfortunately, the state Legislature has so far only appropriated \$3 Million to the Foundation for this upcoming year, which is not quite enough to merit obligating funds to YFLP, also according to the Deputy Secretary.

<sup>17</sup> DE 146th General Assembly, Senate Bill No. 117, see link above.

acres, and it must be in Delaware.<sup>18</sup> The need for some such qualifications is relatively self-evident, and the eligibility was purposefully made broad and permissive. In addition to a ceiling of \$500,000, the maximum loan amount is 70% of the cost of the development rights to the land, in the form of a permanent easement.<sup>19</sup> This means that the farmer has the option of borrowing up to \$500,000, or up to the amount equaling 70% of the cost to purchase development rights, whichever is lower. Of course it is also acceptable if the farmer needs only \$175,000 or an amount equaling only 40% of the easement value, in which case the state would get an even better deal on the easement. While providing the state with a sizable discount on their easement in any case, these caps are still quite generous for a no-interest, thirty-year loan to a new farmer. The minimum of fifteen acres may make for a large beginner CSA farm, but it is far from a viable broiler, corn, soybean, or wheat farm, which together account for 86.4% of Delaware's agricultural commodities by farm dollar value.<sup>20</sup> Each of these stipulations provides an opportunity for normative decisions about what scale and type of farms the state wishes to accommodate and incentivize.

In section 944(a)(10), the statute establishes that, "farmlands being purchased shall not be subject to an existing Preservation easement, conservation easement or similar limitation which restricts residential or commercial development."<sup>21</sup> This section is key to the statute because it verifies for the state what is in effect a "shadow" quid pro quo; the state loans public funds to private individuals without interest and with little recourse in the case of default, and in return is permitted to purchase development rights for at most 70% of the value. The loans are essentially underwritten by this deal on easements acquired by the state. By limiting access to this advantaged source of financing for those purchasing as-of-yet un-preserved farmland, the state is ensuring that public funds are being put to good use. In other words, the worst-case scenario if the loan fails will result in the state having purchased a permanent agricultural easement with at minimum 30% in savings. Within the context of the rest of Title 3, Chapter 9, within the vested state interest to increase preservation of Delaware farmland, the state has not got much to lose in this arrangement.

In section 944(a)(2) the statute sets an eligibility requirement of three years prior farming experience for the loan program.<sup>22</sup> According to Deputy Secretary Short, this was devised as a basic means of protecting the state's investment, ensuring that the loan recipient is serious about

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<sup>18</sup> *Id.*

<sup>19</sup> Back-of-the-napkin calculations suggest that using the maximum \$500,000 and the maximum 70% easement value a beginning farmer could purchase roughly 397 acres -- which is well above the state average of 208 acres per farm. This estimate is based off of Delaware's average farmland prices and the average cost of permanent easements in the state, in proportion to the sale value. In this instance, YFLP \$500,000 would be covering 15.4% of the full purchase price at average market value. "Land Values 2014 Summary" USDA, NASS, DE, August 2014, see: [http://www.nass.usda.gov/Publications/Todays\\_Reports/reports/land0814.pdf](http://www.nass.usda.gov/Publications/Todays_Reports/reports/land0814.pdf)

<sup>20</sup> Delaware, 2012, State Fact Sheets, USDA ERS, see:

<http://www.ers.usda.gov/data-products/state-fact-sheets/state-data.aspx?StateFIPS=10&StateName=Delaware>

<sup>21</sup> DE 146th General Assembly, Senate Bill No. 117, see link above.

<sup>22</sup> *Id.*

farming and has at least a reasonable chance of succeeding, and thus paying back the loan. Net worth of the loan applicant is also considered in evaluating eligibility, where those exceeding \$300,000 may not apply.<sup>23</sup> With an average *household* net worth in Delaware of roughly \$515,000<sup>24</sup> the YFLP eligibility cap would appear, in a generalized sense, not to be overly restrictive while clearly delimiting the pool of candidates to include those who need assistance. Similarly, in 944(a)(6), the statute reads, “The loan recipient prior to the receipt of loan monies shall not own or have an ownership interest in more than twice the tillable acres of farmland than the amount of tillable acres subject to purchases with loan monies,”<sup>25</sup> which also serves as a mechanism to ensure the right folks are prioritized for YFLP, namely those who most need assistance getting started. Each of these benchmarks were the subject of deliberate calculations and normative decisions in drafting SB 117 and have real implications for which young farmers in Delaware benefit and to what degree.<sup>26</sup>

#### D. Implementation

Seated within the Delaware Department of Agriculture, the Foundation is staffed by five state employees, overseen by Deputy Secretary Short, who devotes roughly 50% of his full-time employment to administering YFLP. Many of the other five staff members contribute to the efforts of YFLP, but within the related daily work of the Foundation’s other duties, the overhead demand for YFLP is limited, and neither in drafting nor in implementation has come up as an undue burden, financially or otherwise.<sup>27</sup> The majority of funding the Foundation obligates to YFLP goes directly toward loans.

Deputy Secretary Short and his team have developed a packet for prospective loan applicants.<sup>28</sup> Pre-qualification is determined according to the eligibility requirements of Section 944(a). As of December 2014, pre-qualification applications received by the Foundation came to a total of 83.<sup>29</sup> Of those 83, 76 were determined to qualify, and 24 out of that pool secured options to purchase land and have received a loan from YFLP.<sup>30</sup> The average loan amount is \$241,336 and about \$2,845/acre.<sup>31</sup> The 51 pre-qualified farmers who did not receive a loan are likely still looking for land, and have applied preliminarily to ensure that they would qualify.

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<sup>23</sup> *Id.*

<sup>24</sup> Net Worth and Asset Ownership of Households: 2011, U.S. Census Bureau, see: [http://www.census.gov/people/wealth/files/Wealth\\_Tables\\_2011.xlsx](http://www.census.gov/people/wealth/files/Wealth_Tables_2011.xlsx)

<sup>25</sup> DE 146th General Assembly, Senate Bill No. 117, see link above.

<sup>26</sup> As confirmed in phone conversations with Mr. Parkowski and Deputy Secretary Short.

<sup>27</sup> Phone conversation with Deputy Secretary Short, March 2015.

<sup>28</sup> DE Ag Lands Preservation Foundation, “Dear Potential Young Farmer” packet; here attached as Appendix A.

<sup>29</sup> DE Ag Lands Preservation Foundation, “Current Situation Report,” April 15, 2015; here attached as Appendix B.

<sup>30</sup> *Id.* One of the 24 young farmers actually applied for and received two different loans from YFLP, which is permitted so long as the applicant still meets all eligibility requirements and as long as the total amount of loans requested does not exceed the cap of \$500,000.

<sup>31</sup> *Id.*

Every pre-qualified applicant who has approached YFLP with an eligible parcel available to them for purchase has received a loan. However, YFLP does not accept any loan applications when funding is not available. The Foundation does not know how many farmers would have attempted to get a loan while no funding was available, but expect that the demand is roughly for 8-12 applicants per year.<sup>32</sup>

For the fiscal years (starting July 1 of the year prior) of 2012 and 2013, YFLP received \$3 Million from the Foundation each year.<sup>33</sup> Eleven loans each were distributed in the first two fiscal years, and three loans in the third.<sup>34</sup> FY14 and FY15 saw a dive in all appropriations for the Foundation; YFLP received \$1.5 Million in FY14 and none in FY15.<sup>35</sup> In effect, this means that since June 30, 2014 they have been closed to loan applications. Although there is still funding remaining from FY14, Deputy Secretary Short feels that it is not enough to open up YFLP to another round of accepting loan applications. By the April 14, 2015 “Current Situation Report,” total distributed loans amounted to \$6,033,410, with total closing costs at \$137,726.<sup>36</sup> In exchange for these no-interest loans, the State received a value of \$9,383,735 in easements, on 2,121 acres.<sup>37</sup> This has resulted in significant savings for the state, averaging nearly 36% off on farmland easements that Delaware has already determined a vested interest in acquiring with state funds. Assuming that most of the applicants do not default on their loan and repay the state, Delaware walks away with these acres of farmland preserved in perpetuity entirely free of expense to the state.

If needed, applicants find additional financing, and the no-interest loans provided by the state are subordinated. All but three state loans were accompanied by a primary commercial loan from a third-party lender, and according to Deputy Secretary Short, 18 or 19 of the 22 outside loans came from Farm Credit. The subordination of the state’s loan often improves the viability of the applicant in the view of the third-party lender. Most participating farmers thus far have sought a primary loan, with the exception of a few YFLP applicants, those who had a substantial amount saved over a long period of looking for land, or those who were purchasing land below market from a relative. These commercial loans usually must be repaid within 20 years, and in addition to subordinating the state loan, YFLP provides a 30-year repayment window. It is expected then, that farmers will repay their primary, commercial loan in its entirety before beginning to pay off the subordinated, no-interest state loan. As per Section 945(a)(4), YFLP financing is secured by promissory notes and mortgages, even though subordination to the commercial loan means none of the funding can be recouped by the state until the primary loan amount and interest is collected. Section 947 dictates that any funding that does return to the state, through repayment or foreclosure, goes back into the YFLP coffers, to be used toward

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<sup>32</sup> Phone conversation with Deputy Secretary Short, March 2015.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> DE Ag Lands Preservation Foundation, “Current Situation Report,” April 15, 2015; here attached as Appendix B.

<sup>37</sup> *Id.*

financing another young farmer's purchase. Another important provision of the statute, section 946(a), is that the preservation easement is in no way affected by the status of the loan, nor by the sale of the property to anyone else; once the loan is granted, the easement binds the land to agricultural use in perpetuity.

Worth noting as well is section 948(a)(8) of the statute, which reads, "Develop selection criteria for approving loans involving competing applicants, with emphasis on selecting on a priority basis the loan applicant or applicants who request a loan with the lowest percentage value of the appraised preservation easement value of the eligible farmland." This provides the framework for negotiating and selecting farm loan applicants when there are more applicants than funding available, which according to Deputy Secretary Short has not yet come to pass.<sup>38</sup> This section also draws out a characteristic of the program not otherwise obvious. Loan applicants apply for an amount of *up to 70%* of the easement value, but they are able to ask for any loan amount below 70%, and often end up applying for only 50% or so of the easement value.<sup>39</sup> The lower loan amount often results from sales made from one family member to another, and explains how the state has on average made 36% in savings on the easements acquired against the total amount of loans, as opposed to 30%. Were there to be more applicants than funding in the YFLP coffers, the Foundation is directed to select those applicants with loans representing the lowest percentage of the easement at hand. In this way, the state ensures that limited resources go toward the greatest savings and investment on farmland preservation.

#### E. *Farmer Case Study*<sup>40</sup>

William (Billy) R. Bant, is a young farmer in Delaware and an enthusiastic participant in YFLP. Mr. Bant farms in Sussex County, where for the past decade farmland has been consumed by development, while still remaining the No. 1 broiler-producing county in the nation.<sup>41</sup> A few families own nearly all of the land in Mr. Bant's area, and he applied to YFLP for pre-qualification before knowing if he would ever find a piece of land near his home. The land in this area is above average in cost for the state, between \$8,500 and \$10,000 per acre. Mr. Bant comes from a long line of farmers in this part of the state, but most of them sold off their land for development while he was still a child, either because they needed the money or else because the next generation was uninterested in farming as a trade. Mr. Bant has one great aunt with about 70 acres in farmland, and he hopes to one day make her an offer and keep it in the family.

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<sup>38</sup> As mentioned previously, in 2013 there was no funding allocated to YFLP, due to drastic cuts in overall Foundation appropriations, so no loan applicants were accepted in that year.

<sup>39</sup> Phone conversation with Deputy Secretary Short, March 2015.

<sup>40</sup> I had contact with two farmers in addition to Mr. Bant, by way of Deputy Secretary Short. Their stories were generally similar to this one, and happen to be represented in two separate articles. For Cory Atkins, see: [http://www.dvrpc.org/food/pdf/GP\\_DelawareYoungFarmer.pdf](http://www.dvrpc.org/food/pdf/GP_DelawareYoungFarmer.pdf) & for Cara Sylvester, see: <http://news.delaware.gov/2012/08/01/delaware-young-farmers/>

<sup>41</sup> State News Release, May 2nd 2014, see: <http://news.delaware.gov/2014/05/02/delaware-remains-first-in-key-agricultural-categories-census-shows/>

Using YFLP, Mr. Bant was able to purchase a 57-acre parcel in 2013, which he started out planted with soybeans and will now have in feed corn. At this scale, the operation is essentially still a hobby farm, but his dream is to expand and farm exclusively as an occupation. Most farms in the area are not financially sustainable operations for any full-time employment until they reach 100-200, and the competitive operations are all between 800-1,000 acres. Many farmers start out with a base of 100-200 acres owned outright and then lease more and more as it becomes available in order to be competitive.

Currently, Mr. Bant works full time with the Delaware State Police as a trooper, in addition to farming his land and helping out with the farming operations of friends and neighbors on the side. He does not have children or a partner. Many of his friends farm with a day job, or barely break even while their wives work to pay the bills. For many young farmers in the state it is difficult to get a viable operation up and running largely because of the difficulty acquiring enough land close enough together to reach a competitive scale. Sussex County has been the eastern poultry capital since the 1940s, and as such has experienced a long period of land accumulation in the hands of a few companies and families over several generations. The broiler industry is by-and-large integrated vertically, which means that financing often must come through the large companies in the form of contracts. Mr. Bant believes YFLP is a great fit for beginning farmers in the state because it allows for participants to receive financing without an overly burdensome contract, and also permits capital infrastructure, such as is needed in the broiler industry.

For every twenty acres within the easement one acre is permitted for residential use, with a total of three homes per property. Mr. Bant is currently building a place for himself on his parcel. He grew up farming, with the trade all around him, and has been working in it since he was fourteen. For the past seven years he has been working with another neighboring farm family, and they have been supportive of his own pursuits, lending him the use of their equipment in a work-trade arrangement, and giving him leads on potential acreage opening up for sale. The family he works with owns 4,000 acres, managed by four relatives, the youngest of which is 63. Mr. Bant is also hoping that he may one day have the opportunity to purchase or lease some of their land.

The 57-acre parcel Mr. Bant purchased is a start, something to get his foot in the door, and he values the assistance of YFLP highly. He learned about YFLP first in the newspaper and did research online. He knew of a few others in the area who were participating in the program, and he applied without a piece of land in mind just to make sure he would qualify. An elderly family friend with a background in agriculture and a desire to see the land farmed in perpetuity sold him the 57 acres at a cost of \$5,400 per acre, well below the county and state averages.

Mr. Bant has a \$130,000, 15-year loan from Farm Credit and a \$167,000 loan through YFLP. Because the property was appraised using market averages far higher than the actual sale price, he was able to finance over half of the outright cost of the land using YFLP. The state loaned 67% of the easement, with development rights valued at roughly \$4,400/acre, which came

out to \$2,944/acre, just over the average YFLP loan amount of \$2,845/acre. To pay zero interest on over half the cost of a piece of land, and to have fifteen years following the primary loan pay-off, has given Mr. Bant a substantial jump ahead of where he would be without YFLP. For young farmers looking to purchase land from a family member, the per-acre cost can even be as low as 70% of the state's easement appraisal, and the 30-year no-interest loan from YFLP is all that is needed to acquire land, support family members in their retirement, and start a farm business. Although not everyone starts off with such a low per-acre cost to work with, Mr. Bant recommends this program to all beginning farmers that he meets in Delaware. He feels that the office staff is highly effective and professional, helpful to him throughout the process and instrumental to the success of YFLP implementation.

Delaware's proud and lasting agricultural history has made it relatively easy for YFLP to pass through the state government and get lending to start-up farmers, but the entrenched industry there has also given way to some of the most significant barriers to entry. Fewer families and fewer companies control the land and the agricultural supply chain in Delaware. Mr. Bant understands the industry, grew up on the land there, stays connected and in good favor within the larger farming community, works doggedly toward his goal of farming full-time, even reading the minutes of state meetings to follow industry trends. He would appear to be the poster-child of a deserving candidate for YFLP, and yet it also seems rather far from easy-going for him to get established. YFLP is well intentioned and well directed, thoughtfully tailored to the situation of young farmers in Delaware, but it provides no panacea to the beginning farmer's troubles. If farming is as resilient and successful as the Department of Agriculture in Delaware demonstrates in regular flourishes of statistics -- where agriculture remains the state's single largest land use, continuing to lead the country in the market value of products sold per acre (ahead of California by \$838/per acre), and coming in second for value of products sold per farm (at \$519,794 to California's \$547,510)<sup>42</sup> -- the question lingers: why is it such an arduous and persistent task for young farmers such as Mr. Bant to acquire land and participate in the agricultural economy? It would seem that a Connecticut loan program for young farmers might also work to address structural drivers that are creating the most significant barriers to entry, namely the increasing aggregation of land, capital, and market share in the hands of a decreasing number of families and companies.

#### F. *Application to Connecticut*

In considering an adaptation of Delaware's YFLP for Connecticut, the best place to start might be looking at Connecticut's own Farmland Preservation Program ("FPP"). With Connecticut's FPP, landowners in possession of prime agricultural soils and within established farming communities may voluntarily sell the right to develop their land to the state, just as in Delaware.

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<sup>42</sup> State News Release, May 2nd 2014, see link above.

In 1974 Governor Ella T. Grasso formed a task force in order to assess the condition of and prospects for farmland in Connecticut. The task force found that agricultural land in the state was quickly disappearing, and recommended that 325,000 of the remaining 500,000 acres be preserved, because this was the amount figured could feed one third of the state's population.<sup>43</sup> Governor Grasso spoke at a hearing for a 1978 bill that would attempt to address the loss of farmland. Her words resonate with contemporary views, "We should be concerned about transportation costs that are built into the cost of food supplies from other states...about the need to provide new opportunities for our young people in the field of agriculture...[and] about maintaining a way of life that is so much a part of our heritage."<sup>44</sup> The bill (HB 5051) soon became law (PA 78-232) and so initiated the effort to purchase development rights in Connecticut. The state goal has since been reduced to the preservation of 130,000 acres, and as of December 2015, the program has preserved 315 farms and more than 41,500 acres.<sup>45</sup> An overlapping goal established by the state in 1997 is to preserve 21% of Connecticut's open space by 2023, determined to be 673,210 acres.<sup>46</sup> The FPP makes a concerted effort to target the protection of prime soils and to cluster easements within active farm communities.<sup>47</sup>

Until PA 08-174 in 2008, funding for FPP was limited and sporadic. PA 08-174 enabled the FPP to receive lump sum bonding by way of a "Face of Connecticut" account and the State Bond Commission.<sup>48</sup> With the approval of the Bond Commission, the state may pay up to the entire cost of appraised development rights for a property, up to \$20,000 per acre, although many of the purchases are in fact bargain sales. Connecticut has also established a partnership program for individual towns to jointly purchase development rights with the state.<sup>49</sup>

Although more broad, the state established a separate program in 1998, the Open Space and Watershed Land Acquisition Program, for the preservation of land that is important to local communities. This program includes historically or agriculturally valuable farmland, and can pay for either an easement or purchase the land outright. Up until the most recent legislative session, only 70% of the fair market value of projects conserved through this program could be covered by state and federal funding combined. In 2015, this 70% cap was increased to 90%, but the Department of Energy and Environmental Protection's Commissioner also has the discretion to waive the cap entirely if any one of a number of conditions are met.<sup>50</sup> As with the state-town

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<sup>43</sup> Office of Legislative Research Report, "Genesis of the FPP," September 9, 2005, see: <http://cga.ct.gov/2005/rpt/2005-R-0684.htm>

<sup>44</sup> *Id.*

<sup>45</sup> FPP Program Overview, CT DOAG website, see: <http://www.ct.gov/doag/cwp/view.asp?a=3260&q=399016>

<sup>46</sup> "Top 40 Environmental Accomplishments of the Past 40 Years," CT DEEP website, available at: [http://www.ct.gov/deep/cwp/view.asp?a=2688&q=456424&deepNav\\_GID=1511](http://www.ct.gov/deep/cwp/view.asp?a=2688&q=456424&deepNav_GID=1511)

<sup>47</sup> FPP Overview, CT DOAG, see: <http://www.ct.gov/doag/cwp/view.asp?a=3260&q=399016#programoverview>

<sup>48</sup> 2008 Legislative Session Summary, CT DOAG, see: <http://www.ct.gov/doag/cwp/view.asp?a=1366&q=417598>

<sup>49</sup> "Conservation Options for Connecticut Farmland," American Farmland Trust, 2010, see: [http://www.ct.gov/doag/lib/doag/farmland\\_preservation/\\_conservationoptionsforectfarmland.pdf](http://www.ct.gov/doag/lib/doag/farmland_preservation/_conservationoptionsforectfarmland.pdf)

<sup>50</sup> Press Release, 19 August 2015, Working Lands Alliance, see: <http://workinglandsalliance.org/wla-joins-governor-malloy-for-ceremonial-bill-signing/>

joint FPP this program requires sponsorship, but in addition to municipal sponsors, nonprofit land conservation organizations and water companies may apply.

As do most states, Connecticut benefits from the federal farmland easement cost-sharing program, formerly known as the Farm and Ranch Lands Protection Program (“FRPP”), under the USDA’s Natural Resources Conservation Service (“NRCS”). FRPP was introduced with the 1996 Farm Bill, the 2008 Farm Bill expanded the annual budget from \$97 Million, up to \$200 Million by 2012.<sup>51</sup> The 2014 Farm Bill reorganized FRPP along with two other land preservation programs under the new heading of the Agricultural Conservation Easement Program (ACEP). ACEP cost-share funding often goes toward the state-level programs discussed above, explicitly in order to acquire easements, while municipalities and land conservation organizations may also work with a landowner to apply for these federal funds. ACEP can account for up to fifty percent of a project’s total cost, and Connecticut’s FPP often works with NRCS to close deals using this source.

It also bears acknowledging here that additional funding for agricultural easements in the state comes from the Community Investment Act (“CIA”). Established in 2005, the CIA offers project-specific financial assistance that is not tied solely to funding land costs, but can be used for additional costs related to the acquisition of development rights. In addition to supporting the purchase of development rights, CIA funds may be used for other aspects of the preservation process, such as appraisals, boundary surveys and staff time. This fund is fed by a simple fee that town clerks collect, and it supports several other programs within the Department of Agriculture not directly tied to preservation, as well as certain initiatives in three other agencies.<sup>52</sup>

Like Delaware’s Agricultural Lands Preservation Foundation, Connecticut’s FPP consists of a small (5.5 FTE) staff base, and accommodates fluctuating, lump-sum state funding in order to maximize investments. Outside the Department, Connecticut’s FPP is guided by a diversely appointed Farmland Preservation Advisory Board, which exists to advise the Commissioner on the program.<sup>53</sup> Unlike Delaware, the unit dedicated to FPP is also committed to activities such as stewardship of state-owned lands, the Farmland Restoration Program (“FLRP”), the Community Farms Preservation Program (“CFPP”), and CT Farmlink. Adding to these initiatives, several of which are new or growing, might prove difficult for the current staff. However were the staff to grow, they might easily add a Young Farmer Loan Program to the suite of programs currently being administered. Moreover, the support of the current Governor and state legislature for new programs such as FLRP and CFPP, and continued support of the FPP through trying economic times, is a promising sign for the addition of a Young Farmer Loan Program.

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<sup>51</sup> “FRPP: Lessons Learned” NRCS, USDA, see:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/farmranch/>

<sup>52</sup> *Supra* note 49

<sup>53</sup> See sections 22-261l of CT General Statutes, available at:

[https://www.cga.ct.gov/current/pub/chap\\_422a.htm#sec\\_22-26cc](https://www.cga.ct.gov/current/pub/chap_422a.htm#sec_22-26cc)

A revolving fund used to continually acquire easements at a discount, if not ultimately at zero expense to the state, may well prove to be a resilient move forward for Connecticut, specifically through its FPP. Although additional seed funding will need to be allocated for a new loan program, it will inevitably recoup and reinvest most if not all that goes into it.

Political will, staff time, and finances permitting, there is no foundational reason why Connecticut could not introduce a program modeled directly off of Delaware's YFLP. Were the state to do so, additional research and collaboration would likely be required to ensure that Connecticut's program results in as appropriate and effective results as have been seen in Delaware. Although there were no public testimonies or comment periods heard in Delaware, Connecticut should be prepared to make a strong case for helping to finance farm purchases for young farmers in the state. Some important considerations in assessing the needs of young farmers in the state, and tailoring an appropriate and effective program should include examinations of the following:

- What risk is entailed in relying on the state budget for funding appropriations?
- What kind of tolerance is there for the program to lie dormant for a few years if yearly seed funding drops or dries up as has recently occurred in Delaware?
- What county and municipal economic effect would result with exemption of young farmer purchases from the Realty Transfer Tax, as they are in Delaware?<sup>54</sup>
- Will Farm Credit, or other commercial lenders serve as willing and enthusiastic partners with the state program?
- Is 70% of the easement value a fitting cap for the loan? What problems can we expect to arise with smaller parcels of land in areas that have far higher real estate development value in comparison to agricultural use value?
- What does it mean for the state and its residents if this program were to have the effect of increasing the value of land suitable for development, as land around it enters into perpetual preservation?
- Is 30 years an appropriate time frame for repayment of both primary and secondary state loans in Connecticut?
- Can the preponderance of land trusts in Connecticut aid and abet this initiative?
- What sort of capital infrastructure needs and farm improvements can we expect of young farmers in Connecticut, and does it make sense for this program to finance them as does the Delaware program?<sup>55</sup>

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<sup>54</sup> In DE, the realty transfer tax is 3%; the payment is split between buyer and seller, and the return is split between municipality and state or county. In CT, the realty transfer tax on nonresidential property is 1.25%.

<sup>55</sup> An essential feature in DE's program, due to the prevalence of broiler operations and the infrastructure needs in that industry. The only capital improvement not permitted within DE's YFLP financing is housing.

- Does it make sense for the net worth eligibility requirement to apply to married couples jointly or separately? What about the experience requirement?<sup>56</sup>
- Is \$300,000 an appropriate eligibility cap for the net worth of prospective applicants in Connecticut?
- Is fifteen acres too high of a ceiling for young farmers in Connecticut?
- Is \$500,000 high enough of a loan cap for the average young farmer to purchase adequate start-up land?
- What proportion of young farmer purchases can we expect to come from family members, through generational passage? Will this be an appropriate low-risk use of the program in Connecticut as it has been in Delaware?
- Will the high cost of housing prevent young farmers from living on or near their farmland? Will the high value in farm homes prevent more easements in Connecticut than in Delaware?
- How much land is there in Connecticut that is reasonable to expect a young farmer could purchase, even with a no-interest loan?
- Is agriculture in Connecticut more viable under ownership than tenancy?
- Will Connecticut taxpayers appreciate the need for preserved farmlands and their tax dollars being put to use in support of young farmers?
- How if at all will the difference in agricultural practices, products, and industry play out in adapting this program to Connecticut?
- Are there any special considerations around facilitating succession planning or land transfer between relatives?

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<sup>56</sup> Deputy Secretary Short has said that if couples apply to purchase farmland together then both requirements apply to each separately, which means both must individually have three years farming experience. This is a statutory provision that does not seem to make sense as it exists in DE.

## II. Nebraska & Iowa: Beginning Farmer Tax Credit and Loan Programs

### A. Background & Motivation

Not unlike Delaware, Iowa and Nebraska are two states that pride themselves on a strong agricultural past and present. Dissimilar from Delaware, issues of access to land for young farmers revolve less around development pressures and more around an entrenched, landed, aging farmer population, rising agricultural use value of farmland, and rapidly increasing sophistication of and dependence upon economies of scale. Iowa and Nebraska have each developed landowner assistance programs to address the barriers for young farmers, programs that administer a state income tax credit for landowners who lease land, equipment or infrastructure to young farmers.

Whereas in Delaware the chief normative concern of the state would appear to have been protection of farmland, as evidenced by their early adoption of measures to address encroaching suburbia and disappearing open space, in Nebraska and Iowa the policy endeavor has persistently been the cultivation of the states' stock of farmers for future generations. As such, both states devised early programs to induce participation of young farmers in their predominant industries and economy. In Nebraska the tax incentive program is for one three-year lease, and in Iowa, the program may last from two to five years in total.<sup>57</sup>

The importance of land tenure for farmers is a far older concern than that of land access. Much of the national conversation about access to land for young farmers, as in Delaware, revolves either around disappearing open space, and delimiting the uses of farmland in perpetuity, or else farmer ownership, and often these issues are tied to one another. On the other hand, no one is concerned with Sioux City eating up the Great Plains or the Corn Belt, and climbing the agricultural tenure ladder is embedded in the agricultural economies of Nebraska and Iowa, and generally culturally accepted as part of the reality there. While land access is importantly distinguished from land tenure, with a lack of emphasis on the latter, beginning farmers in Nebraska and Iowa do face unique challenges with the former. Both states' tax incentive programs were introduced ahead of their time, or rather ahead of the rest of the country, in thinking about the plight of the young farmer and her access to farmland. Both programs are directed at the distinct need for access to land for young farmers, rather than ownership of land, and established an early precedent in state-level public policy addressing this need.

The "farmlink" model, popular today in states and regions across the country, was largely a Nebraska innovation, coming out of the not-for-profit organization Center for Rural Affairs

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<sup>57</sup> For the Iowa rule, §§16.75-16.82 in the State Code, see: [http://search.legis.state.ia.us/nxt/gateway.dll/ic/1/13/14/1100/1327?f=templates\\$fn=document-frameset.htm\\$g=\[field%2016\]\\$x=Advanced#0-0-0-431](http://search.legis.state.ia.us/nxt/gateway.dll/ic/1/13/14/1100/1327?f=templates$fn=document-frameset.htm$g=[field%2016]$x=Advanced#0-0-0-431); for the Nebraska rule, §§ 77.5201-5215 in the State Code, see: <http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=77>

(“CFRA”) in 1991.<sup>58</sup> As with most farmlink programs CFRA’s Land Link provided a matching service to pair up beginning farmers and ranchers with the land and expertise of more experienced landowners who might be retiring or otherwise looking to lease. In 1999 the unicameral Nebraska State Legislature passed the Beginning Farmer Tax Credit Act, in essence sanctioning the farmlink concept with a financial incentive, with the hope that such a measure might induce additional retiring farmers to seek out younger tenant farmers, as well as any other landowners looking for a tax break.<sup>59</sup>

In 2006 the Iowa State Legislature enacted similar legislation, HF 2268, charging the Iowa Finance Authority to form an Iowa Agricultural Development Division (“IADD”) and design rules for administering a landowner tax credit program modeled off of Nebraska’s.<sup>60</sup> This bolstered two long-standing loan programs for beginning and low-income farmers, backed by tax-exempt bonds, authorized in 1981 and 1996.<sup>61</sup>

## B. *Nebraska Beginning Farmer Tax Credit*

### 1. Structure of Program & Statutory Authority<sup>62</sup>

The Beginning Farmer Tax Credit program is overseen by a Governor-appointed Beginning Farmer Board.<sup>63</sup> The Board is housed within the Department of Agriculture, “for administrative and budgetary purposes only.”<sup>64</sup> Today, in addition to the Board, Ms. Karla Bahm serves as Program Administrator.

The heart of the program consists of a refundable ten percent tax credit on rent received from a young farmer in a traditional leasing arrangement and fifteen percent in refundable credit from a cost sharing arrangement with a young farmer.<sup>65</sup> The fifty percent increase in tax credits afforded those who participate in cost sharing is intended to motivate mentorship and spread the inherent weight of risk and opportunity between both the young farmer and the landowner. In Iowa there is a more significant increase in the percentage credit received with cost share payments, from seven to seventeen percent. Cost-sharing programs, although foreign to many outside of the Midwest and Great Plains, inherently ensures less risk and improved chances of success for the young farmer, in tying her financial goals and priorities to those of the landowner.

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<sup>58</sup> In fact, Land Link kicked off the National Farm Transition Network in conjunction with Iowa’s lesser-known Farm-On Program, out of Iowa State Extension’s Beginning Farmer Center. Although the Center is still active, the Farm-On Program is not, and CFRA has temporarily suspended their matching program as well. For the National Farm Transition Network 1999 Conference overview notes, see: <http://www.farmtransition.org/pubs/ithacamtg.PDF>

<sup>59</sup> Nebraska State Code § 77.5204, see link above.

<sup>60</sup> Iowa State Code, §16.75, see link above.

<sup>61</sup> Program Overviews, IADD, see: <http://iowafinanceauthority.gov/Public/Pages/PC202LN48> and <http://iowafinanceauthority.gov/Public/Pages/PC203LN48>

<sup>62</sup> A revised copy of the statutes pertaining to the Nebraska program is here attached as Appendix C.

<sup>63</sup> Nebraska State Code § 77.5204.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

Both Iowa and Nebraska programs make clear the importance of and preference for such cost- and risk-sharing arrangements between landowner and leasing beginning farmer.

The Nebraska statute outlines eligible farmer qualifications in Section 5209 of the 77th Chapter of State Code, the chapter dealing primarily with revenue and taxation. Unlike the Delaware program, there is not actually an age requirement; instead, the applicant must simply be a Nebraska resident who has farmed less than 10 of the past 15 years.<sup>66</sup> A narrower net worth ceiling is set for participants, at \$200,000, which includes “any holdings by a spouse or dependent.”<sup>67</sup> It’s important to note, however, that this ceiling is used only for the purposes of loan qualification, and during the course of the loan the farmer is allowed to grow her net worth beyond the threshold required to originally apply. The eligible farmer must provide the majority of the daily physical labor and management of the farm or livestock operation and “agrees that farming or livestock production is intended to become his or her principal source of income.”<sup>68</sup> In lieu of the three years experience required in Delaware, the Board assesses the experience of Nebraska beginning farmers qualitatively and subjectively.<sup>69</sup> Also rather open-ended is the requirement of both “[demonstrating] to the board a need for assistance,” and “a profit potential” through submission of Board-approved projected earnings statements.<sup>70</sup> In addition to this projected cash-flow analysis, the applicant must enroll in a financial management class, the cost of which is itself reimbursable through a state income tax credit of up to \$500.<sup>71</sup> Lastly, the successful farmer applicant will provide to the Board “a nutrient management plan and a soil conservation plan.”<sup>72</sup>

The asset-owner, in order to qualify, must lease land or infrastructure to the farmer “at prevailing community rates as determined by the board,” and may only enroll a given asset in the program once.<sup>73</sup> The board in fact has many discretionary powers over the qualification of rental arrangements for the tax credit. If the lease agreement is terminated, for example, and the board finds that it was to no fault of the farmer, then all credits at that point distributed to the landowner will be recouped, and the landowner will be disqualified from future participation.<sup>74</sup> The board also has discretionary powers over whether the landowner has leased land or assets that might result in the beginning farmer “to be responsible for managing or maintaining a farm which ... is of greater scope and scale than necessary for a viably sized farm ... in order to adequately support a beginning farmer or livestock producer.”<sup>75</sup> Although owners may only enroll a given asset once, farmers may enroll several assets, across several owners, and may even

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<sup>66</sup> Nebraska State Code § 77.5209.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Nebraska State Code § 77.5211.

<sup>74</sup> *Id.*

<sup>75</sup> Nebraska State Code § 77.5212.

enroll in the three-year program repeatedly, provided they still meet the qualifications. The drafters of this statute, and by extension the Board, are empowered with various devices designed to protect the beginning farmer, and set her up for success. It would seem this Act is one crafted explicitly for the benefit of Nebraska by way of fostering new farmers first and foremost, and enriching private landowners via tax credits only secondarily.

In addition to gaining access to farmland, the startup farmer in Nebraska also enjoys an exemption from state taxes on any agricultural infrastructure used in production through the Personal Property Tax Exemption program, allowing her to save up to \$100,000 each year, over the same three consecutive years of the Board-approved lease and tax credit.<sup>76</sup>

## 2. Implementation

Since first opening the application period on January 1st of 2000, the Nebraska program has assisted 250 farmers, distributing \$5.6 Million in tax credits to land and asset owners. There is no limit to the tax credits doled out, all eligible arrangements between landowners and farmers may apply and benefit from this program.<sup>77</sup>

Karla Bahm, of the Nebraska Department of Agriculture's "recently re-branded" NextGen unit, serves as the Beginning Farmer Program Administrator, and oversees the process of applying for the tax credit. When asked why the program is tailored specifically to a lease that lasts only three years, Ms. Bahm noted that this was seen originally as a compromise. The majority of landowner-farmer arrangements this program would be targeting in Nebraska consist only of a handshake, and last one year or growing season. To ask landowners for a written contract for three years appeared to the Act's drafters a compromise that would afford beginning farmers just enough time to develop a rapport with the owner, work out kinks in her operation, and prove herself worthy of a longer working relationship beyond the state program. Landowners might begin to weigh the risks more heavily in leasing to a novice farmer, if a written contract of any longer than three years was at stake. This dynamic becomes only more pronounced in attempting to promote risk- and cost-sharing arrangements between farmer and owner. Despite the potential benefits to young farmers, requiring any longer of a lease term might overreach the industry norms and render the program less effective in Nebraska.

With regard to the tax credit itself, Ms. Bahm believes that most participating asset owners are doing so because they want to see the next generation of farmers gain experience, not necessarily because they need the ten or fifteen percent increase of rental payments. Upon introduction, the program only afforded owners five percent, and that number was increased because of the program's popularity among politicians and administrators. In general, all leasing farmers must pay county averages for the land they lease, and so the tax credit going to the owner functions as a bonus, a carrot to lure hesitant participants and reward generous ones.

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<sup>76</sup> Nebraska State Code § 77.5209

<sup>77</sup> Phone Conversation with Karla Bahm, March 2015

Unfortunately, some of the hesitant participants are not necessarily won over or convinced of the civic merits to working with young farmers, and actually increase the rent by the amount of the tax credit after the initial three-year period is over. Despite this uncharitable gesture, the few farmers subject to this increase with whom Ms. Bahm has spoken claim that it is actually worth paying the additional “tax” to their landowners, simply because prime agricultural soils are so hard to come by as a new farmer.

With the close of the initial three-year lease and tax credit, the state’s formal relationship with both farmer and asset owner comes to an end. Hence there are no comprehensive statistics on the long-term outcomes of this program; there is no mechanism by which county assessors can report later outcomes back to the state. Ms. Bahm has, however, recently completed a voluntary survey of 87 out of the 165 participating farmers who were at least one year out of the initial three-year lease. Although she is just beginning to collate the data and assemble findings from the survey, almost all reported outcomes have been impressive -- 99% (all but one participant) are still farming -- 85% continue to farm the same ground originally leased -- 84% farm as their main profession (*i.e.* derive primary income from farming) -- 91% believed that the tax incentive was instrumental to their success -- 100% would recommend the program to others.

<sup>78</sup> On the other hand, perhaps illustrative of the industry in Nebraska, only two had actually since acquired the land originally leased, and only 29% even remotely saw the possibility of one day purchasing the land they were leasing.<sup>79</sup>

In understanding the implementation of the Beginning Farmer Program, Ms. Bahm also felt it was important to understand more about the \$200,000 net worth ceiling for farmer participants. If there is one substantial critique of the program that she hears it is this wealth cap. This threshold has remained at the current level for some time, but originally was set at \$100,000. The statute delineates a process for annually reevaluating this threshold:

[B]y taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods divided by the Producer Price Index for 2008 and multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of twenty-five thousand dollars, the amount shall be rounded to the next lowest twenty-five thousand dollars.”<sup>80</sup>

Although this process appears to result in an objectively calculated figure, Ms. Bahm confirmed that this was also a normative gesture written into the law. Each year, interested farmers call her office inquiring into the program and are turned away by a net worth beyond this threshold. Sometimes more farmers are turned away than those who qualify and enroll. The policy

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* A retrospective report is currently in the works. The most recent publicly available report for the Nebraska program is from June 2007; here attached as Appendix D.

<sup>80</sup> Nebraska State Code § 77.5209

objective here reveals itself in the final bit of the calculating process where, if needed the final amount is rounded *down*. Ms. Bahm believes that there is a fine line between supporting all beginning farmers and those who truly require assistance to participate in Nebraska’s farming economy. The net worth threshold is the primary mechanism by which the state has positioned itself on the side of that line benefitting those most in need.

One final consideration provided by Ms. Bahm is that the title of their authorizing act and tax credit has led to an occasional snag in outreach. Because the qualification requirements do not include a limit to age, and because there are many folks who have worked less than ten out of the most recent fifteen years who would not consider themselves a “beginning” farmer, not all who are eligible and could use the assistance of the program think to apply. For this reason, second only to “How does the program work?” on the NextGen FAQ page is the question, “I am 45 years old and have just started farming in the last couple of years. Am I too old to qualify as a beginning farmer?”<sup>81</sup>

### C. Iowa Beginning Farmer Tax Credit

#### 1. Structure of Program & Statutory Authority

The structure and implementation of the Iowa Beginning Farmer Tax Credit, which is also known as the Agricultural Assets Transfer Tax Credit, is in many ways similar to the Nebraska program. The Iowa credit is also awarded to any Iowan owners of agricultural assets who lease to qualifying beginning farmers. Owners are credited against their Iowa income taxes, but unlike Nebraska, the Iowa credit is against taxes owed and is non-refundable. In 2014, the Iowa Legislature amended the law to allow this non-refundable credit to roll over for the span of ten tax years or until depleted, if the credit is in excess of the asset owner’s liability at the time of the lease.<sup>82</sup> Also unlike Nebraska, an individual asset owner and farmer may re-apply to extend their arrangement once the initial lease has concluded.<sup>83</sup> Iowan asset owners may obtain an additional tax credit for each farmer they lease to.<sup>84</sup> The tax credit certificate is issued for each year of the lease as it is completed.<sup>85</sup> These provisions, and what follows, were originally found in the Code of Iowa Title V, which authorizes all matters Agricultural, Subtitle 3, “Agricultural Development and Marketing,” but were last year repealed and placed instead under Title I, which

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<sup>81</sup> Frequently Asked Questions, NextGen, Nebraska Dept. of Ag., see: <http://www.nextgen.nebraska.gov/faq.html>

<sup>82</sup> Iowa State Code, §16.75, subsection 6, amended in 2014; see: [http://search.legis.state.ia.us/nxt/gateway.dll/acts/2014IowaActs/1/120?f=templates\\$fn=document-frameset.htm\\$g=\[field%20folio-destination-name:%27ch\\_1112\\_sec\\_1%27\]\\$x=Advanced#0-0-0-5789](http://search.legis.state.ia.us/nxt/gateway.dll/acts/2014IowaActs/1/120?f=templates$fn=document-frameset.htm$g=[field%20folio-destination-name:%27ch_1112_sec_1%27]$x=Advanced#0-0-0-5789)

<sup>83</sup> Iowa State Code, §16.75-.82, see link above.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

is where Economic Development and the Iowa Finance Authority are authorized. Beginning Farmer Programs now fall under Title I, Subtitle 5, Chapter 16, Sections 16.75-16.82.<sup>86</sup>

In order to qualify, the lease must be signed for a term of at least two years, and up to five.<sup>87</sup> In exchange, the landowner is provided with a tax credit equivalent to seven percent of the rental payments received from the young farmer.<sup>88</sup> Another way to think about these tax credits is that the state is essentially subsidizing the beginning farmer's rent while inducing the farmer to seek out or at least consider leasing to less experienced farmers who are just getting started. If the landowner enters into a share arrangement with the beginning farmer then the landowner receives a seventeen percent credit on payments from the farmer.<sup>89</sup> Originally these tax credit amounts were set at five and fifteen percent, respectively, and today if the beginning farmer is also a veteran, both tax credits bump up to eight and eighteen percent during the first year of the lease.<sup>90</sup> As in Nebraska, residential property and homes do not qualify, and if included in the lease of land or other depreciable assets used for agricultural production, then the lease value of the residence must be subtracted from the amount used to calculate the credit.<sup>91</sup> Participation in the USDA's Conservation Reserve Program ("CRP") disqualifies a given piece of land entirely from the program.<sup>92</sup> Feeder animals do not qualify as depreciable property, although some other animals, such as horses, may in fact qualify if used in tandem with a viable for-profit farming operation, as opposed to a "hobby farm."<sup>93</sup> Also akin to Nebraska, any otherwise qualifying beginning farmer over the age of 18 may participate.<sup>94</sup> Last year, a 72-year-old beginning farm qualified and began leasing farmland in Iowa.<sup>95</sup>

In addition to the lease and cost-share arrangements under the Beginning Farmer Tax Credit, Iowa has a related program that rewards anyone hiring a beginning farmer to perform agricultural work under contract, through the Custom Hire Tax Credit. This credit, added to the state's suite of tax incentives in 2013, makes a similar offer as the others. In this case, regardless of whether any assets are owned or leased, any Iowan who contracts custom labor with a beginning farmer receives a credit against state taxes valued at 7% of amount actually paid.<sup>96</sup> The beginning farmer qualifications reflect those of the other programs, except that the contract in this case must be less than twelve months. If the eligible beginning farmer is also a veteran, then

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<sup>86</sup> Iowa State Code, §16.80, amended in 2014; see:

[http://search.legis.state.ia.us/nxt/gateway.dll/ic/1/13/14/1100/1327?f=templates\\$fn=document-frameset.htm\\$g=\[field%2016\]\\$x=Advanced#0-0-0-5801](http://search.legis.state.ia.us/nxt/gateway.dll/ic/1/13/14/1100/1327?f=templates$fn=document-frameset.htm$g=[field%2016]$x=Advanced#0-0-0-5801)

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Phone Conversation with Steve Ferguson, March 2015.

<sup>96</sup> Program Overview, IADD; see: <http://iowafinanceauthority.gov/Public/Pages/PC208LN48>

the employer receives 8% for the first year of employment. The maximum annual return for the employer is \$50,000.<sup>97</sup>

The Iowa Agricultural Development Division (“IADD”) administers these tax credits, and is known colloquially as the Authority, because it is a division of the Iowa Finance Authority. Like the Nebraska Board, the Iowa Authority has some discretion over the qualification of applicants. It has the ability to determine and rule accordingly whether lease rates are substantially higher or lower than a given farm community’s market dictates, and whether the terms of a share agreement between farmer and landowner are such that it substantially benefits the former, and not “an attempt to maximize the [latter’s] benefit under the program.”<sup>98</sup>

The beginning farmer qualifications also include some statutory language left to the Authority’s discretion, wherein she must “[have] sufficient education, training, or experience in farming ... access to adequate working capital and production items ... [and will] materially and substantially participate in farming.”<sup>99</sup> Each of these eligibility qualifications are intended to be “self-certified,” while also “subject to review and confirmation of the Authority.”<sup>100</sup> Included in the application materials must be a “background letter” detailing the beginning farmer’s history and experience with agriculture.<sup>101</sup> If the lease arrangement is one between family members, then this background letter must detail the nature of the arrangement and the involvement of the related lessor, in addition to independent sources who may confirm the legitimacy of the transaction.<sup>102</sup> A current financial statement with the beginning farmer’s total assets and total liabilities is also required for initial assessment by the Authority, as is her Federal Schedule F, which delineates profit or loss from farming, for each year of the lease.<sup>103</sup>

The financial qualifications for an eligible beginning farmer in the Iowa program differ significantly from Nebraska. There is also a net worth threshold, to be re-evaluated and adjusted annually, however, in Iowa this threshold began at \$300,000 and has now been raised to \$703,844 for the calendar year 2015.<sup>104</sup> Moreover, unlike Nebraska where combined net worth of partners and dependents must together fall under \$200,000, the only stipulation in Iowa is that *each* involved party must have a net worth under \$703,844.<sup>105</sup> This value is assessed according to yearly state designations of who in Iowa is “low or moderate net worth,” which is defined as:

[A] designated amount established pursuant to rules adopted by the authority and effective for one year. The designated amount shall be established by January 1 of

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<sup>97</sup> *Id.*

<sup>98</sup> Applicant Packet, IADD; here attached as Appendix E.

<sup>99</sup> Applicant Packet, IADD; here attached as Appendix E.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Program Overview Page, IADD; see: <http://iowafinanceauthority.gov/Public/Pages/PC204LN48>

<sup>105</sup> Applicant Packet, IADD; here attached as Appendix E.

each year by adjusting the designated amount effective on the previous December 31. The authority shall establish the designated amount in accordance with the "prices paid by farmers index" as compiled by the United States department of agriculture.<sup>106</sup>

As with the Nebraska program, the authorizing statute defines a seemingly objective measure for eligible net worth, while in fact making a normative public policy statement about what population this benefit should be directed towards. Rural per-capita income for 2013, as provided by USDA's Economic Research Service, is \$44,349 in Iowa, \$48,557 in Nebraska, and \$44,815 in Delaware.<sup>107</sup> Net worth is a notoriously tricky value to calculate across a broad population, and does not necessarily correlate to per-capita income, but it would seem that if rural income averages are within \$4,200 of each other, then net worth by the same token would not vary by over half a million dollars. Of course land and asset ownership factor importantly into the calculation of net worth, but here we are addressing a threshold for folks who categorically do not own much in the way of either land or assets.

## 2. Implementation<sup>108</sup>

Iowa currently makes available \$12 Million each year for Beginning Farmer Programs.<sup>109</sup> Program operating costs are funded through application and maintenance fees. The application fee is \$200 and may be paid by either the farmer or agricultural asset owner, and if the application is ultimately denied then \$150 will be refunded.<sup>110</sup> The IADD is staffed only by two full-time employees, housed within a larger entity, the Iowa Finance Authority, which primarily focuses on housing and water programs in the state.<sup>111</sup> Steve Ferguson is the Agricultural Program Coordinator and reported that from implementation in 2007 to their last major report at the end of 2013, nearly \$27 Million had been distributed to Iowa asset owners in the form of Beginning Farmer Tax Credits, amounting to over 1,301 distinct applications and 4,552 in total tax certificates issued.<sup>112</sup> The maximum credit amount per asset enrollment is \$50,000, but some quick math reveals that the average is closer to \$7,000.

According to Mr. Ferguson, there is an increasing consciousness and concern in Iowa around soil conservation, and many of the landowners participating in the program will reduce

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<sup>106</sup> "Definitions," Iowa State Code, §175.2, see:

<https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=175.2>

<sup>107</sup> State Facts Pages, USDA, ERS, see: <http://www.ers.usda.gov/StateFacts/>

<sup>108</sup> Neither Ms. Bahm nor Mr. Ferguson was able to connect me with any farmers enrolled in these programs.

Despite posting several ads on Craigslist forums in Nebraska and Iowa, I was not able to solicit any feedback myself either.

<sup>109</sup> This includes the Beginning Farmer Loan Program discussed below.

Phone Conversation with Steve Ferguson, March 2015.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* See also: Appendix F, for the IADD 2013 annual report.

rates (and by extension their own tax credits) if the beginning farmer agrees to farm responsibly, using best practices for soil health. There is no aspect to the Iowa programs that address farmland preservation, in large part because there is equally no threat of development or abandonment of these prime agricultural soils. However, there does appear to be a strong desire among participating landowners to ensure that the quality and fertility of the landscape in Iowa will be preserved.

#### D. *Iowa Loan Programs*

Although not comparable to Delaware's program, it is worth mentioning here the two loan programs administered under the Iowa Agricultural Development Authority. One of the programs is specifically tailored to beginning farmers, and the other would certainly be beneficial for most beginning farmers. Neither is particularly novel or creative in structure, but each nonetheless works to address similar root concerns, as do the other programs discussed above.

##### 1. Beginning Farmer Loan Program

While the Delaware loan program attempts to tackle three distinct problems simultaneously, land access, land tenure and land preservation, the Iowa program simply facilitates land access. Beginning farmers (eligible as per Iowa's other programs) who do not own "substantial farmland" (30% of county median acres) may qualify for loans up to \$500,000 for the purchase of farmland, machinery, breeding livestock and farm improvements.<sup>113</sup> Such a loan, facilitated by the state, is used to supplement the beginning farmer's down payment, helping to secure a primary loan by providing a tax-exempt bond for the remaining balance on the contract or sale.<sup>114</sup> The Authority issues tax-exempt federal bonds to participating lenders or contract sellers, and interest received on contract sales or direct loans is also exempt from state taxes.<sup>115</sup> The idea is that income earned by lenders and contract sellers through tax-exempt interest will induce a lower borrowing rate for beginning farmers. Although there is no enforcement of or mandate for a lower borrowing rate, these loans are on average one to four points, or 25%, lower than market rates for participating beginning farmers.<sup>116</sup>

From the genesis of this program in 1981 to 2013, loans have been provided to 4,054 beginning farmers, amounting to over \$505 Million and over 385,000 acres.<sup>117</sup> Just since 2012, Mr. Ferguson estimates they have brokered an additional \$15 Million in successfully closed

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<sup>113</sup> "Definitions," Iowa State Code, §175.2, see link above.

<sup>114</sup> Phone Conversation with Steve Ferguson, March 2015

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> IADD 2013 annual report; here attached as Appendix F.

loans.<sup>118</sup> Mr. Ferguson believes that the tremendous success they've had with this program over the years can be attributed to the continual championing of state legislators, and the willing cooperation of lending organizations. In recent years, the Authority has handed out a banker-of-the-year award to the lender who has closed on the most loans to beginning farmers.<sup>119</sup>

## 2. Loan Participation Program

Iowa's Loan Participation Program ("LPP") is not directed at beginning farmers; rather, it is designed more generally for low-income farmers in need of loan assistance. It was conceived in 1996 as a companion to Iowa's Beginning Farmer Loan Program, intended to broaden the reach of the pre-existing model.<sup>120</sup> There is no qualifying restriction on the amount of farmland owned and it can be applied to purchases of any agriculture related project. Eligible projects include land, machinery, equipment, breeding livestock, or "agricultural improvements," which "includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling."<sup>121</sup>

In order to qualify, borrowers must demonstrate to the Authority that they do not qualify for any other private or state credit,<sup>122</sup> and therefore require the assistance of the Authority in making a down payment or otherwise securing the loan.<sup>123</sup> In addition to outside capital, the lending institution's risk is reduced because the Authority offers to participate in the financing on a "last-in/last-out" basis.<sup>124</sup> Borrowers must have less than \$400,000 in debt, an assets-to-liabilities ratio of greater than 1.1-to-1, and any off-farm income cannot exceed 50% of total income.<sup>125</sup> The maximum loan amount is 30% of the project cost (up to \$150,000) with a maximum amortization rate of 30 years accompanying an FSA Beginning Farmer 5-45-50 loan, and 20 years otherwise.<sup>126</sup> The interest rate is currently set at 2.5%, and fixed for the borrower for periods of five years.<sup>127</sup> By the end of 2013 the Authority had closed on 111 loans, amounting to nearly \$6.5 Million with an average applicant age of 43 years old.<sup>128</sup>

### E. *Application to Connecticut*<sup>129</sup>

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<sup>118</sup> Phone Conversation with Steve Ferguson, March 2015

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> "Definitions," Iowa State Code, §175.2, see link above.

<sup>122</sup> With the one exception being FSA loans.

<sup>123</sup> Phone Conversation with Steve Ferguson, March 2015

<sup>124</sup> *Id.*

<sup>125</sup> Programs Overview, IADD, see: <http://iowafinanceauthority.gov/Public/Pages/PC201LN48>

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> IADD 2013 annual report; here attached as Appendix F.

<sup>129</sup> Early conversations with and ideas from American Farmland Trust's Senior Policy and Program Advisor, Bob Wagner, were instrumental to the articulation of these suggestions.

The best platform for development of a beginning farmer tax credit in Connecticut such as those in Nebraska and Iowa is likely the 52-year-old legislation Public Act 63-490 (“PA 490”). Connecticut Governor John Dempsey’s 1962 Open Space Task Force paved the way for state-level tax policy in service of farmland preservation.<sup>130</sup> Fifty years later we understand that it is not only in the public interest to preserve farmland, but it is also in the public interest for that open space to be working land, and to ensure access for those who yearn to work it. In PA 490 Connecticut has a legally well-established and politically well-adjusted precedent for a beginning farmer tax credit program, much as the state’s Farmland Preservation Program provides structure and support for a beginning farmer loan program.

In order to build a new preferential tax program off of PA 490 successfully, a strong understanding of what land does and does not qualify, in addition to who takes advantage of PA 490 and why will be required. Retirees and hedge fund managers alike possess land in Connecticut that may be suitable for lease to beginning farmers. In order to design an effective program it is important to understand the motivations and desires of different landowner groups in Connecticut, and to gain insight into how they may become interested in leasing to a beginning farmer. Some landowners will have interest in leasing to a farmer because it will qualify them for tax savings, some will because they want to preserve the agricultural heritage of Connecticut or bolster the local economy, others might simply seek the proximity of fresh produce and association with young farmers. The current structure of PA 490 captures much of the landowner base needed for an effective beginning farmer tax credit, but it will be important to factor in those who do not qualify or choose to enroll as well.

At the outset it would appear that the most effective tax credit program in Connecticut would split at least two ways across the threshold of PA 490. In effect, the NE and IA programs account for acreage in linking the tax credit to the lease payments or yield in a crop sharing arrangement, while also factoring in the quality of the soil. Leasing agricultural land in these states is itself a highly lucrative activity, and because the market controls the price per acre on a fairly tight market rate basis, it is safe for their tax credit programs to rely entirely on the cash rent or equivalent in crop-share. In Connecticut, land values fluctuate widely and farmland leases would not make for a reliable factor in determining tax benefits to a landowner. In NE and IA, it is reasonable to assume as a landowner that any attempt to inflate the lease would be easily spotted by the reviewing Board members, due to accurate and widely known county averages. In Connecticut, this baseline only reliably exists for land that is enrolled in PA 490. Because the heart of PA 490 is a use value assessment, agricultural land enrolled in PA 490 already has a price tag on it. Even with reliable land use values available, lease arrangements would still likely fluctuate, depending on the personal values and priorities of the landowner. Therefore, it seems linking the tax credit landowners receive not at all to the arrangement with a beginning farmer but to the use value itself would be most appropriate. Relationships between the use value and

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<sup>130</sup> PA 490 Guide, CT Farm Bureau, see: [http://www.ct.gov/doag/lib/doag/marketing\\_files/complete\\_490guide\\_cfba.pdf](http://www.ct.gov/doag/lib/doag/marketing_files/complete_490guide_cfba.pdf)

the tax credit could be devised any number of ways, but the simplest, and perhaps most effective mechanism might simply be a credit for all remaining tax held against land 490. If this approach yields too great or too little of a tax credit, if either the budget is constrained or the incentive is not enough to induce the desired participation, there are also data on average rent per acre of PA 490 land specific to land class, which could be used in turn to more closely imitate the variability inherent to the NE & IA programs.<sup>131</sup> Connecticut might consider either designating a fixed per-acre rate according to these PA 490 land use classifications, or simply a fixed percentage of assessed value, for all land types.

If the Connecticut beginning farmer tax credit were to split two ways, one for those properties and landowners enrolled in PA 490, then the next question is how to incentivize those who choose not to enroll or whose land is ineligible to enroll in PA 490. This is perhaps a more complicated design question, but if the primary concern with non-PA 490 land is that the rental value might be falsely inflated in order to maximize the benefit to the landowner, then credits may also be evaluated according to the hierarchy of land types, but capped at a fixed amount. For example, land suitable primarily for hay tillage might be credited \$50/acre and be capped at \$1,500 annually, while prime river valley soils might fetch up to \$200/acre, and \$6,000 per year. Because much of the land outside of PA 490 eligibility consists of smaller parcels, this ceiling would likely not deter participation. To the contrary, there may be hundreds of properties surrounding single-family homes, with only a quarter-acre dedicated to the residence and an adjacent field suitable for a beginning CSA farmer. In this scenario, the landowner may be thrilled to participate in exchange for even a small financial gain, a relief against the property taxes paid perhaps in order to keep a hay field that the neighbor mows.

The key to survival of this proposition might be in demonstrating that even though the credit would in some way be based upon local property taxes, that community coffers remain untouched, with the credit coming by way of state income taxes. Rural municipalities would reap the benefits of having beginning farmers join their local economy while the state would cover the bill, essentially refunding landowners for some or all of their local property taxes paid. One might think of this akin to the SNAP Double Bucks program gaining momentum across the country, wherein the federal government helps both regional small-scale farmers as well as low-income consumers by subsidizing their transaction. The farmers get paid, the low-income consumer gets affordable healthful food, and the federal government meets higher-level goals. In the case of a beginning farmer tax credit, local governments receive property taxes, landowners receive a rebate on their property taxes, beginning farmers gain access to land, and the state makes progress toward the objectives of a more resilient local economy and active use of working lands, while retaining a younger, innovative workforce. Because Connecticut has had a budget deficit for five consecutive years now, a cap on the number of enrolled landowners per year might also be established.

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<sup>131</sup> PA 490 Guide, CT Farm Bureau, see link above.

Although land tenure is not the focus of this incentive scheme, two-to-five or three-year leases in Connecticut make less sense than in IA & NE. A lease arrangement for the Connecticut equivalent of these programs ought to be flexible; as few as two or three years could allow landowners to feel more willing with less experienced farmers. Because crop-share arrangements are uncommon in the Northeast, the program might also have a tiered aspect according to land tenure, wherein landowners who sign a lease for five years or longer receive a higher rate of credit. The precise numbers and tier mechanism for this would have to come as the result of more targeted research among farmers and landowners in Connecticut, but some level of program design to incentivize greater land tenure would seem to be a boon for soil health and beginning farm enterprises alike. Budget constraints might make it more difficult for the state to accept dedicating tax credits to landowners for longer periods of time, but there is a good argument to be made that in doing so the state is in fact multiplying both their financial and conservation investment, ensuring greater success for beginning farmers and greater stewardship of the land.

Another important consideration for a Connecticut tax credit would have to be the common scenario of land enrolled in PA 490 and only partially leased to a farmer. With per-acre crediting and verification of the lease, this is less of a problem, but without it some mechanism would be required to acknowledge the percentage of PA 490 land being leased to a beginning farmer, such that only that percentage dictate the credit due. There is also the question of type and intensity of management, and whether a hierarchy of credit rates outside of land classification ought to be used to privilege the beginning vegetable farmer laboring over stone-laden, hilly, Tillable C-type soils, above the perhaps-dubious beginning-hay-farmer cultivating flat loamy Tillable A-type soils. This is already a point of contention in counties such as Litchfield, where farmers see fertile, vegetable-ready soils ‘wasted’ in hay silage only so the estate-owner may qualify for PA 490 and preserve the historic agricultural view-shed. It seems here that another overlay on the crediting calculation would be required, to reflect and appropriately incentivize the spectrum of management practices. If this overlay comes to be overly cumbersome or ineffective in scaling incentives, the state might consider whether certain uses of land, such as exclusively haying, simply by default do not qualify for the beginning farmer tax credit.

The issue of leasing assets beyond land is yet another adaptation to make for Connecticut. Because rural housing stock is limited, many landowners leasing to a farmer remain living in the property’s sole residence, and historic farms fetch sums prohibitively high for beginning farmers, it might make sense to include a tax credit for those who lease residences in addition to land. Beginning farmers in the state would also benefit greatly from access to machinery, and infrastructural needs such as a barn, washstand, or any number of assets conducive to animal agriculture. As with non-PA 490 land, however, establishing appropriate leasing figures and corresponding credits is not as straightforward as in Nebraska or Iowa. Without industry standards and fair market valuations, it would seem Connecticut might credit fixed lease

percentages according to each type of non-land asset, and hope that asset owners do not abuse the incentive by inflating rental costs to the beginning farmer. Although, even at higher-than-market rates, beginning farmers might benefit from and appreciate the opportunity to lease expensive assets that they otherwise would have no other means of acquiring or accessing.

There are many important considerations in the attempt to adapt and translate the successful programs of the Great Plains and Corn Belt to the expensive, stone-growing hillocks of Connecticut. Only what appear to be some of the greater structural considerations have been discussed here, but in order for the state to design the most effective and appropriate program for Connecticut landowners and farmers, the incentives must be tailored to the unique characteristics of the Northeast. To this end, what follows are some additional inquiries worthy of inclusion in preliminary research and development of a Connecticut beginning farmer tax credit program. These are questions for many of which we have helpful research, if not some answers. The greater objective is the balancing act between these considerations, and the overarching concern of how to design something palatable to the Connecticut legislature.

- What is the median tax bill on an acre in PA 490 vs. not? What is the range according to land type?
- How much agricultural land is currently being rented in CT? What is the average parcel size of currently leased land?
- Using GIS, how much potential is there in fallow, arable farmland? What is the average size of available parcels?
- How much in taxes is being paid on fallow land that is not enrolled in PA 490?
- Who might best qualify the leases and administer this program? Does the State Dept. of Agriculture have the staff capacity? Is there an equivalent to Iowa's Finance Authority?
- How do municipalities differ in zoning of the range of land potentially suitable for a beginning farmer? How do assessors differ in their evaluations of PA 490 land?
- What is the spectrum of eligible landowners? What are the motivations and sentiments of different landowner groups around taxes and farming?
- What are the needs of beginning farmers in Connecticut?
- How much would the ranks of beginning farmers increase with a tax credit in their favor?
- What might Connecticut learn from other states in the Northeast fostering regional agriculture, and specifically beginning farmer communities?
- Should there be a minimum acreage to enroll?
- How might the program design negotiate differences in best practices and management by the beginning farmer?
- How might the program design reflect both differences in land type and discrepancies between PA 490 acreage and leased acreage?
- Are there any specific considerations due pasturing and the prevalence of animal agriculture in Connecticut?

- Is there an opportunity to link this program with environmental markets for increased returns to the state?
- Could a prerequisite for the tax credit be solicitation of a management plan or conservation plan? If so, who would pay for this, NRCS?
- Should priority be given to protected watershed land or otherwise ecologically important parcels?
- Could a higher score for NRCS funding be achieved with application points from leasing to a beginning farmer?
- Might the CT Community Investment Act be used to support the program? Perhaps funding the management/conservation plan via NRCS or the landowner?
- What potential is there for maximizing the state's investment in agricultural development while multiplying cumulative outcomes through collaborations with CT Farmlink, the Community Farms Preservation Program, and the Farmland Restoration Program?
- How much capacity does the state and CT Farmlink have to assist with human-powered matchmaking in conjunction with the beginning farmer tax credit?
- What type of "beginning farmers" does the state wish to cultivate and what is an appropriate ceiling for net worth eligibility?

### III. Moving Forward in Connecticut

#### A. Lending Partners

Among several key partnerships needed to implement these programs, one especially vital collaboration for the beginning farmer loan program to succeed is with lending institutions, namely Farm Credit. Keith Stechschulte, Branch Office Manager for Farm Credit East, believes a beginning farmer loan program modeled off of Delaware's could work well in collaboration with Farm Credit East, and benefit farmers in Connecticut.<sup>132</sup> Mr. Stechschulte's first impression of the loan program is that it has great potential to accomplish some of what the state's current Farmland Preservation Program does not. The protection afforded the state's investment would be two-fold: (1) if the farmer defaults, then the easement is acquired at a premium, equally beneficial to future farmers in need of land, and likely at a parcel size closer to what a beginning farmer needs as opposed to FPP's larger historic farm easements; and (2) in simply protecting farmland the state has little guarantee that farmers will make use of it, let alone succeed and grow the state's agricultural economy. A no-interest loan to a beginning farmer in conjunction with farmland protection would serve to improve the farmer's chances of success and in so doing, improve the quality of the state's investment in both open farmland and a more resilient agricultural economy.

Mr. Stechschulte reiterates the need for smaller parcels. Currently, if the state performs a purchase of development rights on a 100-acre farm, built up over the years with five 20-acre parcels, those five deeds in effect become one deed, with one easement, bound to remain a 100-acre unit, and as such inaccessible to beginning farmers looking to start out with the purchase of a smaller parcel. A beginning farmer loan program might do less to protect the state's open space and view-shed, but it would expand the diversity of properties preserved, and diversity of opportunities for farmers in Connecticut, while ensuring the utility and appropriateness of farmland conducive to small-scale farmers. Mr. Stechschulte sees this more diversified approach to land preservation as a robust means of advancing the state's interest in keeping our working lands working. This is in keeping with the state's 1997 goal to preserve 21% of Connecticut's open space by 2023, and 135,000 acres of prime agricultural land.<sup>133</sup>

When it comes to Farm Credit's interests, so long as there is a market for restricted land, Mr. Stechschulte is confident in its ability to provide primary loans in support of a beginning farmer loan program. As of late, each transfer of restricted farmland has been more valuable than the last, and there is little likelihood of this trend shifting directions in the future. To reiterate, in

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<sup>132</sup> Phone Conversation with Keith Stechschulte, May 2015.

<sup>133</sup> "Top 40 Environmental Accomplishments of the Past 40 Years," CT DEEP website, available at: [http://www.ct.gov/deep/cwp/view.asp?a=2688&q=456424&deepNav\\_GID=1511](http://www.ct.gov/deep/cwp/view.asp?a=2688&q=456424&deepNav_GID=1511); FPP 2013 Annual Report Summary, CT DOAG, see: [http://www.ct.gov/doag/lib/doag/farmland\\_preservation/\\_draft\\_2013\\_Annual\\_Report\\_Summary\\_draft\\_6jd\\_kw\\_pubj\\_ensen.pdf](http://www.ct.gov/doag/lib/doag/farmland_preservation/_draft_2013_Annual_Report_Summary_draft_6jd_kw_pubj_ensen.pdf)

the rare case of farmer default the state government still receives what is in effect a bargain easement, and the private lender will have benefited from an unusually low-risk arrangement because the state's liability is subservient to the lender, where any pay-out goes first to cover the lender's losses.

One interesting dimension that merits further investigation is the possibility of state intervention in the value of land with use restrictions. In Massachusetts, the state has legal authority to regulate the value of land under easement. Although Massachusetts has yet to do so formally, the state has publicly reiterated its right to do so, essentially sending a message to the market to regulate itself and keep preserved farmland affordable. Landed farmers have been strongly opposed to this gesture, because it potentially limits the value of their past investments in land, but this dynamic might also keep preserved farmland accessible to beginning farmers. Mr. Stechschulte believes Connecticut also has the statutory authority to enforce price regulation of land under easement, and that this is a future dynamic worth looking into.

Farm Credit East is an FSA preferred lender and although there is presently no formal relationship between Farm Credit and the Connecticut Department of Agriculture, they have a productive informal working relationship, in which they regularly share industry information and research with one another. Mr. Stechschulte believes a more formal relationship through a beginning farmer loan program would be positive and beneficial to both entities. Farm Credit East already goes above and beyond to assist beginning farmers and frequently finances projects that do not necessarily meet their standard underwriting requirements, such as asset liquidity and lending collateral. According to Mr. Stechschulte the beginning farmers they go out on a limb to finance rarely default or fall behind.

Farm Credit East already operates a Young, Beginning, and Small Farmer Program ("YBSFP") of its own, in which FSA-guaranteed loans<sup>134</sup> for qualifying farmers have their fees to FSA and land appraisal fees covered by Farm Credit East, in addition to 25% off of payroll services, 50% off tax preparation and free consulting.<sup>135</sup> Another initiative Farm Credit East serves as a partner for is FarmStart, a seed capital accelerator program in which beginning farmers who do not qualify for a conventional line of credit may apply for a \$50,000, five-year loan to get started. Applicants are required to provide a farm business plan and are assigned a Farm Credit advisor. Not unlike Iowa's loan programs, FarmStart and YBSFP offer an ancillary support system for those who would likely also meet eligibility requirements for beginning farmer programs in Connecticut. YBSFP would be an ideal choice for beginning farmers participating in a state loan program like Delaware's. FarmStart could also work well for those who are looking to purchase land, while additionally serving the population of farmers leasing

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<sup>134</sup> FSA guarantees mitigate risk for lending institutions by offering 90 cents on the dollar for losses due in the case of default without sufficient collateral to cover payback. This stabilizes the farmer's credit, reduces their interest rate by .5%, and absorbs weakness in the lender's portfolio, all while stretching limited federal dollars to support farmers.

<sup>135</sup> Phone Conversation with Keith Stechschulte, May 2015.

land through a tax credit program, in need of working capital to build infrastructure or operating capacity. Mr. Stechschulte believes Farm Credit East and the Connecticut Department of Agriculture could accelerate and secure each other's pre-existing initiatives and investments through new, state-level beginning farmer programs, while providing a comprehensive pipeline, so to speak, for beginning farmers to find success in a diversity of agricultural endeavors.

### B. Barriers and Opportunities for Connecticut

In beginning to assess the possibility of state-level incentive programs for beginning farmers in Connecticut, modeled off of those in Delaware, Nebraska and Iowa, we might ruminates a moment on the otherwise obvious differences across these four states:

<i>State</i>	<b>Delaware</b>	<b>Nebraska</b>	<b>Iowa</b>	<b>Connecticut</b>
<i>No. of Farms</i>	2,451	49,969	88,637	5,977
<i>Farmland Acres &amp; (% of State)</i>	508,652 (40.8)	45,331,783 (92.2)	30,622,731 (85.7)	436,539 (14.1)
<i>Acres in Conservation</i>	7,808	854,538	1,306,040	465
<i>Avg. Farm Acreage</i>	208	907	345	73
<i>% Principal Occupation Farmers</i>	63.9	59.7	54.1	46.3
<i>% Full-Owner Farms</i>	68.0	49.8	55.9	76.8
<i>% Tenant Farms</i>	8.0	12.5	10.3	6.8
<i>Avg. Farmer Age</i>	58.4	55.7	57.1	58.7
<i>Net Farm Income (2013)</i>	\$539,742,000	\$8,365,727,000	\$9,952,423,000	\$106,865,000
<i>Top Ag. Commodities (in order of % total)</i>	Broilers, Corn, Soybeans	Cattle, Corn, Soybeans	Corn, Hogs, Soybeans	Greenhouse/ Nursery, Dairy
<i>Net Rent Received by Non-Operator Landlords</i>	\$18,026,000	\$1,471,495,000	\$3,003,739,000	<b>\$-5,319,000</b>
<i>Avg. Farm Real Estate Value per Acre (2014)<sup>136</sup></i>	\$8,180	\$3,120	\$8,500	<b>\$11,200</b>

Source: USDA Economic Research Service (2012)

<sup>136</sup> Available at: [http://www.nass.usda.gov/Publications/Todays\\_Reports/reports/land0814.pdf](http://www.nass.usda.gov/Publications/Todays_Reports/reports/land0814.pdf)

Two values in the lower right corner, particularly when juxtaposed against those of Iowa and Nebraska, paint a stark delineation between states. If we look closer at Connecticut data, we see that total farm income from renting land and structures is less than \$1.5 Million, which suggests that the above figure results from the personal subsidization of access to land, for farmers and by Non-Operator Landlords.<sup>137</sup> As hopefully this report has demonstrated, there are fundamental distinctions between these states, agriculturally, politically, and otherwise, but there is also real potential in applying adaptations of these model programs to Connecticut.

One striking aspect of researching the different contexts of Delaware, Iowa and Nebraska, is despite the numerical distinctions made in the chart above, how similar much of the concern and rhetoric around farming was to that of Connecticut. Farmers across the country are aging at an equally worrisome pace, and whether due to development pressures, ever-increasing economies of scale, industry verticalization or land banking by a handful of families over generations, the barriers to entry for young and beginning farmers everywhere have only been increasing. Although the scale and the structural drivers of each state vary, the problems are surprisingly similar: despite successful efforts to preserve farmland, beginning farmers lack access to the land and tenure upon it. Even where there is a large supply of educated and energetic new farmers, and an increasing demand for their innovation and participation in local agricultural economies, the market left to its own devices has not delivered a solution. As with the preservation of farmland and preferential taxation for working lands that spread across the country half a century ago, it is once again time for state intervention and investment in the future of American agriculture. Unlike the preservation of working lands and open space, or even the development of community resources and infrastructure such as the Interstate system, community mills or slaughterhouses, the investment of the loan and tax incentive programs do not simply add value or lubricate the bearings of commerce, these programs have multiplying effects upon regional agricultural economies.

In Connecticut there is an increasing need for a patchwork of smaller farms, for a diverse portfolio of available agricultural parcels. The median farm size in the state decreased from 27 acres in 2007 to 22 acres in 2012.<sup>138</sup> This notably contrasts with the mean average above of 73 acres, which also decreased from 83 acres in 2007.<sup>139</sup> During this period, farms classified under 50 acres saw by far the highest percent increase.<sup>140</sup> It would seem reasonable to conclude that smaller parcels of farmland in Connecticut are noticeably in demand. Moreover, preserving a broader stock of working lands to meet the broadening needs of beginning farmers will enable Connecticut to preserve its open spaces and view-shed while also incubating smaller-scale farmers on smaller-scale parcels. To preserve an historic 200-acre farm is fantastic for

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<sup>137</sup> Trends in Connecticut Presentation, 2012 Census of Agriculture, USDA, NASS

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

Connecticut residents on the whole, but does no more for the beginning farmer than it does for the leaf-peeping urbanite. The Community Farms Preservation Program has begun to address this need, as have certain municipalities, land trusts and individual farmers, but further state sanctioning through beginning farmer tax credits and loan programs would multiply the public investment and bolster the collective effort.

The current suite of farmland preservation mechanisms and CT Farmlink are demanding endeavors for the Department of Agriculture, and beginning farmer programs would require additional financial and staff resources, but could serve as a catalyst to improve effectiveness across all programs. The information needed for a beginning farmer program would aid in successful Farmlink matches, and more landowners would likely look into CT Farmlink if they knew a tax credit was in store for them. Myopic or otherwise stubborn municipalities might be encouraged to conduct better land use planning and proactively facilitate preservation if they knew beginning farmers might join and contribute to their community without detracting from local property taxes. State objectives for environmental conservation might be accelerated via beginning farmers applying for NRCS grants and stewarding their property, or in encouraging their landlords to conduct a management plan and qualify for additional state conservation programs. Each of the existing efforts can be constructively linked by way of new beginning farmer programs.

Among many potential barriers to passage of these programs, one likely hurdle is the suggestion that putting open space into perpetual farmland preservation not only ties the hands of future generations in terms of land use, but in the meantime raises surrounding property values and prompts the remaining developable land to become prohibitively expensive and less accessible. In response to this claim, Kip Kolesinskas of UConn Extension has suggested that in fact Connecticut has plenty of developable land, and that poor land-use planning, lack of smart growth initiatives and low density development are barriers of such magnitude to affordable housing and accessible property values, that either encouraging or denying farmland preservation would have little effect on this far larger problem. If anything, Mr. Kolesinskas believes, increased state purchasing of development rights on smaller parcels would affect only those on the opposite end of the wealth spectrum, as it could result in less opportunity for low-density development and limit the land available for building weekend estates.

As has been mentioned elsewhere in this report, another hurdle will lie in the state deficit Connecticut has only grown over recent years. The state legislature is particularly unlikely to react well to the suggestion of a tax credit. House Representative James Albis, of the 99th Assembly district, believes however that both of these beginning farmer program propositions address key concerns in the state, and could see passage if introduced and supported strategically. According to Rep. Albis, one concern high on the minds of state legislators today is a dwindling population of young workers, an increasing number of retirees, and the long-term economic trouble spelled out in these conjoined trends. A recent report by the advocacy organization Connecticut Voices found that the state as a whole is aging, while unemployment

among young workers grows, as do racial and ethnic wage gaps. The report predicts that these trends will result in a gradual movement of Connecticut's future workforce to other states in the Northeast as they seek better employment options. It is fair to predict that the same trend might present itself in the state's agricultural sector, but so far this does not appear to be the case. While the average age of farmers in Connecticut has increased in recent years from 57.6 to 58.7, this is more or less reflective of trends across the country, and Connecticut's average is only about one year higher than neighboring states.<sup>141</sup> In looking more closely at the demographics it is clear that although older farmers dominate the industry in their number, younger farmers make up by far the fastest growing segment of the farming population. Farmers under 25 in 2012 represented 229% of their ranks in 2007, and those between 25 and 34 represented 140% of 2007 numbers.<sup>142</sup>

One of the conclusions of the Connecticut Voices report was to urge the Governor and state legislators to invest in initiatives that provide incentives for young, low-income, and minority workers.<sup>143</sup> According to Rep. Albis, one key to successful passage and implementation of beginning farmer programs might be leaning on this concern about changing demographics and their effects on the state's economic outlook. It could be easily suggested that the state has an opportunity to address such concerns through beginning farmer loan and tax credit programs, inducing a more resilient future workforce through smaller-scale agriculture, younger farmers, and increased opportunities for low-income and minority workers.

When it comes to introducing a beginning farmer loan program, Rep. Albis agrees that arguing for the multiplicative effect of the program on current state programs could be effective. Other persuasive aspects Rep. Albis brought out include the case that this program might be operated entirely off of seed funding appropriated through bonding or the Community Investment Act; that it would involve a revolving fund; that it would make purchasing development right more affordable for the state; and if need be, that it could lay dormant for a year or so at a time, as in Delaware. Rep. Albis is on the Finance, Revenue and Bonding Committee, and is also the newly appointed Chair of the Environment Committee,<sup>144</sup> and as such might be the ideal legislator to introduce bills authorizing these programs. Moreover, the Majority Leader recently asked Rep. Albis to put together a suite of programs for introduction next year as the new Environment Committee Chair, and encouraged Rep. Albis to include agricultural initiatives. After hearing about the model programs in Delaware, Iowa and Nebraska and their potential for success in application to Connecticut, Rep. Albis believes similar programs might be suitable contributions to his package of agricultural initiatives for the next legislative session.

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<sup>141</sup> Trends in Connecticut Presentation, 2012 Census of Agriculture, USDA, NASS

<sup>142</sup> *Id.*

<sup>143</sup> <http://www.ctvoices.org/sites/default/files/econ13sowetfull.pdf>

<sup>144</sup> The Environment Committee in the Connecticut General Assembly includes oversight of all matters concerning the Department of Agriculture and farming in the state.

Another key strategy in moving forward the introduction and passage of legislation authorizing beginning farmer programs in Connecticut is garnering the input and support of the Governor and Department of Agriculture officials. During U.S. Secretary of Agriculture Tom Vilsack's visit to Yale this spring, Connecticut Agriculture Commissioner Steven Reviczky was receptive to the Secretary's comments on improving access to land for beginning farmers and the potential role state-level policy can play.<sup>145</sup> The Governor's Council on Agricultural Development, authorized in 1991 but resurrected and restructured by Governor Malloy in 2011, is presently charged with developing a holistic, strategic plan for agriculture's future in Connecticut. So far, in an initial report and two lengthy annual updates there have been few mentions of farmland access issues and fewer recommendations.<sup>146</sup> The few exceptions include a proposal to have designated liaisons in all state agencies that work on agricultural issues, and to make more state-owned farmland available for lease.<sup>147</sup> The absence of discussion around accessibility is perhaps due to the fact that during initial stakeholder input interviews and surveys, "land availability" and "access to credit/financing" were not scored as highly in an evaluation of the top *opportunities* in Connecticut.<sup>148</sup> However, "land availability" did rank third, under "input costs" and "regulations" as a top *obstacle* to farmers in the state. With the help of Connecticut Farm Bureau Executive Director, Henry Talmadge, who also serves as Vice Chair on the Council, these issues might have a chance at inclusion in the Council's future work.

Despite broad, countrywide trends in agriculture, farming as it is practiced varies dramatically across the U.S. and structural problems usually require regionally-calibrated solutions. In a recent phone conversation with Lilia McFarland, USDA's New and Beginning Farmer and Rancher Program Coordinator, she spoke to the essential role for individual state governments to lead initiatives on land access for beginning farmers, and to develop models and best practices for their region. Delaware, Iowa and Nebraska have designed effective beginning farmer programming, tailored to their political and agricultural landscapes. These models have yet to be adapted for the dynamic context of farmland in New England, and Connecticut arguably has the most to gain from such programs in the region. In pooling the spectrum of resources already available and introducing a suite of beginning farmer initiatives, Connecticut is in a position to increase opportunities and facilitate entrepreneurship in the state, to patch a gap in the pipeline for new farmers. Above are some of the anticipated barriers, considerations, and strategic opportunities for Connecticut to move ahead in doing so.

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<sup>145</sup> In response to a question I asked in a small group setting, Secretary Vilsack responded that he was convening a new subcommittee to look at the issue of land access for beginning farmers and best practices being implemented at the State level. Commissioner Reviczky chimed in to remark that Connecticut was also looking into this matter.

<sup>146</sup> All three documents accessed here: <http://www.ct.gov/doag/cwp/view.asp?a=3595&Q=536934&PM=1>

<sup>147</sup> Council on Agricultural Development, December 2013 Update, available here: [http://www.ct.gov/doag/lib/doag/boards\\_commissions\\_councils/gcf/gcad\\_web\\_report.pdf](http://www.ct.gov/doag/lib/doag/boards_commissions_councils/gcf/gcad_web_report.pdf)

<sup>148</sup> These opportunities tied for fifth place, under market demand, consumer knowledge, geography and market supply, respectively. See presentation on results here: [http://www.ct.gov/doag/lib/doag/boards\\_commissions\\_councils/governors\\_council/gcad\\_and\\_gcf\\_as\\_of\\_march\\_2013.pdf](http://www.ct.gov/doag/lib/doag/boards_commissions_councils/governors_council/gcad_and_gcf_as_of_march_2013.pdf)

***Appendix A:***

Delaware Applicant Packet

***Appendix B:***

Delaware Current Situation Report

***Appendix C:***

Nebraska Statutes

***Appendix D:***

Nebraska Program Report

***Appendix E:***

Iowa Applicant Packet

***Appendix F:***

IADD Program Report



**DELAWARE AGRICULTURAL LANDS**  
*Preservation Foundation*

2320 South duPont Highway  
Dover, Delaware 19901

Tel: 302-698-4530  
Toll Free: 800-282-8685 (DE only)  
Fax: 302-677-7093

Dear Potential Young Farmer:

The Delaware Department of Agriculture and the Delaware Agricultural Lands Preservation Foundation are pleased that you have an interest in the Young Farmers' Loan Program. As you previously requested, enclosed is information concerning this Program. Included in this packet are:

1. Copy of Senate Bill No. 117, which establishes the Young Farmers program.
2. Copy of the Young Farmers Farmland Purchase and Preservation Loan Program Procedures and Guidelines.
3. Prequalification Application (Form A).
4. Loan Application (Form B).
5. Sample Young Farmers Agricultural Lands Preservation Easement (Form C).

Also enclosed is a one-page summary of programs that are available from the USDA Farm Services Agency (FSA) and Rural Development Program that may offer additional funding for young farmers. We encourage you to contact these agencies to learn more about their programs.

Please note that you may submit a Prequalification Application (Form A) at any time; however, you only submit the Loan Application (Form B) once you have a property ready for acquisition (with a fully executed Agreement of Sale or Option Agreement) and an eligibility/commitment letter from your lender if you will use a loan to finance the remainder of the purchase. **Additionally, the Foundation Board will establish times when they will accept Loan Applications based on available funding. The Foundation is currently not accepting loan applications; however, we anticipate having our next round of loan applications later this year. We will notify all prequalified applicants when the loan application dates are established.**

The Agricultural Lands Preservation Easement (Form C) provided is a sample of the easement agreement that you would sign upon receipt of the loan from this program. This is a sample only you do not need to complete it at this time.

If you have any questions concerning the above, please do not hesitate to contact our office, we are here to answer your questions.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Austin Short".

E. Austin Short  
Deputy Secretary of Agriculture

EAS:cmm  
Enclosures

# FARMLAND PURCHASE AND PRESERVATION LOAN PROGRAM PROCEDURES AND GUIDELINES

The following Procedures and Guidelines are designed for use in connection with the administration of the Farmland Purchase and Preservation Loan Program (herein the "Program").

To the extent that any of the following Procedures and Guidelines are inconsistent with the statutory provisions of the Program (3 Del. Code Sections 942 through and including 948), the statute shall control.

1. **Eligibility Criteria.** In order to receive loan monies from the Foundation under the Program, the successful applicant must meet all of the following eligibility criteria:
  - a. Applicant must be at least 18 years of age and no older than 40 years of age at the time the Loan Application is submitted to the Foundation.
  - b. Applicant must be a resident of the State of Delaware and have at least three (3) years of farming experience.
  - c. Applicant must have a net worth of *no more* than \$300,000.
  - d. The farmland to be purchased must be located in Delaware and contain at least 15 tillable acres, and the Applicant must not own (or have an ownership interest in) more than twice the tillable acres subject to purchase with Program funds.
  - e. The farmland being purchased may be comprised of tillable acres, forestlands, or wetlands, provided the tillable acres comprise at least 15 acres, but must be zoned for agricultural usage.
  - f. The farmland being purchased must not be subject to an existing Preservation Easement, conservation easement, or similar limitation which restricts residential or commercial development.
  - g. Applicant must commit that he/she will remain actively engaged in agricultural usage of the farmland during the term of the Program loan.
  - h. At the time a Loan Application is submitted, the Applicant must have a fully executed Agreement of Sale or Option to Purchase the eligible property. It is not necessary to have an Agreement of Sale or Option to Purchase in order for an Applicant to submit a Prequalification Application.
  
2. **Prequalification.** Any individual may seek a predetermination from the Foundation Staff that he/she meets the eligibility requirements of the Program by submitting a signed Prequalification Application in the form attached hereto as **FORM A**. Upon receipt of a properly executed **FORM A**, the Foundation Staff shall review the information set forth therein, and promptly advise the Applicant, in writing, whether or not the Applicant satisfies the minimum eligibility requirements of the Program. Any such determination shall be based solely upon the accuracy of the information contained in **FORM A**, and shall not constitute a guarantee that the Applicant will be awarded any loan under the Program.
  
3. **Loan Application Process and Timeline.** Any individual seeking a loan under the Program must first submit a signed Loan Application in the form attached hereto as **FORM B**. The Loan Application must be accompanied by a fully executed Agreement of Sale or Option to Purchase the eligible property. Loan Applications shall be reviewed and processed as follows:

- a. Loan Applications received before December 31, 2011 shall be processed during the period January 1, 2012 through March 31, 2012, with the goal of issuing approval letters in the form of a loan commitment issued by the Foundation on or before March 31, 2012.
  - b. For Loan Applications submitted after December 31, 2011, the Loan Application shall be processed during the calendar quarter *following* the date of receipt of the Loan Application by the Foundation, and the Foundation shall endeavor to issue loan commitments to successful applicants before the expiration of the calendar quarter following the date of receipt of the Loan Application.
  - c. Any approvals shall be subject to the availability of funding.
  - d. The Foundation shall schedule settlements on approved loans simultaneously with the purchase of the designated farmland and coinciding with the closing on any private loans utilized by the successful applicant for the purchase of the farmland. Settlements shall occur within six (6) months of approval of the Foundation loan, unless extended by the Foundation.
4. **Appraisal Process.** Upon receipt of a properly executed Loan Application, the Foundation's Staff shall review the Loan Application to determine if the Loan Application is complete and the Applicant meets the eligibility requirements of the Program. For each properly completed Loan Application by applicants meeting the eligibility requirements of the Program, the Foundation shall obtain, at its expense, an appraisal of the eligible farmland property for purposes of determining the fair market value of the proposed Preservation Easement. The appraisal methodology shall be consistent with the methodology used by the Foundation in the purchase of preservation easements pursuant to 3 Del. Code Section 913. For each Loan Application, the Staff shall determine the loan to value ratio for the amount of the loan requested, by dividing the amount of the loan by the appraised value of the Preservation Easement.
5. **Selection Process.** The approval of any loan under the Program is subject to the discretion of the Foundation. If more than one Loan Application is under review, the Board shall endeavor to give priority to the Loan Application that has the lowest loan to value ratio. If there are competing applications with equal Loan to Value ratios and all of the competing applications cannot be funded, the Foundation shall use the highest LESA score for the Preservation Easement area as the basis for making the selection. The Foundation's selection for applications under review for each quarter shall be made at the regularly scheduled Board meeting of the Foundation held during the last month of the calendar quarter following the date of receipt of the Loan Application. The Foundation is under no obligation to provide a loan to any applicant. Any loan application approved by the Foundation is nevertheless subject to veto by the Delaware Secretary of Agriculture pursuant to 3 Del. Code Section 949. If the Secretary fails to exercise his or her veto power at the meeting at which the loan is approved, the Secretary's veto power shall be deemed waived.
6. **Loan Terms and Conditions.** Any Loan approved by the Foundation must comply with the following conditions:
- a. The maximum amount of loans provided to any individual recipient (including any prior loans approved and consummated under the Program) shall not exceed \$500,000. Loan proceeds may only be used for the purchase of qualified farmland and farmland improvements, and shall not be used, or secured by a lien on, the purchase of residential dwellings.
  - b. At the loan closing, the successful applicant shall execute a Preservation Easement in the form attached hereto as **FORM C**.
  - c. The Loan amount shall not exceed seventy (70%) of the appraised value of the Preservation Easement to be placed on the farmland to be purchased.
  - d. The Preservation Easement shall not be subordinated to any liens or encumbrances.
  - e. The successful Applicant shall execute a Promissory Note (the "Note") which shall be secured by a Mortgage on the purchased farmland. The Note and Mortgage shall:
    - (i) Be subordinated to any other loans provided to the successful Applicant by a third party for use in the purchase of the farmland;
    - (ii) Not be subordinated to the Preservation Easement;

- (iii) Be without interest with a payback period not to exceed thirty (30) years, with the first payment due within thirty (30) days after any other Mortgage on the farmland has been paid and satisfied.
  - (iv) Provide that upon the sale or transfer of the farmland, the entire amount due under the Note and Mortgage shall be paid in full, unless the Foundation, in its sole discretion, consents to the assumption of the Note and Mortgage by a purchaser of the farmland who satisfies the loan eligibility requirements of the Program in effect at the time of the transfer.
- f. The farmland to be purchased, including any residential area, shall be surveyed at the expense of the Foundation. The survey shall identify the farmland and the residential areas located within the property to be purchased, and shall be used to determine the value of the Preservation Easement.
- g. The Applicant shall be responsible for payment of all closing costs associated with any commercial or private financing required to complete the purchase.
- h. At the time of submission of a Loan Application, the Applicant shall identify the source of any commercial or private financing needed to complete the purchase, and provide the Foundation with documentation from such source confirming that the Applicant is eligible to seek such financing.
- i. The Applicant must take title to the farmland in Applicant's individual name.

**Potential USDA Programs for Young Farmers  
September 2011**

**(PLEASE NOTE: These are federal programs and are not related to Delaware's Young Farmers Program – please contact these agencies for more information)**

**Farm Service Agency Loan Programs for Beginning Farmers & Ranchers**

The Farm Service Agency (FSA) provides direct and guaranteed loans to beginning farmers and ranchers who are unable to obtain financing from commercial credit sources. Each fiscal year, the Agency targets a portion of its direct and guaranteed farm ownership (FO) and operating loan (OL) funds to beginning farmers and ranchers.

A beginning farmer or rancher is an individual or entity who (1) has not operated a farm or ranch for more than 10 years; (2) meets the loan eligibility requirements of the program to which he/she is applying; (3) substantially participates in the operation; and, (4) for FO loan purposes, does not own a farm greater than 30 percent of the median size farm in the county. (Note: all applicants for direct FO loans must have participated in business operation of a farm for at least 3 years.) If the applicant is an entity, all members must be related by blood or marriage, and all stockholders in a corporation must be eligible beginning farmers.

Beginning farmers may choose to participate in a joint financing arrangement. With this arrangement, FSA lends up to 50 percent of the amount financed, and another lender provides 50 percent or more. The interest rates can be obtained from your local FSA office and the term of the loan will not exceed 40 years or the useful life of the security

**Where to Apply**

Applications for FSA direct loan assistance in Delaware may be submitted to the FSA Farm Loan team based in the USDA Service Center at 21315 Berlin Rd, Georgetown, De. For guaranteed loans, applicants must apply to a commercial lender who participates in the Guaranteed Loan Program. Contact the FSA office for a list of participating lenders.

**For More Information**

In Delaware for further information, or to make an appointment to learn more about FSA Farm Loan Programs call 302-856-3990 extension 2. Additional information is also available on the FSA website at: [www.fsa.usda.gov](http://www.fsa.usda.gov).

**USDA Rural Development - Rural Housing Service**

**Section 502 Single Family Housing Direct Loan Program**

The Rural Housing Service (RHS) Direct Homeownership Loan program is available to lower income individuals and families who wish to live in rural areas or rural cities or towns. You must be unable to obtain a homeownership loan from a bank or other conventional sources. Under the program, individuals or families with incomes below 80 percent of the median income level of the community in which they intend to live may receive a loan directly from Rural Development. Loans may be made for the purchase of an existing home or to build a new home. Payments are based on income and no down payment is required. The standard term for a loan is 33 years for most borrowers. The interest rate is set by Rural Development, and is based on your current income.

**Single Family Housing Guaranteed Loan Program**

The Guaranteed Housing Loan Program is available to low and moderate income individuals and families to assist them to become eligible homeowners in rural areas or rural cities or towns with the help of a USDA guaranteed home loan. Loans may be made for the purchase of an existing or new construction home or new manufactured home. Loans may be guaranteed up to 100 percent of the appraised value; the one-time guarantee fee may be included; and no down payment is required. The applicant must be able to show they have the ability to repay the guaranteed home loan based on qualifying ratios. The standard term for a loan is 30 years fixed. The interest rate is agreed upon by the lender and applicant.

For further information on the Section 502 Single Family Housing Direct Loan Program or Single Family Housing Guaranteed Loan Program, please contact the USDA Rural Development office servicing the area where the home is or will be located.

Kent County:

Rural Development – Area Office  
1221 College Park Drive  
Suite 200  
Dover, DE 19904  
(302) 857-3595 (voice)  
(302) 678-2863 (fax)

Sussex County:

Rural Development – Georgetown Local Office  
Agricultural Service Center  
21315 Berlin Road, Unit 2  
Georgetown, DE 19947-3990  
(302) 856-3990, ext 4 (voice)  
(302) 856-4381 (fax)

(302) 857-3585 (TTY) for both Counties

**Delaware Agricultural Lands Preservation Foundation** **FORM A**  
**Young Farmer Loan Program**  
**Prequalification Application**

**Purpose of FORM A:** Any person interested in purchasing farmland in Delaware and who wishes to apply for a loan under the Delaware Farmland Purchase and Preservation Loan Program (“Program”) may complete the Application below in order to obtain, in advance of any future offer to purchase farmland, a determination by the Delaware Agricultural Lands Preservation Foundation (“Foundation”) that he or she satisfies all of the eligibility requirements of the Program. In order to apply for this determination, you do not have to have an existing agreement in place to purchase a specific parcel of farmland, nor designate any farmland. *A determination by the Foundation that you meet all of the eligibility requirements under the Program does not constitute the approval of any loan or other benefit, nor guarantee the award or approval of any loan or benefit in the future.*

**I. Applicant Information**

Name (First, MI, Last) \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_ County \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

Date of Birth \_\_\_\_\_ (At the time of any Loan Application, you must be at least 18 and no older than 40)

Does your current net worth (assets minus liabilities) exceed \$300,000? Yes \_\_\_\_\_ No \_\_\_\_\_ (This amount may not exceed \$300,000)

Do you have at least three (3) years of farming or agriculturally related activity experience?  
 Yes \_\_\_\_\_ No \_\_\_\_\_

Please describe any relevant education (i.e. identify degree program, college or university and year of graduation) or other formal agricultural-related training that provided certification.

- High School
- Some college, no degree
- College degree, identify degree program
- Advanced degree, identify degree program
- Certifications, name each
- Other (describe)

How many years experience do you have farming? Total years of agricultural experience \_\_\_\_\_ (State number of years). Describe below:

Operation or business	Position	Description of experience	Dates of experience (from / to)	


Do you presently own or have an ownership or other beneficial interest in any tillable acres of farmland?

Yes \_\_\_\_\_ No \_\_\_\_\_

If so, please list the tax parcel identification numbers for each parcel: \_\_\_\_\_,

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

How many acres of tillable farmland do you own? \_\_\_\_\_ acres (Please note that prior to the receipt of any loan monies under the Program, you may not own or have an ownership interest in more than twice the tillable acres of farmland that you intend to purchase with loan monies).

If awarded a loan, are you willing to remain actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan? Yes \_\_\_\_\_ No \_\_\_\_\_

If awarded a loan, are you willing to grant the Foundation a permanent Preservation Easement limiting the activity on the farmland to agricultural and related uses? Yes \_\_\_\_\_ No \_\_\_\_\_

If awarded a loan, are you willing to agree to and comply with the Guidelines attached hereto as Exhibit 1? Yes \_\_\_\_\_ No \_\_\_\_\_

**II. Certifications *IMPORTANT – PLEASE READ CAREFULLY BEFORE SIGNING***

By signing below, the undersigned certifies that all information provided in connection with this Prequalification Application is true and correct to the best of Applicant's knowledge. Applicant acknowledges that a determination by the Foundation that the Applicant currently meets all of the eligibility requirements of the Program (a) is based solely on the accuracy of the information provided above, (b) is subject to change should *any* of the above information change, and (c) does not constitute an award of any loan benefit nor a guarantee of any such award in the future.

**SIGNATURE**

X \_\_\_\_\_

**Date:** \_\_\_\_\_

Delaware Agricultural Lands Preservation Foundation

FORM B

*Young Farmer Loan Program  
Loan Application*

I. APPLICANT INFORMATION			
Name (First, MI, Last)			
Mailing Address			
City	State	Zip	County
Telephone	Email		
Date of Birth			
Have you been involved in farming or an agriculturally related activity for at least three (3) years? (Check one) <input type="checkbox"/> Yes <input type="checkbox"/> No			
What is your current net worth (assets minus liabilities)? (check one) <input type="checkbox"/> \$0-\$300,000 <input type="checkbox"/> Over \$300,000 (check one) <input type="checkbox"/> Schedule F for Farm Income is attached. <input type="checkbox"/> Did not file a Schedule F Please state your Adjusted Gross Income (AGI) from Line 37 of the 1040 Form from most recent U.S. tax return: Amount: \$ _____ Tax Return Year: _____ State your principal occupation _____			
II. EDUCATION OR EXPERIENCE			

Please describe any relevant education (i.e. identify degree program, college or university and year of graduation) or other formal agricultural-related training that provided certification.

- High School
- Some college, no degree
- College degree, identify degree program
- Advanced degree, identify degree program
- Certifications, name each
- Other (describe)

How many years experience do you have farming? Total years of agricultural experience \_\_\_\_\_ (State number of years). Describe below:

Operation or business	Position	Description of experience	Dates of experience (from / to)	

### III. PROPOSED FARMLAND TO BE PURCHASED

**Please identify the farmland that you intend to purchase by responding to the following questions:**

1. Tax Parcel Number: \_\_\_\_\_
2. Number of tillable acres: \_\_\_\_\_ (Must be at least 15 acres)
3. Attach a fully executed copy of the Agreement of Sale relating to the farm land you intend to acquire.
4. Is the farmland you intend to purchase zoned for agricultural usage?  Yes  No
5. Is the farmland you intend to purchase subject to any existing agricultural lands preservation easement, conservation easement, or similar limitation which restricts residential or commercial development?  
 Yes  No
6. Do you currently own or have an ownership interest in any other farmland?  Yes  No
7. If your answer to number 6 above is Yes, state the total number of tillable acres of farmland that you currently own or have an ownership interest in. \_\_\_\_\_

Proposed use of farmland to be acquired

- Crop operation
- Livestock operation
- Crop and livestock
- Aquaculture
- Horticulture
- Forestry
- Other (describe) \_\_\_\_\_

Have you been the recipient of a prior loan administered under the Young Farmers Farmland Purchase and Preservation Loan Program?

Yes  No

If Yes, please provide the specifics regarding the amount of the loan(s), dates, and farmland purchased.

Do you intend to take title to the farmland in your individual name? \_\_\_\_\_

#### IV. SOURCE OF FUNDS

Please indicate the source of funding for your proposed purchase of the farmland.

- Loan (**Required:** furnish a letter from the lender confirming funds will be available).  
 Personal Savings  
 Gift  
 Inheritance  
 Other (describe) \_\_\_\_\_

#### V. CERTIFICATIONS IMPORTANT – PLEASE READ CAREFULLY BEFORE SIGNING

By signing below, Applicant:

- (1) Certifies all information provided in connection with this application is true and correct to the best of Applicant's knowledge;
- (2) Acknowledges that any misrepresentation or false statement made by Applicant, or an authorized agent of Applicant, in connection with this application, whether intentional or not, will constitute grounds for denial of this application;
- (3) Acknowledges that acceptance of funds in connection with this application acts as an acceptance of the authority of the Delaware Agricultural Land Preservation Foundation (the "Foundation") or any successor agency to conduct an investigation in connection with those funds, and Applicant further agrees to cooperate fully with the Foundation or its successor in the conduct of such audit or investigation, including providing all requested records, cooperating with and providing interviews, and allowing the Foundation to inspect Applicant's premises;
- (4) Acknowledges that this application and any funds awarded to Applicant as a result of this application may be reduced or denied for any reason or because Applicant fails to satisfy any of the requirements for such funding under the Delaware Farmland Purchase and Preservation Loan Program;
- (5) Acknowledges that Applicant will be required to execute an Agricultural Lands Preservation Easement in favor of the Foundation at the time of the purchase of the farmland, that no dwellings shall be allowed on any part of the farmland subject to the Easement, that any mortgage on said farmlands must be subordinate to the Easement, and that failure to timely execute the Easement will result in denial of the application and withdrawal of any loan funds awarded;
- (6) Certifies that no state or federal tax liens have been filed against Applicant or Applicant's property;
- (7) Certifies that Applicant understands that the approval of loans hereunder is purely discretionary and that the Foundation is under no obligation to provide a loan to any applicant.
- (8) Acknowledges that Applicant will be required to be actively engaged in the agricultural usage of the purchased farmland during the term of any loan approved hereunder.
- (9) Acknowledges receipt of a copy of 3 Delaware Code Section 943 through and including Section 948, and that any loan approved hereunder shall be subject to the terms and conditions set forth therein.

**Notice of Penalties:** The penalty for knowingly making false statements or false entries, or attempts to secure money through fraudulent means, may include fines and/or incarceration and/or forfeiture of funds under applicable state law.

#### SIGNATURE

X \_\_\_\_\_

Date: \_\_\_\_\_

*\*Please see the Attachment Checklist on the following page, and attach to this Application the documents listed on the Checklist.*

**ATTACHMENT CHECKLIST**

In order to be eligible for funding, the following items ***must*** be included with the signed application, please check if attached:

- Copy of Applicant's Delaware Driver's License or other form of identification (U.S. Passport, State of Delaware I.D., or birth certificate)
- The fully executed Agreement of Sale or Option Agreement relied upon in connection with your proposed purchase
- IRS form Schedule F to verify income from most recent tax return
- Lender eligibility or commitment letter if a loan from a third party is used to fund your proposed project
  
- Copy of Farm Plan setting forth how the proposed financing for the purchase of the farmland, including the Young Farmers Program loan, will be paid. While no specific format is required, the Farm Plan should show the projected income and expenses for the operation of the farmland and anticipated cash flow from farming operations.

**Return application and supporting documentation to Delaware Department of Agriculture. All eligible applications must be received by the Delaware Department of Agriculture no later than 4:30 p.m. EST.**

**Physical address:** Delaware Department of Agriculture  
Delaware Agricultural Lands Preservation Foundation  
Young Farmer Loan Program  
2320 South DuPont Highway  
Dover, DE 19901

# FORM C

**Tax Map No(s):**

**Prepared By:** Delaware Agricultural Lands  
Preservation Foundation  
2320 S. DuPont Highway  
Dover, DE 19901

**Return To:** Parkowski, Guerke & Swayze, P.A.  
116 W. Water Street  
Dover, DE 19904

## AGRICULTURAL LANDS PRESERVATION EASEMENT GRANTED PURSUANT TO THE DELAWARE FARMLAND PURCHASE AND PRESERVATION LOAN PROGRAM

**THIS PRESERVATION EASEMENT**, made, granted, assigned and conveyed this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_, by @, whose address is @, and who are hereinafter referred to as "Grantor", and the **DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**, a body politic and corporate constituting a public instrumentality of the State of Delaware, and which is hereinafter referred to as "Grantee" and/or "Foundation."

**WHEREAS**, Grantor is fee simple title holder of certain lands situated in @, @County, Delaware, being of record in Deed Book @, Page @, at the Office of the Recorder of Deeds, in and for @ County, Delaware, hereinafter referred to as the "Parcel" and more particularly described in Exhibit "A" (annexed hereto); and as shown on a plot entitled "Delaware Agricultural Lands Preservation Foundation – Lands of @" (hereinafter the "Plot") as prepared by @, dated @ and recorded in the aforesaid Office of the Recorder of Deeds in Plot Book \_\_\_\_\_, Page \_\_\_\_\_.

**WHEREAS**, the General Assembly of the State of Delaware has declared that the preservation of the State's farmlands and forest lands is considered essential to maintaining agriculture as a viable industry and as an important contributor to Delaware's economy; and

**WHEREAS**, the General Assembly of the State of Delaware has recognized that a need exists to create sufficient economic incentives and benefits to encourage agricultural landowners to voluntarily place viable agricultural lands under protective restrictions through the creation of and participation in agricultural preservation districts and sale and/or donation of development rights;

**WHEREAS**, the Grantor desires to grant and convey to the Foundation an agricultural lands preservation easement as provided in Chapter 9, Title 3 of the Delaware Code Annotated.

**NOW, THEREFORE**, the Grantor, for and in consideration of the sum of @ (\$@), the receipt and sufficiency of which are hereby acknowledged, and in consideration of the benefits conferred under 3 Del.C. Ch. 9, hereby grants and conveys to the Foundation, its successors and assigns, an agricultural lands preservation easement on and over the Parcel, and covenants and promises that the Parcel will be owned, used and conveyed subject to, and not in violation of, the following restrictions:

1. No rezoning or major subdivision of the real property shall be allowed.
2. Except as otherwise provided for herein, activities conducted on the real property shall be limited to agricultural and related uses as defined in 3 Del. C. Sections 902 and 909(a)(5). "Agricultural and related uses" does not include, among other things, such activities as:
  - (a) excavation, filling, borrow pits, extraction, processing and removal of sand, gravel, loam, rock or other minerals, unless such activities are currently required by or ancillary to any preparation for, or operation of any activities involving aquaculture, farm ponds, cranberry operations, manure handling facilities, and other activities directly related to agricultural production on the Parcel;
  - (b) acts, actions and neglect which are detrimental to drainage, flood control, water conservation, erosion control or soil conservation;
  - (c) acts, actions and neglect that negatively affect the continued agricultural use of the land.
  - (d) uses that are not directly and functionally related to the farming activities conducted on the Parcel, except as otherwise provided for in 3 Del. C. Section 909(a)(5).
3. The allowability of a general use, conditional use, special use or other use under any zoning law or ordinance shall not have any effect on the restrictions imposed on the Parcel under this easement.
4. The Parcel consists of @ acres, all of which are usable for agricultural and related uses. ***This easement is granted pursuant to the provisions of the Delaware "Farmland Purchase and Preservation Loan Program". Accordingly, no dwelling houses or residential use shall be allowed at any time on the farmland located on the Parcel.*** No more than three (3) dwelling houses for residential use are permitted on the Parcel and must be located within the area shown on the Plot and as identified as the "Residential Area".
5. This easement shall be deemed a covenant which runs with and binds the Parcel permanently and in perpetuity as set forth in 3 Del.C. §909(c), the terms and conditions of which shall be subject to specific performance and other action allowed under 3 Del.C. §920. Pursuant to the Farmland Purchase and Preservation Loan Program, this easement shall ***not*** be subject to release under 3 Del.C. §917. This easement shall be binding upon the heirs, executors, administrators, successors and assigns of the Grantor. This easement may be managed, administered and enforced by the Grantee or the State of Delaware.
6. The provisions of Title 3, Chapter 9 of the Delaware Code Annotated and duly adopted regulations there under as such provisions relate to the Parcel shall govern this easement, except as otherwise provided for herein.
7. Notwithstanding anything stated herein to the contrary, the rights afforded Grantee under this Preservation Easement may only be assigned by Grantee to a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code and only with assurances that the purposes of this Preservation Easement, as described herein, will be maintained in perpetuity by such Assignee. If any such Assignee shall be dissolved or shall abandon this Preservation Easement or the rights and duties of enforcement herein set forth, the Preservation Easement and the rights of enforcement shall revert to the Grantee, and if the Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the State of Delaware, or its successors or assigns, shall appoint an appropriate successor as Grantee, and any such successor shall be a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code or the comparable provision in any subsequent revision of the Code. No assignment may be made by the Grantee of its rights under this Preservation Easement unless the

Grantee, as a condition of such Assignment, requires the Assignee to carry out the conservation purposes of this Preservation Easement, as described herein. Grantee agrees to hold this Preservation Easement exclusively for conservation purposes as defined in Section 170(h)(4)(A) of the Internal Revenue Code.

8. The Preservation Easement granted hereunder shall be perpetual.

**SIGNATURE LINES APPEAR ON FOLLOWING PAGES**

**IN WITNESS WHEREOF**, the said parties have hereunto set their hands and seal the day and year first above written.

SIGNED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

STATE OF DELAWARE    )  
                                  ) SS:  
COUNTY OF KENT        )

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, parties to this Indenture, known to me personally to be such, and they acknowledged this Indenture to be their act and deed.

GIVEN under my hand and seal of office the day and year aforesaid.

\_\_\_\_\_  
Notary Public Signature  
\_\_\_\_\_  
Notary Name – Typed or Printed  
My Commission Expires:\_\_\_\_\_

DELAWARE STATE SENATE  
146<sup>th</sup> GENERAL ASSEMBLY

SENATE BILL NO. 117

AN ACT TO FACILITATE THE ACQUISITION AND PRESERVATION OF AGRICULTURAL LANDS  
BY YOUNG FARMERS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 3 of the Delaware Code by providing a new Subchapter VI to read as follows:

“Subchapter VI. Farmland Purchase and Preservation Loan Program

§942. Purpose, policy and intent.

In furtherance of the declared policy of the State to conserve, protect and encourage use and improvement of agricultural lands and to encourage, promote and protect farming as a valued occupation it is important to provide a means of facilitating the acquisition of farmland by young farmers, while furthering the goal of permanently protecting the farmland which is acquired through the placement of permanent Preservation easements on the acquired farmland property. To accomplish this objective it is desirable to establish a farmland purchase and preservation loan program in accordance with the provisions of this subchapter.

§943. Loan Program.

There is hereby established a farmland purchase and preservation loan program to be administered by the Foundation.

§944. Loan Program Eligibility.

(a) In order to receive loan monies from the Foundation for the purchase and preservation of farmlands the following eligibility criteria shall apply:

1. The loan recipient shall be at least 18 years of age and no older than 40 years of age at the time a loan application is submitted to the Foundation.
2. The loan recipient at the time of loan application shall have at least three (3) years of farming or agriculturally related activity experience.

3. The loan recipient at the time of loan application shall have a net worth of no more than \$300,000.

4. The loan recipient shall be required to take title to the farmland in an individual name.

5. The farmland subject to purchase shall contain at least fifteen (15) tillable acres.

6. The loan recipient prior to the receipt of loan monies shall not own or have an ownership interest in more than twice the tillable acres of farmland than the amount of tillable acres subject to purchases with loan monies.

7. The farmland shall be located in the State of Delaware.

8. Loan applicants shall be residents of the State of Delaware.

9. The farmland subject to purchase may be comprised of a combination of tillable acres, forestlands or wetlands; provided however, that the farmland property is zoned for agricultural usage.

10. The farmlands being purchased shall not be subject to an existing Preservation easement, conservation easement or similar limitation which restricts residential or commercial development.

11. Loan applicants shall contractually commit that they will be actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan.

(b) The Foundation shall be entitled to adopt a loan application form requesting information from the loan applicant which includes, but is not limited to, information regarding loan eligibility.

#### §945. Loan Requirements and Approval.

(a) The following requirements and conditions shall apply to loans provided by the Foundation:

(1) The maximum total amount of loans provided to an individual recipient shall not exceed \$500,000.

(2) The maximum loan amount for any loan shall not exceed seventy percent (70%) of the appraised Preservation easement value of the farmland property which is being purchased and subject to perpetual Preservation easement.

(3) A condition of the loan is that the eligible farmland being acquired is to be subjected at closing to a permanent Preservation easement in the form determined by the Foundation, such easement to have priority status and not be subject to subordination.

(4) The loans provided by the Foundation shall be secured by Notes and Mortgages which allow for the following conditions:

a. Notes and Mortgages will be subordinated to other loans provided for the purchase, in whole or in part, of the eligible farmlands; provided however, that the perpetual Preservation easement placed on the eligible farmland property at the time of settlement shall not be subordinated.

b. The Notes and Mortgages shall bear no interest and the payback may be structured for final payback within thirty (30) years, with initial payments to begin after the primary commercial or other financing for the purchase of the farmland property is satisfied or released.

c. The Notes and Mortgages shall contain a requirement for payment in full of the balance of the loan upon the sale or transfer of the secured farmland property; provided however, the Foundation shall have the discretion to allow for assumption of the loan by the transferee under such terms and conditions deemed advisable, provided the transferee satisfies the loan eligibility requirements set forth in Section 945(a) above.

(5) Loans shall be limited to the purchase of farmland and farmland improvements only. Portions of the property subject to purchase which are used or proposed for use for residential purposes shall not be eligible for loans, provided further nonetheless, that those lands used or intended for use for residential purposes shall be subject to the limitations set forth in Section 904(a)(4) a. and b. of this Chapter.

(b) The approval of loans by the Foundation under this subchapter is purely a discretionary function and the Foundation shall be under no obligation to provide a loan to any applicant.

§946. Preservation Easements.

(a) The Preservation easements provided as a condition for receiving a loan under this subchapter shall include, but not be limited to, the following conditions:

- (1) The Preservation easement binds and runs with the farmland in perpetuity, and is not subject to the termination provisions of Section 917 of this Chapter.
- (2) No residential use is allowed on the farmland subject to the Preservation easement.
- (3) The farming and related uses as specified under Section 909(a)(5)a. through h. inclusive of this Chapter shall be allowed.
- (4) Except as expressly provided otherwise, the farmland subject to a Preservation easement under this subchapter shall have the same benefits, controls and restrictions as those Preservation easements otherwise acquired pursuant to the provisions of this Chapter, and provided further the Foundation shall be entitled to take enforcement action as provided in Section 920 of this Chapter.

(b) The Preservation easements acquired under this subchapter shall not be affected by the payment status of the loan.

§947. Preservation Loan Fund.

There is hereby established a preservation loan fund to be maintained, operated, supervised and administered by the Foundation, and used for making loan payments and related transaction costs and expenses for the loans provided under this subchapter. Monies for the preservation loan fund may be derived from specific appropriations provided by the General Assembly, federal grants, county and municipal grants and private funding. The fund shall be operated as a revolving fund, with monies paid to the Foundation as repayment of loans or condemnation related compensation deposited in the fund and used to make additional loans.

§948. Administration.

(a) In carrying out the responsibilities of administering the loan program the Foundation shall be entitled to:

- (1) Adopt an application and other forms for processing applications and closing loan transactions.
- (2) Establish a prequalification system for potential loan applicants.
- (3) Establish schedules and timelines for processing applications and making loan decisions.
- (4) Require the submission by applicants of a farm plan which includes a loan repayment plan.
- (5) Provide assurances to commercial or other lenders regarding willingness to subordinate Foundation loans to commercial or other loans needed to acquire farmland.
- (6) Structure and restructure the payment provisions of loans, provided however, that payments due the Foundation under any loan shall not be forgiven in whole or in part.
- (7) Have appraisals performed under an appraisal methodology approved by the Foundation to determine the fair market value and Preservation easement value of loan eligible farmland property.
- (8) Develop selection criteria for approving loans involving competing applicants, with emphasis on selecting on a priority basis the loan applicant or applicants who request a loan with the lowest percentage value of the appraised Preservation easement value of the eligible farmland.
- (9) subordinate Foundation loans to commercial financing provided to support farming operations conducted on the purchased farmlands.
- (10) Cooperate with commercial lenders and others providing financing for the purchase of eligible farmlands to facilitate the successful completion of purchase transactions.
- (11) Establish a system for annual reporting by loan recipients to assure that the loan recipients are actively engaged in agricultural usage of the acquired farmlands.

(b) The Foundation shall be entitled to advertise and promote the loan program, and create public awareness of the agricultural land preservation, open space and environmental benefits which the program provides.

(c) The Foundation shall be entitled to adopt rules of practice and procedure for administering the loan program.

§949. Secretary's Veto.

With respect to any loan application approved by the Foundation under this subchapter, the Secretary shall be entitled to veto any such approval at the time that the approval is granted. In the event the Secretary fails to exercise the veto power at the meeting at which the approval is granted, the veto power shall be deemed waived.”

SYNOPSIS

Delaware has implemented a successful agricultural lands preservation program under which Preservation easements have been acquired to permanently protect over 100,000 acres or approximately 20% of Delaware's available farmland. To carry on Delaware's agricultural legacy and maintain agriculture as a leading component of Delaware's economy there is a need to facilitate the acquisition of farmlands by Delaware's younger generation of farmers. The loan program established by this legislation serves the dual purpose of permanently protecting farmland through Preservation easements and providing to younger farmers the much needed equity basis for obtaining commercial loans by providing favorable subordinated loans from the Foundation to make the farmland purchases.

The value of the Preservation easement obtained by the Foundation in return for the program loan would be greater than the program loan amount, thus protecting the interests of the State even if a default in repayment of the program loan occurs. When the program loans are repaid at the end of the loan term or sooner, the monies are reinvested in the program to provide further loans and permanently preserve additional farmland.

## Delaware Agricultural Lands Preservation Foundation Current Situation Report for April 14, 2015

Delaware Agricultural Statistics 490,000 acres in Farms (39% of State Land Area)		
Agricultural Preservation Districts		
District/Expansions	Farms	Acres
Approved	1,055	1,302
Pending	22	2,306
<b>Farm Terminations</b>	<b>70</b>	<b>11,015</b>
<b>Totals</b>	<b>1,077</b>	<b>170,002</b>

Kent County Districts		
District/Expansions	Farms	Acres
Approved	506	607
Pending	14	14
<b>Farm Terminations</b>	<b>23</b>	<b>3,795</b>
<b>Totals</b>	<b>520</b>	<b>88,410</b>

New Castle County Districts		
District/Expansions	Farms	Acres
Approved	103	118
Pending	0	0
<b>Farm Terminations</b>	<b>2</b>	<b>236</b>
<b>Totals</b>	<b>103</b>	<b>18,258</b>

Sussex County Districts		
District/Expansions	Farms	Acres
Approved	446	577
Pending	8	8
<b>Farm Terminations</b>	<b>45</b>	<b>6,984</b>
<b>Totals</b>	<b>454</b>	<b>63,334</b>

Agricultural Easements			
	Farms	Acres	Cost
<b>Settlements Final</b>	<b>791</b>	<b>114,826</b>	<b>\$205,808,618</b>
<b>Pending Round 18</b>	<b>4</b>	<b>331</b>	<b>\$1,169,572</b>
<b>Pending Round 19</b>	<b>13</b>	<b>1,066</b>	<b>\$1,434,044</b>
<b>Totals</b>	<b>808</b>	<b>116,223</b>	<b>\$208,412,234</b>

Averages of Easements			
No. Easements	All 808	Last 5yrs- 245	Last 3yrs- 119
<b>*Discount</b>	*56%	*65%	*65%
<b>Farm Size</b>	144 Acres	95 Acres	95 Acres
<b>Payment Landowner</b>	\$257,936	\$205,217	\$174,883
<b>Cost Per Acre</b>	\$1,793	\$2,166	\$1,845

\*Note: Avg. % includes County Funds

Agricultural Easements by County				Easement Land Use		
County	Farms	Acres	Cost	Type	Acres	%
Kent	404	61,292	\$91,881,444	Cropland	76,833	66
NewCastle	90	13,293	\$33,850,306	Forestland	30,798	27
Sussex	314	41,638	82,680,484	Wetland/Other	8,592	7
<b>Total</b>	<b>808</b>	<b>116,223</b>	<b>\$208,412,234</b>		<b>116,223</b>	<b>100</b>

#### Source of Funds 808 Easements

* State Funds-	\$144,070,750
* Federal Funds-	\$ 50,152,143
* County Funds-	\$ 11,509,579
* ISTEAs Funds-	\$ 1,309,173
* Other Funds-	\$ 1,370,589
<b>*Est. Total Funds</b>	<b>\$ 208,412,234</b>
<b>*Landowner Disco</b>	<b>\$ 265,734,716</b>
<b>*Est.Total Value</b>	<b>\$ 474,146,950</b>
*Est. Closing Costs	\$4,700,000

Total Number of Properties – Eligible for Round 20			Total Number of Properties to Appraise for Round 20			District Applications Received in 2015		
County	Farms	Acres	#	Acres	#	Acres	#	Acres
Kent	145	16,491	75	6,900	0	0		
New Castle	15	1,900	6	1,482	0	0		
Sussex	161	19,645	89	10,606	1	24		
<b>Totals</b>	<b>321</b>	<b>38,036</b>	<b>170</b>	<b>18,988</b>	<b>1</b>	<b>24</b>		

Prepared By: Staff

**Agricultural Lands Preservation Foundation**  
**Forestland Current Situation Report**  
**As of April 14, 2015**

<b>Forestland Preservation Areas</b>		
	Forestland Areas Acres	Acres
Approved	34	2,582
Pending	0	0
<b>Total</b>	<b>34</b>	<b>2,582</b>
<b>Not in Easement</b>	<b>10</b>	<b>344</b>

<b>Kent County Areas</b>		
	Properties	Acres
Approved	16	963
Pending	0	0
<b>Total</b>	<b>16</b>	<b>963</b>

<b>Sussex County Areas</b>		
	Properties	Acres
Approved	18	1,619
Pending	0	0
<b>Total</b>	<b>18</b>	<b>1,619</b>

<b>Forestland Preservation Areas Selected in Round 14-1 2009</b>			
County	Properties	Acres	Easement Value
Kent	5	427	\$617,277
Sussex	4	445	\$833,527
<b>Settlements Final</b>	<b>9</b>	<b>872</b>	<b>\$1,450,804</b>
<b>Farmland Easement</b>	<b>15</b>	<b>1,365</b>	

**Source of Funds 9 Easements**

State -	\$ 1,038,401
Nature Conservancy-	\$ 412,403
Total of Costs	\$ 1,450,804
Landowner Discount-	\$ 2,808,680
<b>Grand Total Value</b>	<b>\$ 4,259,484</b>
Settlement Costs	\$ 49,717

**Delaware Agricultural Lands Preservation Programs Grand Totals of all Easements**

Programs	Properties	Acres	Easement Value
Forestland Preservation Area Easements	9	872	\$1,450,804
Farmland Preservation Easements	808	116,223	\$208,412,234
<b>Total of Forestland &amp; Farmland Easements</b>	<b>817</b>	<b>117,095</b>	<b>\$209,863,038</b>
Total of Forestland & Farmland Landowner Discount			\$268,543,396
<b>Grand Total Value</b>			<b>\$478,406,434</b>

**Delaware Agricultural Lands Preservation Young Farmers Program**

Farms	Total Acres w/o Residential		Easement Value	Announced Farmer Loan Amount	Actual Farmer Loan
	Acres	Type			
<b>25</b>	<b>2,121</b>	<b>1657 454 10</b> Cropland Forest Other	\$9,383,735	\$6,532,710	<b>\$6,033,410</b>
# Prequalification Applications Received	# Approved	# Waiting for Review	# Denied or No Longer Qualify	<b>Settlement Costs Total Cost</b>	<b>\$137,726</b>
85	77	0	8		<b>\$6,171,136</b>

Prepared By: Staff

## BEGINNING FARMER TAX CREDIT ACT AND RELATED STATUTES

- Administration:** The Beginning Farmer Board is created in the Beginning Farmer Tax Credit Act. For administrative and budgetary purposes only the Board is housed within the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2341.
- Revisions:** These statutes were revised during the 2014 session of the Nebraska Legislature. Sections 77-2715.07, 77-2717, 77-2734.03, and 77-202 are included for informational purposes. The income tax credit in the first three sections is referenced in the Beginning Farmer Tax Credit Act and the personal property tax exemption in the Act is referenced in the last section, 77-202.
- Rules:** The Nebraska Department of Agriculture has no authority to promulgate regulations under this Act. The Beginning Farmer Board, however, has promulgated a regulation under this Act, known as Title 91, Chapter 1 - Beginning Farmer Tax Credit Act Regulations.

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77-5201. Act, how cited. Sections 77-5201 to 77-5215 shall be known and may be cited as the Beginning Farmer Tax Credit Act.

77-5202. Legislative findings. (1) The Legislature hereby finds and declares that:  
 (a) Current farm economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of agricultural jobs, and difficulty in attracting and retaining farm operations; and  
 (b) Major revisions in Nebraska's tax structure are necessary to accomplish economic revitalization of rural Nebraska and to be competitive with other states involved in economic revitalization and development of agriculture.

(2) It is the policy of this state to make revisions in Nebraska's tax structure in order to encourage persons to seek careers in the farming industry, retain existing and established farm operations, promote the creation and retention of new farm jobs in Nebraska, and attract and retain investment capital in rural Nebraska.

77-5203. Terms, defined. For purposes of the Beginning Farmer Tax Credit Act:  
 (1) Agricultural assets means agricultural land, livestock, farming, or livestock production facilities or buildings and machinery used for farming or livestock production located in Nebraska;

(2) Board means the Beginning Farmer Board created by section 77-5204;

(3) Farm means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;

(4) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing livestock, fruits, and vegetables;

(5) Farming or livestock production means the active use, management, and operation of real and personal property for the production of a farm product;

(6) Financial management program means a program for beginning farmers or livestock producers which includes, but is not limited to, assistance in the creation and proper use of record-keeping systems, periodic private consultations with licensed financial management personnel, year-end monthly cash flow analysis, and detailed enterprise analysis;

(7) Owner of agricultural assets means:

(a) An individual or a trustee having an ownership interest in an agricultural asset located within the State of Nebraska who meets any qualifications determined by the board;

(b) A spouse, child, or sibling who acquires an ownership interest in agricultural assets as a joint tenant, heir, or devisee of an individual or trustee who would qualify as an owner of agricultural assets under subdivision (7)(a) of this section; or

(c) A partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska which meets any additional qualifications determined by the board;

(8) Qualified beginning farmer or livestock producer means an individual who is a resident individual as defined in section 77-2714.01, who has entered farming or livestock production or is seeking entry into farming or livestock production, who intends to farm or raise crops or livestock on land located within the state borders of Nebraska, and who meets the eligibility guidelines established in section 77-5209 and such other qualifications as determined by the board; and

(9) Share-rent agreement means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined portion of the production of farm products from the rented agricultural assets.

77-5204. Beginning Farmer Board; created; duties. For the purpose of developing and directing programs to provide increased and enhanced opportunities for beginning farmers and livestock producers, the Beginning Farmer Board is created. For administrative and budgetary purposes only, the board shall be housed within the Department of Agriculture. The board shall be vested with the following duties and responsibilities:

(1) To approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, for eligibility to claim tax credits authorized by section 77-5209.01, and for eligibility to claim an exemption of taxable tangible personal property tax as provided by section 77-5209.02;

(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213;

(3) To advocate joint ventures between beginning farmers or livestock producers and existing private and public credit and banking licensed institutions, as well as to advocate joint ventures with owners of agricultural assets desiring to assist beginning farmers and livestock producers seeking entry into farming or livestock production;

(4) To provide necessary and reasonable assistance and support to beginning farmers and livestock producers for qualification and participation in financial management programs approved by the board;

(5) To advocate appropriate changes in policies and programs of other public and private institutions or agencies which will directly benefit beginning farmers and livestock producers and may include changes regarding financing, taxation, and any other existing policies which prohibit or impede individuals from entering into farming or livestock production;

(6) To provide adequate explanations of facts and aspects of available programs offered or recommended by the board intended for beginning farmers and livestock producers;

(7) To assist and educate beginning farmers and livestock producers by acting as a liaison between beginning farmers or livestock producers and the Nebraska Investment Finance Authority;

(8) To encourage licensed financial institutions and individuals to use alternative amortization schedules for loans and land contracts granted to beginning farmers and livestock producers;

(9) To refer beginning farmers and livestock producers to agencies and organizations which may provide additional pertinent information and assistance;

(10) To provide any other assistance and support the board deems necessary and appropriate in order for entry into farming or livestock production;

(11) To adopt and promulgate rules and regulations necessary to carry out the purposes of the Beginning Farmer Tax Credit Act, including criteria required for tax credit eligibility and financial management program certification and guidelines which constitute a viably sized farm that is necessary to adequately support a beginning farmer or livestock producer. Such guidelines shall vary and take into account the region of the state, number of acres, land quality and type, type of operation, type of crops or livestock raised, and other factors of farming or livestock production; and

(12) To keep minutes of the board's meetings and other books and records which will adequately reflect actions and decisions of the board and to provide an annual report to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically.

77-5205. Board; members; vacancies; removal. The board shall consist of the following members:

(1) The Director of Agriculture or his or her designee;

(2) The Tax Commissioner or his or her designee;

(3) One individual representing lenders of agricultural credit;

(4) One individual of the academic community with extensive knowledge and insight in the analysis of agricultural economic issues; and

(5) Three individuals, one from each congressional district, who are currently engaged in farming or livestock production and are representative of a variety of farming or livestock production interests based on size of farm, type of farm operation, net worth of farm operation, and geographic location.

All members of the board shall be resident individuals as defined in section 77-2714.01. Members of the board listed in subdivisions (3) through (5) of this section shall be appointed by the Governor with the approval of a majority of the Legislature. All appointments shall be for terms of four years.

Vacancies in the appointed membership of the board shall be filled for the unexpired term by appointment by the Governor. Members of the board shall serve the full term and until a successor has been appointed by the Governor and approved by the Legislature. Any member is eligible for reappointment. Any member may be removed from the board by the Governor or by an affirmative vote by any four members of the board for incompetence, neglect of duty, or malfeasance.

77-5206. Board; officers; expenses. Once every two years, the members of the board shall elect a chairperson and a vice-chairperson. A member of the board may be reelected to the position of chairperson or vice-chairperson upon the discretion of the board. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

77-5207. Board; quorum. Four of the members of the board shall constitute a quorum for the transaction of official business. The affirmative vote of at least four members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall constitute an impairment of a quorum to exercise any and all rights and perform all duties of the board.

77-5208. Board; meetings; application; approval. The board shall meet at least twice during the year. The board shall review pending applications in order to approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, to approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213, and to approve and certify qualified beginning farmers and livestock producers as eligible for the tax credit authorized by section 77-5209.01 and for qualification to claim an exemption of taxable tangible personal property as provided by section 77-5209.02. Any action taken by the board regarding approval and certification of program eligibility, granting of tax credits, or termination of rental agreements shall require the affirmative vote of at least four members of the board.

77-5209. Beginning farmer or livestock producer; qualifications. (1) The board shall determine who is qualified as a beginning farmer or livestock producer based on the qualifications found in this section. A qualified beginning farmer or livestock producer shall be an individual who: (a) Has a net worth of not more than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value; (b) provides the majority of the day-to-day physical labor and management of his or her farming or livestock production operations; (c) has, by the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; (d) demonstrates to the board a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; (e) demonstrates to the board a need for assistance; (f) participates in a financial management program approved by the board; (g) submits a nutrient management plan and a soil conservation plan to the board on any applicable agricultural assets purchased or rented from an owner of agricultural assets; and (h) has such other qualifications as specified by the board. The qualified beginning farmer or livestock producer net worth thresholds in subdivision (a) of this subsection shall be adjusted annually beginning October 1, 2009, and each October 1 thereafter, by taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods divided by the Producer Price Index for 2008 and

multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of twenty-five thousand dollars, the amount shall be rounded to the next lowest twenty-five thousand dollars.

(2) A qualified beginning farmer or livestock producer who has participated in a board approved and certified three-year rental agreement with an owner of agricultural assets shall not be eligible to file a subsequent application with the board but may refer to the board for additional support and participate in programs, including educational and financial programs and seminars, established or recommended by the board that are applicable to the continued success of such farmer or livestock producer.

77-5209.01. Tax credit for financial management program participation. A qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement shall be allowed a one-time credit to be applied against the state income tax liability of such individual for the cost of participation in the financial management program required for eligibility under section 77-5209. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five hundred dollars.

77-5209.02. Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption. (1) Agricultural and horticultural machinery and equipment of a qualified beginning farmer or livestock producer utilized in the beginning farmer's or livestock producer's operation may be exempt from tangible personal property tax to the extent provided in this section.

(2) A qualified beginning farmer or livestock producer seeking an exemption of taxable agricultural and horticultural machinery and equipment from tangible personal property tax under this section shall apply for an exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is to begin. Application shall be on forms prescribed by the Tax Commissioner. For the initial year of application, an applicant shall provide the original documentation of certification provided by the board pursuant to section 77-5208 with the application. Failure to provide the required documentation shall result in a denial of the exemption for the following year but shall be considered as an application for the year thereafter.

(3) The county assessor shall approve or deny the application for exemption. On or before February 1, the county assessor shall issue notice of approval or denial to the applicant. If the application is approved, the county assessor shall exempt no more than one hundred thousand dollars of taxable value of agricultural or horticultural machinery and equipment for each year. If the application is denied by the county assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial to the county board of equalization.

(4) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the applicant

within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision. Any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the agricultural and horticultural machinery and equipment will receive the exemption for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section.

(5) A properly granted exemption for taxable agricultural and horticultural machinery and equipment under this section shall continue for a period of three years if each year a Nebraska personal property tax return and supporting schedules and depreciation worksheet, showing a list and value of all taxable tangible personal property, are provided and filed by the beginning farmer or livestock producer with the county assessor when due. The value of taxable agricultural and horticultural machinery and equipment exempted in any year shall not exceed one hundred thousand dollars. The exemption allowed under this section shall continue irrespective of whether the person claiming the exemption no longer meets the qualification of a beginning farmer or livestock producer pursuant to section 77-5209 during the exemption period unless the beginning farmer or livestock producer discontinues farming or livestock production.

(6) Any person whose agricultural and horticultural machinery and equipment has been exempted from tangible personal property tax pursuant to this section shall be permanently disqualified from any further exemption of agricultural and horticultural machinery and equipment from tangible personal property tax as a qualified beginning farmer or livestock producer.

77-5210. Board; annual report. The board shall submit an annual report of the activities and actions of the board for the preceding fiscal year to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by request to the chairperson of the board. Each report shall include the following information:

(1) A complete operating and financial statement for the board for the prior fiscal year;

(2) The number of qualified beginning farmers and livestock producers receiving assistance from the board;

(3) The number of owners of agricultural assets claiming tax credits and the monetary amount of credits granted by the board; and

(4) Any other relevant information which the board deems necessary to report.

No information furnished to the board shall be disclosed in the report in such a way as to reveal information from a tax return of any person.

77-5211. Owner of agricultural assets; tax credit; when. (1) Except as otherwise disallowed under subsection (5) of this section, an owner of agricultural assets shall be allowed a credit to be applied against the state income tax liability of such owner for

agricultural assets rented on a rental agreement basis, including cash rent of agricultural assets or cash equivalent of a share-rent rental, to qualified beginning farmers or livestock producers. Such asset shall be rented at prevailing community rates as determined by the board.

(2) The credit allowed shall be for renting agricultural assets used for farming or livestock production. Such credit shall be granted by the Department of Revenue only after approval and certification by the board and a written three-year rental agreement for such assets is entered into between an owner of agricultural assets and a qualified beginning farmer or livestock producer. An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement for reasonable cause upon approval by the board. If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the board, the tax credit shall not be retroactively disallowed. If an agreement is terminated with fault on the part of the owner of agricultural assets as determined by the board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska.

(3) A credit may be granted to an owner of agricultural assets for renting agricultural assets, including cash rent of agricultural assets or cash equivalent of a share-rent agreement, to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets shall not be eligible for further credits under the Beginning Farmer Tax Credit Act unless the rental agreement is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets. If the board finds that such a termination was not the fault of the owner of agricultural assets, it may approve the owner for credits arising from a subsequent qualifying rental agreement with a different qualified beginning farmer or livestock producer.

(4) Any credit allowable to a partnership, a corporation, a limited liability company, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed.

(5) The credit allowed under this section shall not be allowed to an owner of agricultural assets for a rental agreement with a beginning farmer or livestock producer who is a relative, as defined in section 36-702, of the owner of agricultural assets or of a partner, member, shareholder, or trustee of the owner of agricultural assets unless the rental agreement is included in a written succession plan. Such succession plan shall be in the form of a written contract or other instrument legally binding the parties to a process and timetable for the transfer of agricultural assets from the owner of agricultural assets to the beginning farmer or livestock producer. The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except that when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. The owner of agricultural assets shall be allowed the credit provided for qualified rental agreements under this section if the board certifies the plan as providing a reasonable manner and probability of successful transfer.

77-5212. Rental agreement; requirements; appeal. In evaluating a rental agreement between an owner of agricultural assets and a qualified beginning farmer or livestock producer, the board shall not approve and certify credit for an owner of agricultural assets who (1) has, with fault, terminated a prior board approved and certified rental agreement with a qualified beginning farmer or livestock producer or (2) is proposing a rental agreement of agricultural assets which, if rented to a qualified beginning farmer or livestock producer, would cause the lessee to be responsible for managing or maintaining a farm which, based on the discretion of the board, is of greater scope and scale than necessary for a viably sized farm as established by the guidelines implemented by the board in order to adequately support a beginning farmer or livestock producer. Any person aggrieved by a decision of the board may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

77-5213. Tax credit; amount; agreement; review. (1) The tax credit approved and certified by the board under section 77-5211 for an owner of agricultural assets in the first, second, or third year of a qualifying rental agreement shall be equal to (a) ten percent of the gross rental income stated in a rental agreement that is a cash rent agreement or (b) fifteen percent of the cash equivalent of the gross rental income in a rental agreement that is a share-rent agreement. Tax credits shall only be approved and certified for rental agreements that are approved and certified by the board under the Beginning Farmer Tax Credit Act.

(2) To qualify for the greater rate of credit allowed under subdivision (1)(b) of this section, a share-rent agreement shall provide for sharing of production expenses or risk of loss, or both, between the agricultural asset owner and the qualified beginning farmer or livestock producer. The board may adopt and promulgate rules and regulations, consistent with the policy objectives of the act, to further define the standards that share-rent agreements shall meet for approval and certification of the tax credit under the act.

(3) The board shall review each existing three-year rental agreement between a beginning farmer or livestock producer and an owner of agricultural assets on a semiannual basis and shall either certify or terminate program eligibility for beginning farmers or livestock producers or tax credits granted to owners of agricultural assets on an annual basis.

77-5214. Board; support and assistance. In order to carry out the provisions of the Beginning Farmer Tax Credit Act, the Department of Agriculture shall provide any and all of the necessary support and assistance to the board.

77-5215. Changes; when operative. (1) The changes made in sections 77-5201, 77-5203, 77-5208, 77-5209, and 77-5211 to 77-5213 by Laws 2006, LB 990, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2007, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2007, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

(2) The changes made in sections 77-5203, 77-5209, and 77-5211 by Laws 2008, LB 1027, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2008, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2008, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

77-2715.07. Income tax credits. (1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the

credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

(d) A credit as provided in the New Markets Job Growth Investment Act; and

(e) A credit as provided in the Nebraska Job Creation and Mainstreet

Revitalization Act.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

77-2717. Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits. (1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, the tax imposed on all resident estates and trusts shall be a

percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (A) substituting Nebraska taxable income for federal taxable income, (B) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (C) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result. The credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act,

and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment Act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, and the New Markets Job Growth Investment Act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, and the New Markets Job Growth Investment Act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. For taxable years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or

attributable to sources within this state. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

77-2734.03. Income tax; tax credits. (1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment Act.

77-202. Property taxable; exemptions enumerated. (1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture,

recreation, community development, and cemetery purposes, or (B) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act shall be exempt from the personal property tax.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property. Depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

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# **Beginning Farmer Tax Credit Act**



**Annual Report  
July 2006 – June 2007**

**Nebraska Department of Agriculture  
Beginning Farmer Program**

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# BOARD OF DIRECTORS FY 2006-2007

<i>NAME</i>	<i>REPRESENTING</i>
Greg Ibach	Director Nebraska Department of Agriculture
Marian Beethe	Beginning Farmer Program Administrator Nebraska Department of Agriculture
Douglas Ewald	Tax Commissioner Nebraska Department of Revenue
Dave Dearmont (Designee)	Research Division Nebraska Department of Revenue
Dr. Darrell Mark	Academic Community Extension Agricultural Economist University of Nebraska - Lincoln
Dale Pohlman	Agricultural Lender
Bert Garvin	Producer, District 1
Timothy Schram	Producer, District 2
Don Anthony	Producer, District 3

## STAFF MEMBERS

Mary Jackson	Staff Assistant
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BEGINNING FARMER BOARD MEETING DATES & ATTENDEES  
FY 07/2006 – 06/2007

Meeting Date	Members Attending	Guests Attending	Staff Attending
August 21, 2006	Dave Dearmont Dr. Darrell Mark Bert Garvin Don Anthony Timothy Schram Marian Beethe		Marian Beethe, NDA Program Administrator Pam Wurdeman, NDA Administrative Assistant
November 13, 2006	Dale Pohlmann Dave Dearmont Dr. Darrell Mark Bert Garvin Don Anthony Marian Beethe	Pat McGrane, USDA/NRCS Senator Roger Wehrbein Tim Reimer, USDA/FSA	Marian Beethe, NDA Program Administrator Pam Wurdeman, NDA Administrative Assistant
February 21, 2007	Dale Pohlmann Phillip Anthony Dr. Darrell Mark Don Anthony Marian Beethe	David Goeller, UNL	Marian Beethe, NDA Program Administrator Pam Wurdeman, NDA Administrative Assistant

## 2007 ADMINISTRATIVE NOTES

Last year we were excited about the prospects for this year due to the changes in the Nebraska Beginning Farmer Tax Credit Act that enhanced the program for the participants involved. We had more inquiries and applications, but were surprised it didn't result in more applications. Many of the people who called said they would be starting in 2008 or after.

The increase in the tax credit was most welcomed by the beginning farmers because the owner would receive a larger incentive to rent to them. Also, those who had not already taken a financial management class were glad to get the reimbursement to pay the cost of taking it.

There were several new Board Members whom we welcomed this year. Todd Reed, Melvin Valasek, and Don Anthony, are the new representatives for the three Congressional Districts. They join Mark Graff who represents the banking industry, Dr. Darrell Mark who represents Nebraska Education, Douglas Ewald, State Tax commissioner and Marian Beethe for the Department of Agriculture. The newly elected chairman is Don Anthony and the new vice chairman is Mark Graff. We appreciate the guidance and support from our retired board members: Dale Pohlmann, Bert Galvin and Tim Schram. Thank you!

A proposed draft of the new Beginning Farmer Tax Credit Regulations has been written and is going through the process of studying and reviewing the changes before it is submitted for approval from the Governor's and Attorney General's offices.

The new changes to the act are important for family operations that will be passed down through the generations. The tax credit becomes an incentive for families to develop their plan and to put it in place so the next generation knows how they will become part of the operation. Many times this keeps families from misunderstandings and hard feelings because they didn't all have the same picture of how and when the transition will take place.

We continue to attend many functions and Ag Shows to talk to the individual farmers and ranchers to tell them about the program and encourage them to use it. It's still very surprising to hear so many say they have never heard of the program before. We are also trying to reach people in other ways, such as magazine and newspaper articles.

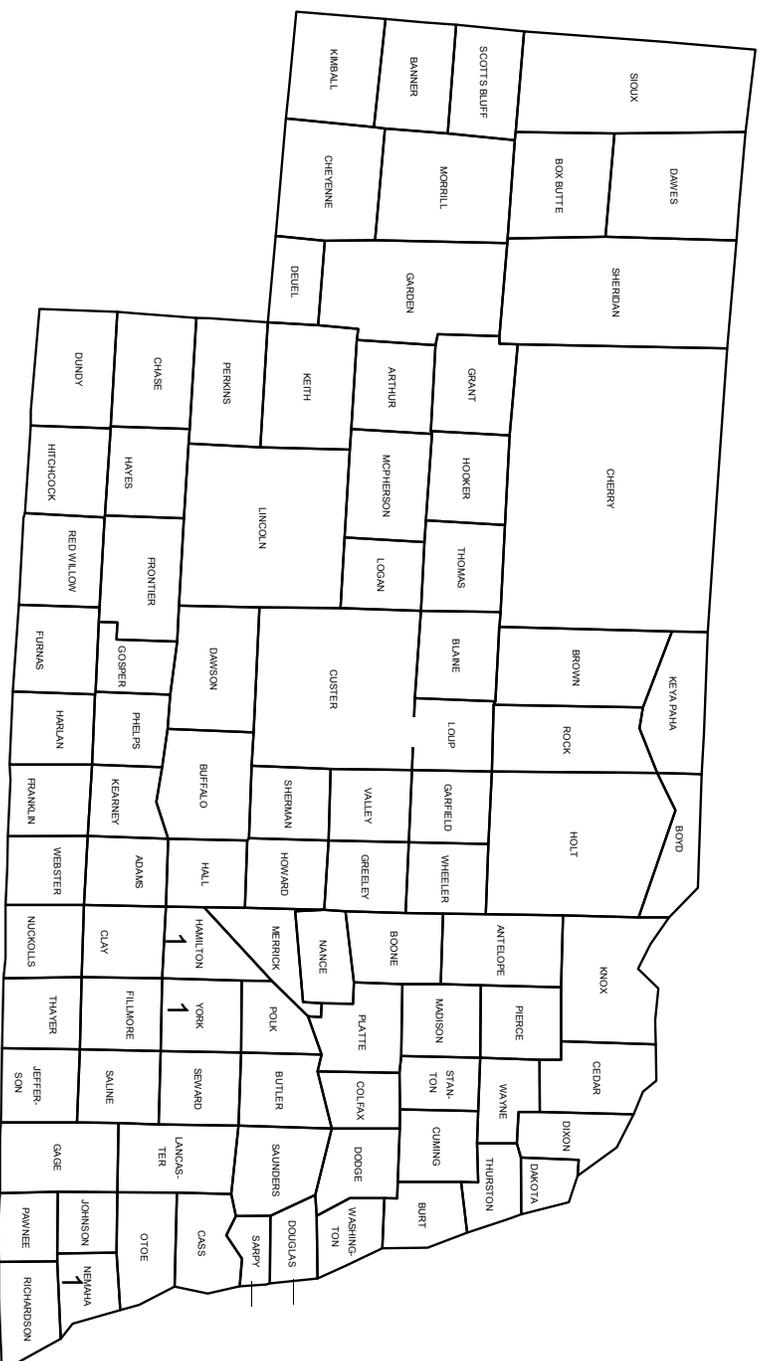
PARTICIPANT STATISTICS  
AS REPORTED FOR THE TAX YEAR

	A	B	C	D	E	F	G	H
1	Tax Year Participation	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2003 - 2007</b>	Totals - 2000 to 2007
2							Last 5 Yrs Total & Avg	Since the Beginning
3	# of Owners Receiving Tax Credit	46	47	32	18	23	166	220
4	Total Tax Credits Paid To Owners	\$ 81,580	\$ 66,298	\$ 46,604	\$ 26,883	\$ 76,781	\$ 298,146	\$ 354,198
5	Average Tax Credit per Owner	\$ 1,773	\$ 1,441	\$ 1,456	\$ 1,493	\$ 3,338	\$ 1,796	\$ 1,610
6	# of Beg. Farmers Paying Rent	46	46	32	18	23	165	180
7	Total Rent Paid by Beg Farmers	\$ 1,631,584	\$ 1,325,961	\$ 932,086	\$ 479,960	\$ 697,105	\$ 5,066,696	\$ 6,245,458
8	Average Rent Paid per Beg Farmer	\$ 35,469	\$ 28,825	\$ 29,128	\$ 26,664	\$ 30,309	\$ 30,707	\$ 34,697

# Beginning Farmer Tax Credit Program

## Number of Cases Declared Eligible by County

### July, 01 2006 - June, 30 2007



Total: 3



**BEGINNING FARMER TAX CREDIT ACT  
FINANCIAL REPORT  
AS OF JUNE 30, 2007**

Account Code Description	Budgeted Amount	Year-To-Date	% of Budget	Variance-Favorable (Unfavorable)
<u>510000 Personal Services</u>				
511100 Permanent Salaries – Wages	\$2,420.00	\$1,923.26	79.47	\$496.74
512100 Vacation Leave Expense		\$268.72		\$268.72-
512200 Sick Leave Expense		\$97.72		\$97.72-
512300 Holiday Leave Expense		\$121.01		\$121.01-
512500 Funeral Leave Expense		\$9.31		\$9.31-
<u>Personal Services Subtotal</u>	\$2,420.00	\$201.65	100	\$ .02-
515100 Retirement Plans Expense	\$174.00	\$181.55	104.34	\$7.55-
515200 OASDI Expense	\$185.00	\$166.00	89.74	\$19.00
515400 Life& Accident Insurance Expense	\$1.00	\$.77	77.00	\$.23
515500 Health Insurance Expense	\$482.00	\$516.31	107.12	\$34.31-
516500 Worker Comp Premium	\$26.00	\$25.93	99.73	\$.07
<u>Major Account 4100 Total</u>	\$3,288.00	\$3,310.58	100.39	\$22.58-
<u>520000 Operating Expenses</u>				
521100 Postage Expense	\$81.56	\$114.23	140.06	\$32.67-
521200 Com. Exp – Voice/Data	\$65.00	\$119.25	183.46	\$54.25-
521290 Com. Exp – Data only	\$5.00	\$1.93	38.60	\$3.07
521300 Freight Expense		\$21.17		\$21.17-
521400 Data Processing Expense	\$643.05	\$1,298.07	201.86	\$655.02-
521500 Pub. And Print Expense	\$595.00	\$352.90	59.31	\$242.10
522100 Dues and Sub. Expense	\$500.00	\$500.00	100.00	
522200 Conf. Registration		\$25.75		\$25.75-
524744 Exhibit Space	\$50.00	\$15.63	31.26	\$34.37
534900 Misc. Supplies Expense	\$5.00			\$5.00
532100 Non-Capitalized Equip PU		\$1.63		\$1.63-
532101 Non-Capitalized Computer Eq		\$18.06	72.24	\$6.94
534946 Promotional Supplies				
541100 Accounting & Auditing Service	\$25.00	\$2,468.62	125.34	\$499.01-
555200 Software-New Purchases				
<u>Major Account 520000 Total</u>	\$1,969.61	\$2,468.62	125.34	\$499.01-
<u>570000 Travel Expense</u>				
571100 Board and Lodging	\$223.39	\$184.09	82.41	\$39.30
571600 Meals - Not Travel Stat	\$25.00	\$9.99	39.96	\$15.01
572100 Commercial Transport		\$26.94		\$26.94-
574500 Pers. Vehicle Mileage	\$1,250.00	\$1,122.08	89.77	\$127.92
575100 Misc. Travel Expense	\$50.00	\$76.00	152.00	\$26.00-
<u>Major Account 570000 Total</u>	\$1,548.39	\$1,419.10	91.65	\$392.30-
<u>Budgeted Expenditures Total</u>	\$6,806.00	\$7,198.30	105.76	\$392.30-
<u>1 General Fund</u>	\$6,806.00	\$7,198.30	105.76	\$392.30-
<u>Budgeted Expenditures Total</u>	\$6,806.00	\$7,198.30	105.76	\$392.30-

## PARTICIPANT STATISTICS

### As Reported for the Tax Year

Participation Per Tax year	Tax year 2003	Tax Year 2004	Tax year 2005	Tax Year 2006	Tax Year 2007
<b>Average Tax Credit Rec'd by Owner</b>	\$1,862.13	\$1,407.26	\$1,166.39	\$2,557.63	\$3,073.22
<b>Average Rent Paid by Beg. Farmer</b>	\$37,242.37	\$28,850.93	\$27,856	\$33,648	\$32,599
<b># of Owners receiving tax Credits (see #1)</b>	46	47	35	20	29
<b># of Beginning farmers paying rent (see #2)</b>	46	47	32	18	22
<b># of Cases per tax year (See #3)</b>	43	44	34	19	23

1. Agricultural Asset owner – Each individual, partnership, or corporation who is qualified as an agricultural asset owner is counted once. An agricultural asset owner may have more than one contract with one or more beginning farmers but will be counted only once.
2. Beginning Farmers – Each individual who is qualified as a beginning farmer is counted once. A beginning farmer may have more than one contract with one or more agricultural asset owners but will be counted only once.
3. Cases – An application packet that has been sent in with applications completed by the owner of agricultural assets and the beginning farmer who has signed a three-year rental agreement that qualifies for the tax credit.

\*An agricultural asset owner may rent to more than one beginning farmer, and a beginning farmer may rent from more than one agricultural owner. Therefore, the number of agricultural asset owners and beginning farmers may not be the same.

# OUTREACH ACTIVITIES

FY 7/2006-6/2007

Beginning Farmer Website was launched – [www.nebraskabeginningfarmer.org](http://www.nebraskabeginningfarmer.org)

Beginning Farmer Connections – listing of landowners and beginning farmers

Beginning Farmer Advisory Council met July 10-12, 2006 in Washington DC – Beethe attended, NRCS pursuing ways to aid beginning farmers

National Farm Transition Network Meeting and Workshop, Des Moines IA, August 6-10, 2006, attended by Beethe and Dave Goeller (UNL)

News articles November 2006 in Nebraska Farmer Magazine and Cattle Business Weekly

NE Bankers Association Ag Credit Conference, October 2006 – Beethe attended

Gateway Farm Expo, Kearney, November 15-16, 2006 – Beethe attended

USDA/NRCS representative Pat McGrave attended November 2006 Board Meeting. Would like to partner the NRCS EQUIP program with our BF program, possibly a joint brochure

FSA Representative, Tim Reimer attended November 2006 Board Meeting. Would like to promote the Beginning Farmer program by adding our link to their website.

NE Cattleman's Convention, Lincoln, November 29-30, 2006

Farm Bureau Conference, December 3-4, 2006

NE Ag Classic, Kearney December 13-14, 2006

North Platte Ag Show, February 7-8, 2007 – Beethe interviewed with local television station, received at least one call directly as a result of the television exposure

Mediator Newsletter – Fall Addition included article on Beginning Farmer Program

Beethe met with Weldon Sleight regarding 100 cow program offered by Nebraska College of Technical Agriculture

Governor's Ag Conference, Kearney – February 28 thru March 1, 2007

FFA Conference, Lincoln, March 28-30, 2007

International Farm Succession Conference

Nebraska State Fair

University of Nebraska Field Day

Husker Harvest Days

Northeast Nebraska Career Day

Agromedicine Conference

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**for**  
**IADA Beginning Farmer Tax Credit Program**

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## **AGRICULTURAL ASSETS TRANSFER TAX CREDIT**

This program is commonly referred to as the Beginning Farmer Tax Credit. The program is administered by the Iowa Agricultural Development Authority and began with the 2007 tax year.

### **PURPOSE**

The tax credit is designed to encourage owners of capital agricultural assets, who lease those assets, to lease them to Iowa's qualifying beginning farmers. The program provides the agricultural asset owner a credit against Iowa income taxes owed.

### **WHAT AGRICULTURAL ASSETS ARE ELIGIBLE AND INELIGIBLE FOR THE TAX CREDIT?**

Agricultural land, improvements and depreciable property (machinery, equipment, and breeding livestock) used for farming purposes. The agricultural assets subject to the lease must be located in the state of Iowa.

The rental of a rural residence is not permitted. If a residence is part of the lease agreement, the lease value of the residence should be specifically identified so it can be excluded from tax credit calculations.

The rental of farmland that is enrolled in CRP is not permitted. If CRP land is part of the lease agreement, the lease value of the CRP ground should be specifically identified so it can be excluded from tax credit calculations.

Feeder cattle, feeder pigs, feeder lambs, feeder chickens or feeder turkeys do not qualify as depreciable property and as a result are not eligible under the program. Other animals such as horses or those classified as "exotic" are eligible if they are a viable "for profit" farming operation, are depreciable property under IRS code and not a "hobby farm."

### **HOW MUCH IS THE TAX CREDIT?**

#### **Cash Rent Agreement**

The agricultural asset owner will receive a tax credit of 5 percent of the rental income received under a cash rental agreement.

*Example - A beginning farmer leases 150 acres of crop ground for \$150 per acre. This totals \$22,500 in gross rental income for a tax credit of 1,125 (\$22,500 x 5.00%).*

#### **Share Agreement**

The agricultural asset owner will receive a tax credit of 15 percent of the value of the owners' share of the product under a share agreement. A pre-calculated county average yield will be utilized. The yield will be calculated utilizing historical USDA county average yields and the final November USDA yield estimate. The price will be determined using the USDA average monthly Posted County Price for the month of harvest.

**Example** - A beginning farmer leases 150 acres of crop ground in Clay County on a 50/50 share basis. The 2008 county yield for Clay County is 175 bushels per acre. Total crop is 26,250 bushels. The owner's share is 13,125 bushels. The crop was harvested in October. The average posted county price for October in Clay County was \$3.00 per bushel. This results in a tax credit of \$5,906.25. (13,125 bushels x \$3.00 per bushel x 15.00%)

#### **WHAT IS THE TERM OF THE TAX CREDIT?**

The lease term must be a minimum of two years and a maximum of five years. A tax credit certificate will be issued for each year of the lease. Upon expiration of the lease, the asset owner and beginning farmer may re-apply for continuance of the tax credit. An eligible beginning farmer will continue to be considered an eligible beginning farmer for the term of the lease even if the eligible beginning farmer's net worth exceeds \$300,000 during the term of the lease.

The tax credit is a non-refundable credit, therefore any credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier

#### **CAN THE AGRICULTURAL ASSET OWNER HAVE MORE THAN ONE TAX CREDIT IF THEY LEASE TO MORE THAN ONE BEGINNING FARMER?**

Yes, an agricultural asset owner may obtain a tax credit for each lease they have with a qualified beginning farmer.

#### **WHAT TYPE OF LEASE IS ACCEPTABLE?**

The written lease should specify the agricultural assets subject to the lease, the location of the property, the volume of the lease (i.e., number of acres, pieces of equipment, number of animals) and the lease rate or terms. The lease should also specify the term of the lease and terms of payment under the lease. A commodity share lease does not have to be the traditional 50/50 lease terms. (Several good lease templates are available on the Iowa State University Ag Decision Maker website)

The lease term shall be for at least two years, but not more than five years. An existing lease with an eligible beginning farmer is eligible if it meets the minimum two year and maximum five year term (upon application). The tax credit may be renewed at the end of the lease term through re-application and approval.

The agricultural assets should be leased at a rate which is not substantially higher or lower than the market rate for similar agricultural assets leased within the same community, as determined by the Authority. Rental rate adjustments cannot be made arbitrarily. Rate adjustment must be specified in the initial lease agreement with the actual rental rates for each year, or tied to a publicly available rental value index.

The Authority reserves the right to review all agreements and determine that the terms of the lease are beneficial to the beginning farmer and not an attempt to maximize the taxpayer benefit under the program.

**WHAT IF THE AGRICULTURAL ASSET OWNER AND THE BEGINNING FARMER AGREE TO LEASE MODIFICATIONS AFTER APPROVAL?**

Modifications to the original lease are only allowed if there is a life changing event, for example, death or divorce. If a life changing event occurs, immediately notify the Authority of the change.

**LEASE TERMINATION**

A taxpayer or beginning farmer may terminate a lease as provided in the lease agreement or by law. The taxpayer must immediately notify the Authority of the termination.

If the Authority determines that the taxpayer is not at fault for the termination, the Authority shall not issue a tax certificate to the taxpayer for any subsequent years based on the approved application. Any prior tax credit is allowed. The taxpayer may apply for and be issued another tax credit for the same agricultural assets for any remaining tax years for which a certificate was not issued.

If the Authority determines that the taxpayer is at fault for the termination, any prior tax credits claimed will be recaptured and the amount of the tax credits claimed will be immediately due and payable to the Iowa Department of Revenue. If a taxpayer does not immediately notify the Authority of a termination, the taxpayer shall be deemed at fault for the termination.

**WHO CAN QUALIFY TO OBTAIN THE TAX CREDIT?**  
***(Asset Owner Requirements)***

You must be a person who may acquire or otherwise obtain or lease agricultural land in the State of Iowa pursuant to [Chapter 9H or 9I - Code of Iowa](#). This is commonly known as the "Corporate Farming Law."

An individual may claim the tax credit of a partnership, LLC, S Corporation, estate, or trust by electing to have the income taxed directly to the individual. The amount of tax credit claimed by the individual shall be based upon the pro-rata share of the individual's earnings from the partnership, LLC, S Corporation, estate or trust. A copy of the Articles of Incorporation, Partnership Agreement, Trust Agreement, etc. must be provided with the application. This document should indicate the financial beneficiaries of the entity and their percent ownership.

The agricultural asset owner cannot be a party to a pending administrative or judicial action, including a contested case proceeding under Chapter 17A, Code of Iowa, relating to an alleged violation involving an animal feeding operation regulated by the Iowa Department of Natural Resources, regardless of whether the pending action is brought by the Department of the Attorney General. The agricultural asset owner cannot be classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the Iowa Department of Natural Resources.

The taxpayer cannot be at fault for terminating a prior lease.

### **WHO IS AN ELIGIBLE BEGINNING FARMER?**

A qualified beginning farmer must be of low or moderate net worth. Code of Iowa 175.2.12 defines this as not more than \$300,000.

For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, and each partner's co-applicant and minor children shall not be more than \$600,000. However, the aggregate net worth of each partner and that partner's co-applicant and minor children may not exceed \$300,000.

For a family farm corporation, an aggregate net worth of all shareholders, including the value of each shareholder's share in the family farm corporation and each shareholder's co-applicant and minor children are not to exceed \$600,000. However, the aggregate net worth of each shareholder and that shareholder's co-applicant and minor children may not exceed \$300,000.

For a family farm limited liability company, an aggregate net worth of all members, including the value of each member's share in the family farm limited liability company and each member's co-applicant and minor children are not to exceed \$600,000. However, the aggregate net worth of each shareholder and that shareholder's co-applicant and minor children may not exceed \$300,000.

The beginning farmer shall be a resident of the state of Iowa. If the beginning farmer is a partnership, all partners shall be residents of the state of Iowa. If a beginning farmer is a family farm corporation, all shareholders shall be residents of the state of Iowa. If the beginning farmer is a family farm limited liability company, all members shall be residents of the state of Iowa.

The beginning farmer must have sufficient education, training and/or experience in the type of farming for which the tax credit will be issued. The beginning farmer or a third party shall self-certify that the beginning farmer has sufficient education, training and/or experience through a background letter which shall accompany the application. Such certification is subject to review and confirmation of the Authority.

The beginning farmer has or will have access to adequate working capital, farm equipment, machinery or livestock. This, again, will be self-certified by the beginning farmer or third party. This certification is subject to review and confirmation by the Authority.

The beginning farmer shall materially and substantially participate in farming the assets subject to the lease. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, each partner, shareholder or member shall materially and substantially participate in farming. In addition, the beginning farmer shall assume the financial risk associated with operating the agricultural asset subject to the lease, and annually submit a copy of their IRS Schedule F to the Authority.

The agricultural assets subject to the lease shall only be used for farming by the qualified beginning farmer.

If the beginning farmer is found to be in violation of these requirements, a tax credit will not be issued for subsequent years and the matter will be referred to the Iowa Department of Revenue for potential administrative or judicial review.

### **HOW DO I APPLY FOR THE TAX CREDIT?**

A beginning farmer and agricultural asset owner must prepare and submit an application to the Authority. Application forms are available from the Authority or on the Authority's website address of [www.iada.state.ia.us](http://www.iada.state.ia.us). The applications should be completed by the beginning farmer and the agricultural asset owner and submitted directly to the Authority. The completed application should be accompanied by the beginning farmer's current financial statement and background letter and a copy of the agricultural asset lease and a completed and signed "**Authorization For Release Of Confidential State Tax Information**" signed by the agricultural asset owner.

Additional supporting information is needed with the application and this information is listed on the application. In order to document ownership of the land and to certify the acres being leased, the land owner must provide a copy of a "USDA Farm Service Agency Abbreviated 156 Farm Record form.

Additionally, since the tax credit is issued to individuals only, if the agricultural asset being leased is owned by a partnership or corporation, a copy of the partnership agreement or articles of incorporation must be provided. A list of the partners or shareholders must also be provided along with their percentage of ownership in the entity. Similar information must be provided if the Beginning Farmer will operate the farm as a partnership or corporation.

### **WHAT TYPE OF FINANCIAL STATEMENT IS REQUIRED?**

A copy of the beginning farmer's current financial statement, taken within 30 days prior to submission of the application, witnessed by a bank officer and signed by all applicants, must be submitted with the application. If the beginning farmer and/or co-applicant are involved in a business, partnership, corporation, etc., either related or unrelated to his/her farming operation, a financial statement from this entity must also be submitted with the application.

If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, each partner, shareholder or member shall submit a personal financial statement in addition to a statement of the operating entity.

**Total Assets** - Total assets shall include but not be limited to the following: Cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery equipment; cars and trucks; farm and other real estate including life estate and personal residence; value of beneficial interest in a trust; government payments or grants; and any other assets.

All assets shall be valued at fair market value by the beginning farmer's lender. The value shall be what a willing buyer would pay a willing seller in the locality.

Total assets shall not include items used for personal, family or household purposes by the applicant, but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. A deduction of 10 percent may be made from fair market value of farm and other real estate.

The beginning farmer and their lender shall complete a true and accurate statement and the above adjustments will be made by the Authority upon receipt of the application.

**Total Liabilities** - Total liabilities shall include but not be limited to the following: Accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contracts or real estate mortgages; judgments; accrued interest payable; and any other liabilities.

Liabilities shall be determined on the basis of generally accepted accounting principles.

#### **WHAT IS THE BACKGROUND LETTER?**

The background letter will better able the Authority and its board of directors to evaluate the project and the application. The letter should explain the beginning farmer's background with respect to his or her education and experience in the type of farming operation for which a tax credit is sought. The letter should outline the beginning farmer's access to machinery if the loan is for land or his or her access to land if the loan is for agricultural improvements or depreciable agricultural property. The letter should also state where the beginning farmer will obtain operating capital, if necessary, along with contact information for the lender. The letter should also give a brief background of the farming operation subject to the lease.

#### **WHEN AND HOW WILL THE APPLICATIONS BE APPROVED?**

Completed applications received by the 15th of the month will be reviewed and considered by the Authority's board of directors at that month's board meeting. Applications received after the 15th of the month will be reviewed at the next month's board meeting. If the 15th falls on a Saturday or Sunday, then applications will be due on the preceding Friday. **Must have in no later than December 15th to go to December Board meeting and be eligible to receive a credit for that year.** If the application is incomplete the Beginning Farmer and the Asset Owner will be contacted with the request for the needed information. There will be one month allowed to submit the needed information, after which the file will be withdrawn. Should the application be withdrawn due to insufficient information upon request, no monies will be refunded.

#### **ARE THERE ANY COSTS OR FEES WITH THE PROGRAM?**

Since the Authority does not receive any general fund or other monies to support the program, a modest \$200 administrative fee is required with the application. This fee may be paid by either the beginning farmer or the agricultural asset owner. Should the application be denied, \$150 will be refunded. Should the application be withdrawn due to insufficient information upon request, no monies will be refunded.

#### **CAN I RENT FROM A RELATED PERSON?**

Yes, you may rent from a related person such as a father or grandfather. Those transactions could be subject to additional scrutiny, however. The background letter submitted with related party transactions should be very specific as to the involvement of the related party and sources which can independently confirm the legitimacy of the transaction should be identified.

**HOW AND WHEN WILL THE TAX CREDIT CERTIFICATE BE ISSUED?**

**Cash Rental Contract** - After the approval of a cash rental agreement, the Authority will issue an approval letter which will specify the terms of the approval (if any). Tax credit certificates will be issued by January 31 of the following year assuming all requirements have been met.

**Share Agreement Contract** - After approval of a share agreement contract, the Authority will issue an approval letter which will specify the terms of the approval (if any).

Previously it was anticipated that IADA would collect actual yield and sales price documentation on land subject to a crop share agreement. This information would be used to determine the tax credit amount the landowner had earned. It has become obvious that this method is burdensome for both parties and presents an unintended opportunity for misuse of the program. Therefore, effective **October 1, 2007**, the following procedure was established to be used to determine the tax credit award on crop share rental agreements.

***The following procedure will be used to calculate the tax credit amount regardless of whether the crop is sold at harvest or stored for later sale. Livestock share leases will continue to use the actual dollar amount of product sold for the tax credit calculation.***

**Yield Data:** The IADA will use a pre-calculated county average yield. This yield will be calculated annually using historical USDA county average yields and the November final USDA yield estimate for the current year.

This method will be used, as the direct submission of actual yield data on the part of the landowner could be fairly paperwork intensive. In addition, there is no standard way of documenting actual yield data short of requiring all production to go across certified scales. Finally, there exists a possibility of inaccurate yield reporting in order to obtain an increased tax credit.

**Price Data:** The IADA will use the monthly average USDA Posted County Average Price for the month of harvest for the county(ies) in which the tract(s) subject to the lease are located. This information is available the first business day following the end of the month at this web address:  
<https://arcticocean.sc.gov.usda.gov/acr/>

Either the landowner or tenant with a crop share lease should complete the "*Crop Share Lease Information Form*" following harvest and submit it to the IADA office. This form will verify the crop acres grown and the month of harvest. This form can be found as part of the application packet (Page 9) or on the IADA website.

**HOW DO I REDEEM THE TAX CREDIT?**

The taxpayer should complete their Iowa State Tax Return as normal. The taxpayer should supply their tax preparer with the tax credit certificate issued by the Authority. The tax preparer should complete State of Iowa Tax Form IA148 - Tax Credits Schedule and attach it to the taxpayer's tax return.

**WHAT IS REQUIRED IN FUTURE YEARS AFTER APPROVAL?**

Annually, the beginning farmer will be required to **submit a copy of their Federal Schedule F to the Authority by May 1 of each year.**

Should either party become aware of any violation of the lease, violation of the Code of Iowa or the Administrative Rules of the program, they shall immediately notify the Authority. Failure to do so could result in disallowing of previous tax credits received as well as future tax credits.

Under commodity share agreements, the ***Crop Share Lease Information Form* should be submitted annually following harvest and prior to December 1.** (Available on IADA website)

# Iowa Beginning Farmer Tax Credit Program

## Crop Share Harvest Information Form

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**Asset Owners:** Please return this form by December 1<sup>st</sup>!  
(If harvesting in December or January, please submit information by January 15<sup>th</sup>)

✉ Mail to: Iowa Agricultural Development Authority  
505 Fifth Avenue, Suite 327  
Des Moines, Iowa 50309  
OR

✉ Fax to: 515-281-8618  
OR

✉ E-Mail: This form is available on the IADA website for quick and easy return:  
[www.iada.state.ia.us](http://www.iada.state.ia.us). Please access the Beginning Farmer Tax Credit Program link in order to use this form.

Tax Credit Project Number: \_\_\_\_\_  
*(submit a separate form for each project number, do not combine information from multiple projects)*

Land/Asset Owner Name: \_\_\_\_\_

Land/Asset Owner Address: \_\_\_\_\_  
\_\_\_\_\_

Tenant Name: \_\_\_\_\_

Type of asset subject to lease:  Land  Machinery  Livestock

Total crop acres subject to the lease: \_\_\_\_\_

<u>County</u>	<u>Crop Grown</u>	<u># Acres</u>	<u>Month of Harvest</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

<u>County</u>	<u>Hay Type/Straw</u> (grass, alfalfa)	<u>Types of Bales</u> (Lg. rd or sq., Sm sq.)	<u># of Bales</u>
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**\*\*Livestock share agreements must submit the actual: Livestock type, # of, average weight & price. The sales ticket with this information is sufficient. If you have not sold your livestock, a third party appraisal is required.\*\***



IOWA AGRICULTURAL  
DEVELOPMENT DIVISION

## 2013 Annual Report

### Beginning Farmer Loan Program

Year	# of Applications	Amount of Loans Closed	Number of Acres Purchased
1981-2012	4013	\$495,623,713	382,518
2013	41	\$9,493,999	2,819
<b>Totals</b>	<b>4054</b>	<b>\$505,117,712</b>	<b>385,337</b>

### Beginning Farmer Tax Credit Program

Year	Total Number of Tax Certificates Issued	Total Amount of Tax Credits Issued	Number of New Applications	Amount of New Applications
2007	286	\$1,351,035	286	\$1,351,035
2008	652	\$2,236,625	202	\$796,940
2009	696	\$2,604,843	140	\$636,818
2010	767	\$3,583,654	175	\$1,038,044
2011	787	\$5,289,398	139	\$1,283,768
2012	726	\$5,763,537	165	\$1,558,773
2013	638	\$5,959,299	194	\$1,868,685
<b>Totals</b>	<b>4552</b>	<b>\$26,788,391</b>	<b>1301</b>	<b>\$8,534,063</b>

### NEW Beginning Farmer Custom Farming Tax Credit Program

Year	Total Number of Tax Certificates Issued	Total Amount of Tax Credits Issued	Number of New Applications	Amount of New Applications
2013	10	\$28,974.76	10	\$28,974.76
<b>Totals</b>	<b>10</b>	<b>\$28,974.76</b>	<b>10</b>	<b>\$28,974.76</b>

### Loan Participation Program

Total # of Loan Participations	Total Amount of Loan Participations	Outstanding Balance as of 12/31/13
<b>111</b>	<b>\$6,484,779</b>	<b>\$1,837,621</b>

# Total IADA Beginning Farmer Loans Closed January 1, 1981 to December 31, 2013

Bottom number denotes number of loans per county

Total number of loans closed - 4,054  
Total amount - \$505,117,712  
Average loan amount - \$134,597

Lyon \$13,200,312	Oscoda \$7,043,674	Dickinson \$1,744,445	Emmet \$3,240,275	Wrenn \$10,454,441	Worth \$3,830,889	Mitchell \$6,158,625	Howard \$4,379,584	Winneshiek \$906,225	Allamakee \$1,100,544
Lyon \$28,364,724	O'Brien \$11,139,858	Clay \$5,585,606	Palo Alto \$4,620,480	Kossuth \$4,237,175	Wright \$3,906,860	Cerro \$4,012,101	Howard \$8,263,002	Winneshiek \$936,295	Clayton \$1,220,097
Plymouth \$9,383,759	Cherokee \$3,833,628	Buena Vista \$7,001,000	Pocahontas \$4,836,577	Humboldt \$3,488,995	Franklin \$8,130,340	Butler \$10,171,459	Bremer \$10,088,486	Fayette \$53,750	Clayton \$693,476
Woodbury \$2,261,008	Ida \$5,704,135	Sac \$4,612,729	Calhoun \$5,669,502	Webster \$1,910,000	Hamilton \$691,625	Grundy \$7,995,653	Black Hawk \$91,078,989	Buchanan \$5,043,739	Delaware \$18,676,733
Monona \$2,475,482	Crawford \$6,768,636	Carroll \$2,295,509	Greene \$3,628,692	Boone \$7,335,321	Stoy \$2,281,687	Marshall \$6,646,619	Benton \$7,211,970	Linn \$6,691,668	Jones \$8,418,773
Harrison \$2,191,718	Shelby \$1,257,084	Audubon \$4,693,000	Guthrie \$1,630,390	Dallas \$3,603,888	Polk \$9,525,994	Jasper \$4,600,522	Iowa \$4,251,825	Johnson \$3,403,222	Cedar \$3,809,328
Pottawatomie \$2,606,660	Cass \$2,876,974	Adair \$2,892,610	Madison \$2,276,957	Warren \$9,204,263	Mason \$3,862,029	Mahaska \$3,113,213	Keokuk \$2,086,619	Washington \$8,142,284	Muscatine \$4,330,129
Mills \$1,045,028	Montgomery \$1,852,510	Adams \$870,100	Union \$2,280,950	Clark \$1,243,153	Lucas \$364,000	Monroe \$1,391,775	Wapello \$2,569,698	Jefferson \$3,735,977	Henry \$691,299
Fremont \$1,797,565	Page \$3,302,213	Taylor \$1,529,152	Ringgold \$809,040	Decatur \$944,721	Wayne \$206,231	Appanoose \$721,898	Davis \$2,377,497	Van Buren \$2,539,977	Lee \$1,565,674
1. Northwest \$4,104,229	2. Northeast \$14,915,602	3. Southeast \$80,833,829	4. Southwest \$18,646,339	Total \$118,500,000					

# Iowa Agriculture Development Division Tax Credits

## 2008 to 2013

Top number denotes number of tax certificates issued per county

Bottom number denotes total amount of tax credits issued per county

Total number of tax certificates - 4,266  
Total tax credit amount - \$25,437,355  
Average credit amount - \$5,963

Lyon	Osceola	Dickinson	Emmet	Winneshiek	Worth	Mitchell	Howard	Winneshiek	Allamakee
180,848	105,084	53,680	28,366	193,912	432,388	194,055	246,271	906,225	3
180,848	105,084	53,680	28,366	193,912	432,388	194,055	246,271	906,225	3
Sioux	O'Brien	Clay	Palo Alto	Cerro Gordo	Floyd	Chickasaw	Bremer	Fayette	Clayton
473,916	557,814	632,682	895,938	509,206	471,335	246,271	53,791	53,750	47,938
473,916	557,814	632,682	895,938	509,206	471,335	246,271	53,791	53,750	47,938
Plymouth	Cherokee	Buena Vista	Pocahontas	Humboldt	Franklin	Butler	Black Hawk	Buchanan	Delaware
277,081	383,587	90,860	1,446,889	389,494	1,024,166	223,073	1,428,481	120,693	665,749
277,081	383,587	90,860	1,446,889	389,494	1,024,166	223,073	1,428,481	120,693	665,749
Woodbury	Ida	Sac	Calhoun	Webster	Hardin	Grundy	Buchanan	Delaware	Dubuque
887,888	182,989	573,102	656,136	1,917,000	489,806	82,728	120,693	665,749	980,080
887,888	182,989	573,102	656,136	1,917,000	489,806	82,728	120,693	665,749	980,080
Monona	Crawford	Carroll	Greene	Boone	Stoy	Marshall	Tama	Benton	Linn
307,752	354,510	557,945	545,186	531,339	223,667	918,918	1,277,500	781,893	2,471,833
307,752	354,510	557,945	545,186	531,339	223,667	918,918	1,277,500	781,893	2,471,833
Harrison	Shelby	Audubon	Guthrie	Dallas	Polk	Jasper	Poweshiek	Iowa	Johnson
113,847	943,868	359,980	250,951	500,000	2,472,854	317,246	81,544	110,203	34,453,232
113,847	943,868	359,980	250,951	500,000	2,472,854	317,246	81,544	110,203	34,453,232
Pottawattamie	Cass	Adair	Madison	Warren	Mason	Mahaska	Keokuk	Washington	Henry
423,280	24,405	48,253	96,387	249,895	25,543	127,701	272,762	145,106	948,889
423,280	24,405	48,253	96,387	249,895	25,543	127,701	272,762	145,106	948,889
Mills	Montgomery	Adams	Union	Clark	Lucas	Monroe	Wapello	Jefferson	Res Moines
73,922	44,386	23,321	99,950	106,048	106,048	9,301	577,960	9,301	475,990
73,922	44,386	23,321	99,950	106,048	106,048	9,301	577,960	9,301	475,990
Fremont	Page	Taylor	Ringgold	Decatur	Wayne	Appanoose	Davis	Van Buren	Lee
108,691	20,937	59,425	25,667	33,793	33,793	Appanoose	Davis	Van Buren	1,386,444
108,691	20,937	59,425	25,667	33,793	33,793	Appanoose	Davis	Van Buren	1,386,444
1. Northwest	2. Northeast	3. Southeast	4. Southwest	Total					
\$4,104,229	\$14,915,602	\$80,833,829	\$18,646,339	\$118,500,000					



IOWA AGRICULTURAL  
DEVELOPMENT DIVISION

This paper is one in a series produced through the **New England Land Access Policy Project**. A collaboration between American Farmland Trust, Conservation Law Foundation, and Land For Good, the **New England Land Access Policy Project** facilitated dialogue in each New England state to identify policy barriers and opportunities around land access and farm transfer.

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