

Justice on the Menu

*Legal & Policy Strategies to Address Structural Discrimination
in the US Food System*



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Introduction

Food is a basic human necessity, and access to safe and nutritious foods is essential to health and well-being.^{1,2} But racial injustice embedded in the US food system causes social, economic, and environmental harm for countless Americans who rely on it to survive – from farmers and producers to distributors, restaurant workers, food retailers, and eaters.

Racism and oppression have been woven into the US food system since the country's founding, with roots in colonization and slavery.³ Today, racism is evident across many dimensions of the US food system, from low pay and poor working conditions for farm and food workers – many of whom are Black, Indigenous, and other people of color (BIPOC)^{4,5,6,7} – to unjust racial and ethnic disparities in rates of hunger, food insecurity, and diet-related diseases.^{8,9,10,11} Movements for food justice respond to these historical and ongoing conditions by acknowledging structural racism and honoring the power of BIPOC communities to develop and implement strategies to support a healthy and thriving food system.



Informed by and in support of food justice movements, this resource offers the following information and tools:

- **Background & Key Concepts.** This section defines *structural racism* and describes how it has appeared and currently appears in the US food system, with historical and present-day examples. Looking to the future, it explores the intersection of food justice, health justice, and racial justice movements as a promising nexus for changemaking. It also champions *racism-conscious* policies as key to advancing food justice, health justice, and racial justice.
- **Policy Menus.** The policy menus provide options for changemakers who wish to address structural racism in the US food system. The options were identified via a policy scan process – which included conversations with food justice advocates, scholars, and others – in addition to legal and policy research to assess how various approaches can promote food justice and racial justice. Because every community has unique assets and priorities that must be at the foundation of any movement for a racially just food system, the menus do not prescribe solutions but instead seek to inspire and build collective understanding and dialogue about pathways toward food justice by highlighting what others have done.
- **Community Spotlights.** Law and policy can feel overwhelming when viewed in the abstract. These stories describe real-world experiences of communities in implementing some of the proposed policy options and offer key takeaways for people seeking to make changes in their own communities. The spotlights focus on advancing tribal food sovereignty, ensuring BIPOC representation in food system governance, achieving justice for Black farmers, and securing labor protections for farmworkers.
- **Practical & Legal Considerations for Policymaking to Promote Food Justice, Health Justice & Racial Justice.** This section outlines important considerations for changemakers pursuing policy as an avenue to advance food justice, health justice, and racial justice. These include general principles to inform strategy, community organizing, and advocacy, as well as limitations that may be posed by various legal landscapes.

Every community has unique assets and priorities that must be at the foundation of any movement for a racially just food system.¹² Thus, while this resource highlights policy options and considerations that can serve as a starting place for research, planning, and advocacy, it does not make specific policy recommendations. The path forward should be defined by BIPOC communities that have been historically excluded from food system governance and policymaking, despite being closest to the issues that many state and local food policies seek to address.

WHAT IS A FOOD SYSTEM?

Scholars have defined a *food system*ⁱ as “the set of operations and processes involved in transforming raw materials into foods and transforming nutrients into health outcomes, all of which functions as a system within biophysical and sociocultural contexts.”¹³ In other words, a food system encompasses the entire food supply chain, including environmental inputs, production, processing, distribution, consumption, reuse or redistribution, and disposal, as well as organizations, institutions, regulations, policies, resources, and people that drive those activities.¹⁴

A systems-level approach offers a more holistic, structural view of how food affects all people and how food issues affect health, the environment, labor, economic development, and other policy areas. Food serves as a bridge across these disciplines and provides fertile ground for the types of partnerships and collaboration that are critical to driving social change.¹⁵

See [Appendix A](#) for definitions of other terms used in this resource.

ⁱ For conciseness and alignment with non-academic vernacular, we use the term *food system* rather than *food and nutrition system* throughout this resource.

Whom This Resource Is for

Advancing and sustaining racial justice in the US food system requires collaboration across racial identities, age groups, sectors, and disciplines, and among people working on food system transformation and those involved in other social justice movements (e.g., economic rights, worker protections, civil rights and antidiscrimination, environmental justice, climate justice).¹⁶ The information in this resource is for anyone seeking to center racial justice in food system research, policy, and action. Audiences may include a wide range of changemakers, including community members; advocates; researchers; funders; financiers; narrative change agents, like local journalists and storytellers; business and organizational leaders; and policymakers and other government officials.

How Individuals Can Use This Resource

Changemakers can use this resource in various ways:

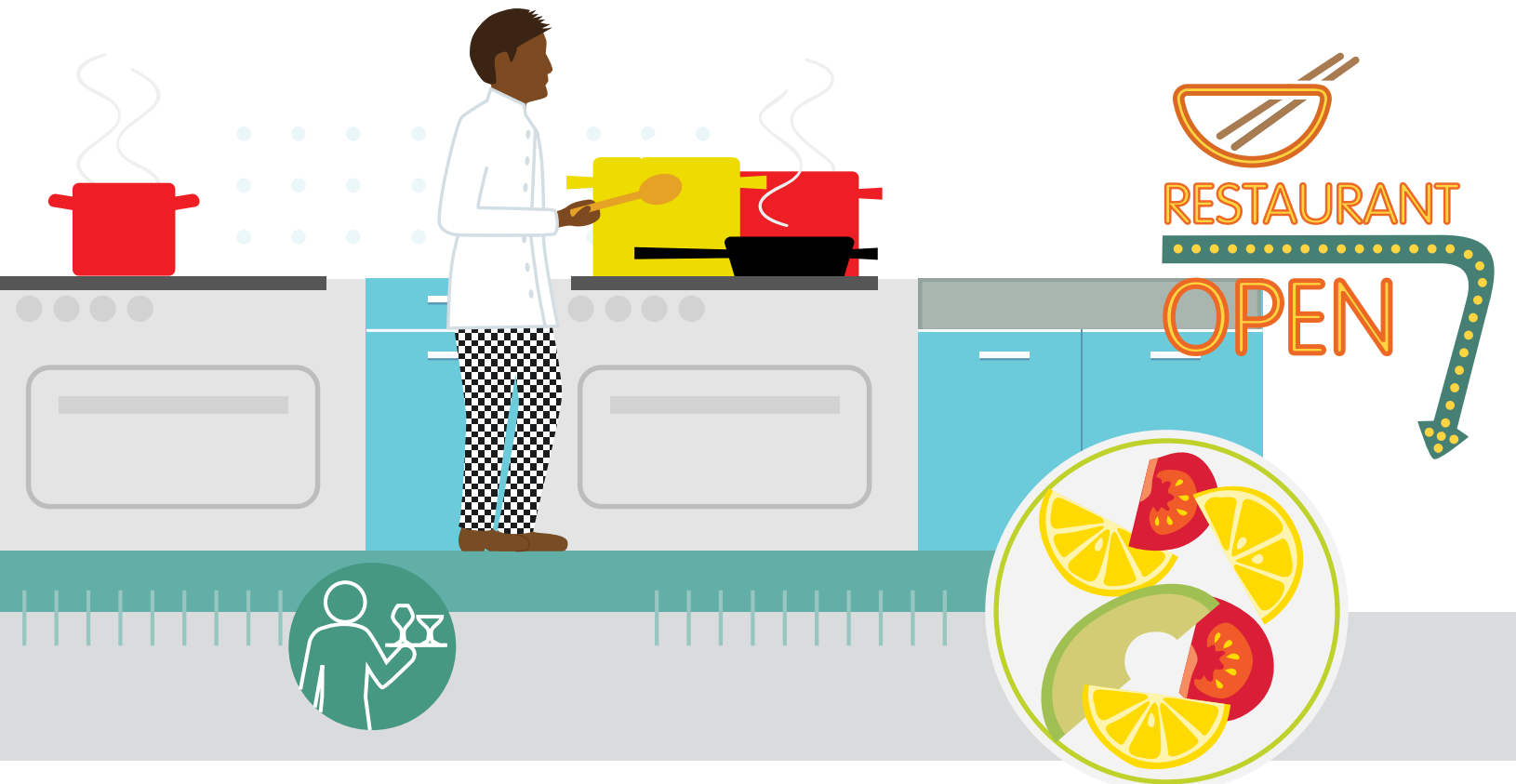
- **Advocates** and **policymakers** can reference the policy menus to jump-start conversations about options they may wish to pursue in their own jurisdictions.
- **Community leaders** and **government officials** can reference the [Practical & Legal Considerations for Policymaking to Promote Food Justice, Health Justice & Racial Justice](#) section to improve their partnerships and infuse racial justice into food system planning and policy development.
- **Researchers** can interrogate and build on learnings in this resource to produce new scholarship that explores the intersection of food justice, health justice, and racial justice or expands the evidence base to help make the case for policy changes or to defend policies in court.
- **Funders, financiers,** and **policy organizations** can use this resource to inform conversations with community partners about capacity building and resources needed to further the ongoing evolution of this work.

We hope that the ideas, options, stories, and guidance in this resource will foster new conversations, advocacy efforts, partnerships, and research to advance food justice, health justice, and racial justice.

Background & Key Concepts

Structural Racism in the US Food System

The history of the US food system is deeply rooted in racism and oppression, beginning with the stealing of land from Indigenous people for farming and the enslavement of Black and Indigenous people to work on those farms.^{17,18} People's need for food was also exploited to facilitate colonization and enslavement through forced starvation, rationing, deliberate construction of unhealthy diets, and destruction and erasure of traditional foodways for both Indigenous and enslaved populations.¹⁹ Centuries of racial segregation and discrimination within the food system have allowed racial and economic inequities to endure and affect people across generations.^{20,21}



TALKING ABOUT STRUCTURAL RACISM

Structural racism can be a sensitive topic. For some, reading these facts about the history of the United States may be difficult, while others may feel that acknowledging structural racism in the US food system is long overdue. Many have noted that confronting truths about how racial hierarchies have shaped us as individuals, as well as our communities and institutions, is a fundamental part of healing and moving toward a society in which people from all racial and ethnic groups experience equitable opportunities for health and well-being.^{22,23,24,25}

To establish a starting place for conversations on these topics, it is helpful to have a baseline understanding of key terms.

Structural discrimination entails interlocking systems of oppression, such as public policies, institutional practices, and cultural norms, that shape individuals' experiences across multiple dimensions of identity.²⁶

Structural racism, as defined by the Aspen Institute, is "a system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with 'whiteness' and disadvantages associated with 'color' to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist."²⁷

Note that structural discrimination and racism cannot be reduced to discrete acts of interpersonal bias. Rather, they are embedded in institutions and policies or practices that may appear neutral but lead to inclusion and exclusion.

The following resources further unpack these terms and related concepts:

- [What Is Racial Equity?](#) (Race Forward)
- [Four Levels of Racism](#) (Race Forward)
- [11 Terms You Should Know to Better Understand Structural Racism](#) (Aspen Institute)
- [Truth, Racial Healing, and Transformation Implementation Guidebook](#) (W.K. Kellogg Foundation; see glossary)

Additionally, the resources below provide guidance on how to discuss structural racism with various audiences:

- [Structural Racism and Health: Messages to Inspire Broader Understanding and Action](#) (Robert Wood Johnson Foundation)
- [Racial Justice](#) (FrameWorks Institute)
- [Talking to Your Family and Friends About Settler Colonialism](#) (Showing Up for Racial Justice Albuquerque)

The following are some specific examples of structural racism in the US food system throughout history:

- **Mass slaughter of North American bison for profit by European settlers throughout the nineteenth century.** Endorsed by government leaders as a means of forced assimilation and control, the slaughter of bison eliminated a major source of sustenance and spiritual and cultural practices for Indigenous people.^{28,29}
- **Exclusion of agricultural workers from basic protections in the National Labor Relations Act of 1935 and the Fair Labor Standards Act of 1938.** This exclusion was meant to appease Jim Crow-era Southern Democrats who were interested in maintaining a political and economic culture dependent on the exploitation of Black agricultural labor.^{30,31,32} Today, these unjust exemptions disproportionately harm Latine farmworkers, who make up more than two-thirds of the US agricultural workforce.^{33,34}

- **California's Alien Land Law of 1913.** This legislation prohibited Japanese immigrants from owning land or leasing land for more than three years, to protect white farmers from economic competition. The law was later expanded to include all Asian immigrants, their American-born children, and corporations run by Asian immigrants.³⁵
- **Persistent discrimination against Black, Latine, and other farmers of color by the US Department of Agriculture.** The department's discriminatory administration of farm loan and other financial assistance programs since the twentieth century has contributed to a significant decrease in Black-owned farms – from 14 percent of all US farms in 1920 to less than 1 percent today – and has inhibited opportunities for self-determination and intergenerational wealth accumulation.³⁶
- **Employment discrimination in the restaurant industry.** Data show that in fine dining establishments, white applicants are more likely to be interviewed and twice as likely to be hired as equally or better-qualified applicants of color. The highest rates of discrimination occur in service jobs that have substantial customer interaction and higher earnings, such as front-of-house server and bartender positions.³⁷

While certainly not an exhaustive list, these examples illustrate how structural racism has touched and become engrained in various aspects of the US food system. Many present-day inequities in health and health-related social and economic outcomes can be traced to laws, policies, and practices like those listed,^{38,39,40,41} and public health scholars and advocates increasingly acknowledge structural discrimination as the root cause of health inequities.^{42,43,44} For example, the mass slaughter of bison had immediate deleterious health impacts for populations that relied on bison as a food source. These populations experienced significant declines in average height and increased rates of child mortality relative to non-bison-dependent populations. The slaughter also “permanently altered bison-reliant nations’ dynamic path of development and [helps] explain the relative poverty today of Indigenous nations in the interior of North America.”⁴⁵ As another example, farmworkers who work long hours without breaks because they are denied basic labor protections have an increased risk of developing acute kidney disease – sometimes after only one shift.⁴⁶

LEARN MORE

For additional examples and research, see [An Annotated Bibliography on Structural Racism Present in the US Food System, Tenth Edition](#) from the Michigan State University Center for Regional Food Systems.

That said, despite a long history of structural racism and deliberate forms of oppression and disfranchisement, many BIPOC individuals and families have established thriving farms, gardens, and food businesses in the United States and lead influential efforts for food system transformation. For example, the Coalition of Immokalee Workers' national Campaign for Fair Food has won Fair Food Agreements with multibillion-dollar food retailers such as Walmart, McDonald's, and Subway, which improve farm labor standards and establish fairer wages for farmworkers.⁴⁷ The success of the Black Panthers' Free Breakfast for School Children Program was a direct inspiration for the permanent authorization of the federal School Breakfast Program that today helps to feed over 14 million children before school.⁴⁸

Transforming the US food system into one that is equitable and racially just requires rebalancing power in systems of food governance and redistributing resources based on values such as diversity, self-determination, equitable access and opportunity, worker safety, environmental protection, nutrition, food security, and economic security. Naming both the root causes of inequities and the values that should be reflected moving forward invites policy and systems change that can advance food justice, health justice, and racial justice.^{49,50,51}

Looking Ahead: Key Concepts

Intersection of Food Justice, Health Justice & Racial Justice

This resource focuses on the intersection of food justice, health justice, and racial justice movements as a promising nexus for change. Thus, it is important to establish an understanding of these terms and how they overlap.

Food justice. There is no single definition of *food justice*, and movements for food justice can look different in practice, depending on community goals and priorities. Drawing on insights from partners, *food justice* is defined in this resource as the right and power of all people to grow, sell, or eat nourishing foods. Other organizations have further emphasized that food justice should promote food as a human right and that centering BIPOC leadership and mitigating structural discrimination and other inequities within the food system are also integral parts of food justice.⁵² For example, the organization FoodPrint explains:

Food justice is a holistic and structural view of the food system that sees healthy food as a human right and addresses structural barriers to that right. The movement draws in part on environmental justice, which...is a movement primarily led by the people most impacted by environmental problems, connecting environmental health and preservation with the health of vulnerable communities. Food justice efforts (which are generally led by indigenous peoples and people of color) work not only for access to healthy food, but for an end to the structural inequities that lead to unequal health outcomes....

*A food justice lens examines questions of access to healthy, nutritious, culturally appropriate food, as well as: ownership and control of land, credit, knowledge, technology and other resources; the constituent labor of food production; what kind of food traditions are valued; how colonialism has affected the food system's development and more.*⁵³

Health justice. Similarly, there is no single definition of *health justice*. However, most of its proponents assert that health justice centers subordination – valuing some people less than others based on race or other social characteristics – as a key driver of health disparities. Further, health justice focuses on law and policy as both drivers of inequities and key tools for reform. Like food justice, health justice emphasizes the importance of empowering frontline communities with lived experience of structural inequities to lead initiatives.^{54,55,56,57,58} For example, the legal scholar Emily A. Benfer and her colleagues have written,

*Health justice is the eradication of social injustice and health inequity caused by discrimination and poverty.... The framework centers on engaging, elevating, and increasing the power of historically marginalized populations to address structural and systemic barriers to health, as well as to compel the adoption of rights, protections, and supports necessary to the achievement of health justice.*⁵⁹

Angela P. Harris, a civil rights legal scholar, and Aysha Pamukcu, a public health advocate, have stated, “Health justice not only places subordination at the center of the problem of health disparities; it calls for subordinated communities to speak and advocate for themselves.”⁶⁰

Racial justice. Racial justice is threaded through both food justice and health justice. As the Othering and Belonging Institute explains, “Because race and racialization are woven into all aspects of society, including housing, education, healthcare, and life outcomes in general, you will find race as a central consideration across every research project and program area.”⁶¹ The organization Race Forward defines *racial justice* as “a vision and transformation of society to eliminate racial hierarchies and advance collective liberation, where Black, Indigenous, Latinx, Asian Americans, Native Hawaiians, and Pacific Islanders, in particular, have the dignity, resources, power, and self-determination to fully thrive.”⁶²

While food justice, health justice, and racial justice are separate movements, they are all grounded in the same core principles, they and approach their goals with similar beliefs (see Figure 1). Exploring the relationships between them can reveal opportunities to advance all of them. For example, the policy menus in this resource encourage using the food system as a tool or pathway to advance racial and health justice.

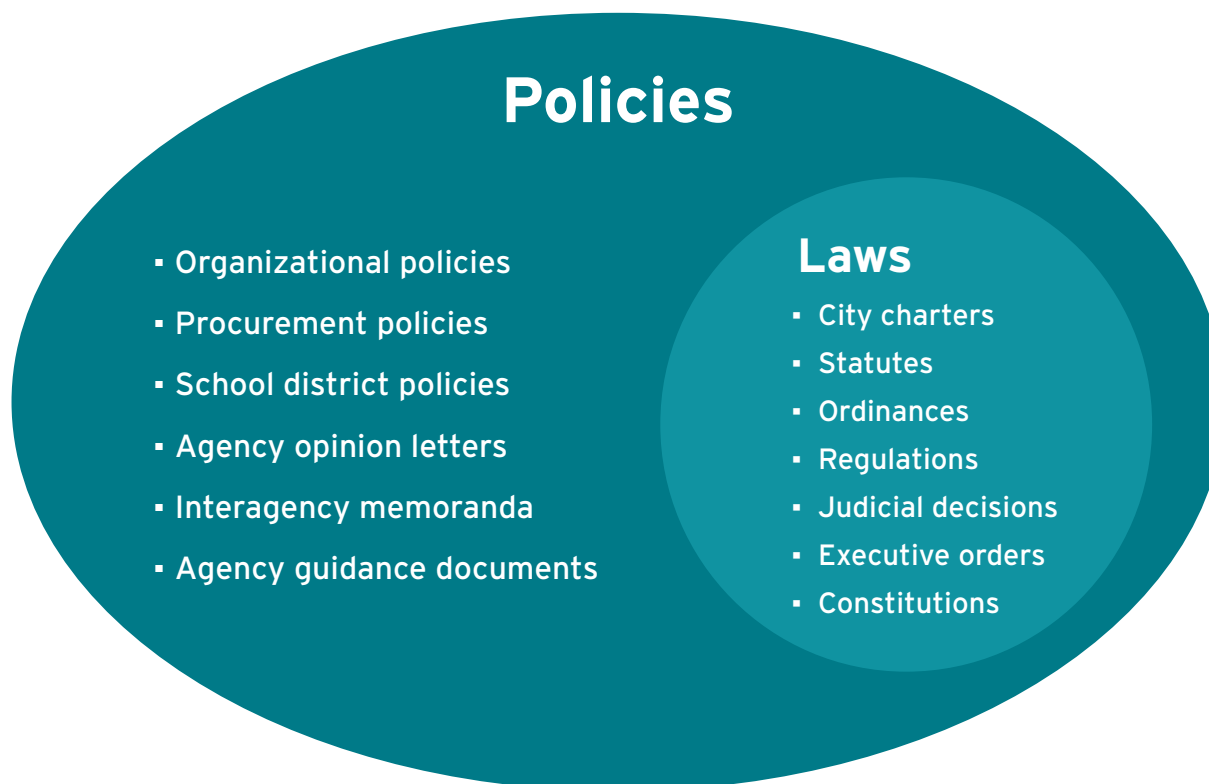
Figure 1. Food justice, Health Justice, and Racial Justice



Racism-Conscious Laws & Policies

As noted earlier, food justice, health justice, and racial justice movements all focus on both the necessity and insufficiency of law and policy to address structural discrimination. While the terms *law* and *policy* are often used interchangeably in the media, in this resource, *law* refers specifically to the codification and institutionalization of a policy by a government in the form of an ordinance, statute, or regulation. *Policy* refers to a written statement of a public agency or organization's position, decision, or course of action. Thus, all laws are policies, but not all policies are laws (see Figure 2).⁶³

Figure 2. Laws and Policies



Because racism is embedded in and reinforced by many existing laws and policies, using laws and policies to dismantle structural racism in the food system can be fraught.⁶⁴ Laws and policies have created a system that has perpetuated racism, discrimination, and segregation throughout US history.⁶⁵ In this context, color-blind approaches to policymaking – those that deny the existence of structural racism – do little, if anything, to further racial justice.^{66,67} For laws and policies to redress the racist legacy of the United States, they must be *racism-conscious*, purposefully considering race and focusing on mitigating the root causes of structural racism.^{68,69,70}

Racism-conscious laws or policies vary. Some may make explicit classifications based on race, while others may be race-neutral but have a racial purpose or be pursued with awareness of racial effects.⁷¹ For example, a food procurement policy that allocates a portion of government contracting funds to certified minority-owned businesses makes explicit race-based distinctions to benefit these businesses. However, if a government agency is legally prohibited from designing a policy in this way (which is generally true for state and local agencies), or if such an approach is politically infeasible given the priorities of the administration in power, the agency might consider a policy that gives preference to local food businesses, with the knowledge that many food businesses in the area are owned by people from minoritized racial and ethnic groups.^{72,73} Both approaches could be considered racism-conscious.

A NOTE ON TERMINOLOGY

The terminology used to describe laws and policies that seek to eliminate structural racism is evolving in public discourse and in a growing body of academic literature.^{74,75,76,77} Here, we define and distinguish the terms *racism-conscious*, *race-based*, and *race-neutral* as they are used in this resource.

Racism-conscious policies. Racism-conscious policies seek to eliminate structural racism. Scholars Shekinah Fashaw-Walters and Cydney McGuire explain that such policies “address racism by identifying, understanding, and responding to the structural barriers and inequities that give rise to and maintain the social, political, and economic limitations imposed on minoritized groups in the US.”⁷⁸ Racism-conscious approaches to eliminate racial discrimination can be race-based or race-neutral!

Race-based policies. Race-based policies make explicit racial distinctions, often using “race as a decision or selection criterion, generally at the individual level.”⁷⁹

Race-neutral policies. *Race-neutral* is a legal term used to describe policies that are “facially neutral,” meaning that they do not make explicit racial distinctions.^{80,81} Some scholars understand *race-neutral* to indicate color-blind policies that “attempt to improve quality and outcomes for everyone, regardless of race,” and that “do not consider the potential and inevitable role of racism, or even race, in policy outcomes.”⁸² This resource uses *race-neutral* in the more narrow legal sense, in which race-neutral policies may still be racism-conscious. As stated by the Othering and Belonging Institute, “Many policies that are ostensibly race-neutral have disparate racial effects. Neutrality refers to the... design of the policy, and specifically that it does not use race as a decision or selection criterion.”⁸³

Many of the options listed our policy menus are race-neutral but can nevertheless be considered racism-conscious, depending on their purpose or effects, and how they are implemented.

ⁱ Some commentators understand a similar term – *race-conscious* – to have a meaning that is consistent with this definition, while others understand it to be limited to *race-based* policies, meaning those that make explicit distinctions based on race. Due to the lack of a clear and consistent definition, we avoid the term *race-conscious* in this resource and use *racism-conscious* instead. By Fashaw-Walters and McGuire’s definition, the term *racism-conscious* encompasses both race-based and race-neutral approaches and emphasizes that exposure to racism, not race itself, is the issue that a policy is focusing on.



No single policy pursued in isolation can dismantle structural racism or make transformational change in the food system. Changemakers who use this resource should consider individual policy options as “bricks in a brick wall” – meaning that over time, and when connected to broader social justice movements, they can be part of the pathway toward more transformational change. Deliberate, racism-conscious legal and policy interventions can help to codify and institutionalize ideas and values that emerge from these movements to drive long-term food justice and racial justice. Legal and policy strategies can address the distribution of money, power, opportunities, and resources and **undo fundamental drivers of inequity**, including structural discrimination, which is the preeminent driver of inequity. Efforts to address historical and ongoing harms and advance food justice, health justice, and racial justice would be incomplete without law and policy changes.⁸⁴

EXAMINING THE ROLE OF THE US DEPARTMENT OF AGRICULTURE

Although this resource does not focus on the federal food policy landscape, we do note that the US Department of Agriculture (USDA) has played a major role in both creating and beginning to address structural racism within the US food system. For example, decades of discrimination by USDA against BIPOC and women farmers in the agency’s Farm Bill–authorized lending programs culminated in multiple lawsuits against the agency that resulted in settlement agreements providing monetary relief to claimants.ⁱ However, even when settlements were reached in cases challenging USDA’s discriminatory lending practices, issues with the administration of claims for settlement proceeds resulted in many farmers falling further into debt while awaiting payment. Ultimately, only a small percentage of claimants received financial relief.^{85,86} The impact of these broken promises persists today,⁸⁷ as Black farmers have lost an estimated \$326 billion worth of farmland in the twentieth century⁸⁸ and constituted only 1.2 percent of US farmers as of 2022.⁸⁹

In recent years, USDA has advanced initiatives to address its harmful practices. In 2021, USDA vowed to end all forms of discrimination in its programs and publicly acknowledged

the agency’s history of systemic discrimination.⁹⁰ In response to the Biden Administration’s ambitious national strategies to reduce hunger and diet-related diseases by 2030 and the Executive Orders on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, USDA developed equity action plans that are intended “to remove barriers to access to [USDA] programs and services for all Americans, including ensuring USDA resources reach underserved communities and those with the most need.”^{91,92,93,94} As the agency tasked with administering programs to support the economic stability of farmers and nutrition assistance programs, USDA policies and programs have a wide reach and potential to help shape a racially just food system.

To learn more about lawsuits arising from USDA’s discrimination in its farm lending programs, see the [National Black Farmers Association website](#) and [this issue brief](#) from the Congressional Research Service.

To learn more about the Farm Bill, see the [many resources](#) available from the National Sustainable Agriculture Coalition, including their [2023 Farm Bill Platform: Advancing Racial Equity Across the Food System](#).

ⁱ See *Pigford v. Glickman* (filed by Black farmers); *Keepseagle v. Vilsack* (filed by Native American farmers); *Love v. Vilsack* (filed by female farmers); and *Garcia v. Vilsack* (filed by Hispanic farmers).

Policy Menu

What Is the Goal of the Policy Menu?

The policy menus in this resource provide options for changemakers who want to address structural racism within the US food system. Moving toward justice and equity is always context-specific, and people who live, work, and make decisions in a particular place are best suited to determine what policy solutions are best for their communities. The context and nuance of what is happening on the ground – including local community assets and state-specific political and legal considerations – inform what is possible and what should be prioritized. Thus, the policy menus are not meant to offer recommendations or an exhaustive list of solutions but to inspire and increase collective understanding and discourse about pathways toward a racially just food system by highlighting what others have done.

How Were the Policy Options Identified?

Information in the menus was collected via a comprehensive policy scan process. The process was designed to identify state and local policies that can advance racial justice in the US food system. We also aimed to find opportunities for states to leverage and implement federal food policies. The process included three distinct phases:

- 1. Scoping:** identifying legal and policy options via virtual roundtables with food justice advocates, scholars, and others, as well as an informal review of peer-reviewed and gray literature
- 2. Assessment:** conducting legal and policy research to evaluate the impact of various policy options on outcomes related to food justice and racial justice
- 3. Ground truthing:** gathering feedback on findings from partners in the field

The complete methodology for the policy scan can be found in [Appendix B](#).

The process yielded a list of 53 state and local policies, including emerging policy proposals that have not yet been adopted in any jurisdiction (referred to as “proposed” policies in the menus) and policies that have been adopted and implemented in at least one jurisdiction. Notably, while the search for policies that advance racial and food justice was expansive, the resulting list is neither exhaustive nor formally validated.



LEARN MORE

For additional inspiration, consider exploring other compendiums of policy options and examples:

- [Food Sovereignty Action Steps](#) (Soul Fire Farm). These action steps include a “policy platform to end racism in the food system.”
- [HEAL Platform for Real Food](#) (HEAL Food Alliance). This 10-point platform, developed by 50 organizations across the US food system, “serves as a call to action and a political compass for transformation.”
- [Vision for Black Lives](#) (Movement for Black Lives). The Vision is “a comprehensive and visionary policy agenda for the post-Ferguson Black liberation movement” endorsed by over 50 Black-led organizations.
- [Policy Database](#) (Healthy Food Policy Project). This database enables users to search among 605 healthy food policies implemented in towns, cities, and counties around the United States. Users can apply a variety of filters, including one that specifically identifies policies that refer to priority populations, which are defined as “[g]roups with unique healthcare needs or issues that require special attention; groups that tend to be socially disadvantaged and marginalized.”
- [Racial Equity Toolkit](#) (Restaurant Opportunity Center). This resource provides “restaurant management with practical resources for assessing, planning, and implementing steps toward racial equity.”

Why Do the Policy Menus Focus on State & Local Policies?

This resource focuses specifically on state and local policies.

State policies include state-level legislation, such as statutes and budget appropriations; regulations promulgated by state agencies; and executive orders issued by governors.

Local policies include local legislation, such as ordinances and budget appropriations; resolutions; executive orders issued by mayors or similar local officials; and policies issued by entities like local school boards, planning commissions, or boards of health.

Policy changes at state and local levels are more likely to be grounded in a deep understanding of community needs and goals; the lived experiences of residents; and unique geographic, economic, political, and other factors that influence the local food system. Making changes to state and local policy may also be more feasible than policy changes at the national level, especially when it comes to novel or innovative approaches. Additionally, many drivers of food justice, health justice, and racial justice can be influenced through decisions about how local and state programs and services are delivered.⁹⁵

CHECKING FOR PREEMPTION

The policy scan process did not assess all potentially relevant legal considerations that would inform whether pursuing a particular policy option is feasible in each state. A locality's authority to adopt a policy may depend on state law and state-level preemption.

Preemption – a legal doctrine in which a government body may limit or eliminate a lower level of government's power to regulate a specific issue – can have profound significance for food justice, health justice, and racial justice. Preemption historically has been used as a legislative and judicial tool for resolving problems that arise when different levels of government adopt conflicting laws on the same subject. Preemption in itself is neither bad nor good; it is simply a legal concept. However, powerful interest groups have initiated many state-level efforts to preempt local

laws that threaten their power and profits – from local minimum wage laws to sugary drink taxes and participatory budgeting^{96,97} – thus impeding communities' ability to pursue equity- and health-promoting policies.

Any community that wishes to address racism in the food system through policy change should take steps to ensure that their approach is not limited by existing or impending preemption at a higher level of government. If preemption stands in the way of a specific policy approach, communities may be able to pursue other options.

For more information about preemption and equitable policymaking, including how to analyze the role of preemption as part of the policymaking process, please explore [ChangeLab Solutions' preemption tools and resources](#).

Although this resource focuses on state and local-level policies, many of the examples can also be adopted and implemented at the organizational level. Organizational policies include the internal policies of government agencies, schools, health care institutions, nonprofits, businesses, or other private entities. These policies establish organizational practices or govern the conduct of employees and do not apply broadly at the jurisdictional level. Some policy options that could be adopted by organizations include values-based procurement policies and requirements to support healthy retail food environments.

Further, while this project did not set out to identify federal policy opportunities, some of the policy options provided have been pursued at the federal level (e.g., child tax credits, protecting Indigenous hunting and gathering rights on public lands) or could be (e.g., loans for worker-owned businesses, overtime pay for farmworkers). Such federal-level policies are often pursued simultaneously with parallel state and local approaches. On the flip side, the policy scan did systematically include opportunities for state and local governments to address food system inequities through implementation of existing federal policies.

How Are the Policy Menus Organized?

The policy menus are organized by the food system component – namely, production, consumption, retail, workforce, or governance – that the policies are primarily concerned with. The following information is provided for each policy:

- Policy name
- Policy description
- Racial justice impact
- Food justice impact
- Jurisdictional level(s) at which the policy can be pursued (state and/or local), depending on state-specific legal contexts
- Status (proposed or adopted in at least one jurisdiction)
- Example(s)

Table 1 provides more detail on how some of these categories are defined within the context of this research. Table 2 contains the policy menus.

Table 1. Definitions Used in the Policy Menus

Food system component	Which aspect of the food system is the policy primarily concerned with?
Production	The policy creates change in the food supply chain at the point of growing, producing, hunting, fishing, and/or gathering food.
Consumption	The policy creates change in the activity of preparing and/or consuming foods in a variety of settings.
Retail	The policy creates change in food retail environments where food is marketed and/or sold.
Workforce	The policy creates change for food workers and/or in labor practices across the supply chain.
Governance	The policy creates change in decision-making processes and/or practices.
Racial justice impact	In what way(s) does the policy support the elimination of racial hierarchies; advance collective liberation; and promote conditions for the equitable distribution of dignity, resources, power, and self-determination?
Community power	The policy supports BIPOC community participation in food policy decision making and governance, BIPOC community-led resistance to corporate power in the food system, and/or community-led or community-owned food solutions. The policy aims to use democratic processes and/or practices to address how structural racism inequitably distributes political power across the food system.
Distribution of resources, land, and capital	The policy supports the equitable redistribution of land, capital, and/or other resources necessary for food production, processing, distribution, and/or consumption.
Income and food supports	The policy supports administration of state and federal income and/or food assistance programs in ways that acknowledge the presence of structural racism in the food system, recognize food insecurity as a form of trauma, preserve participants' dietary and bodily autonomy, and/or include participants' meaningful involvement in formulating program guidelines and practices.
Retail and commercial determinants	The policy addresses structural racism in food and beverage production, procurement, marketing, and/or sales.
Food justice impact	In what way(s) does the policy promote the right and power of all people to grow, sell, and/or eat nourishing foods?
Access	The policy improves access to nourishing and culturally appropriate foods by addressing barriers such as limited transportation options or retail outlets.
Affordability	The policy promotes affordability of nourishing and culturally appropriate foods by addressing barriers related to income and pricing, among others.
Availability	The policy helps to ensure that nourishing and culturally appropriate foods are being produced and sold at retail outlets.
Choice and dignity	The policy addresses the experience of engaging in the food system by maintaining individual choice and dignity in producing and consuming foods.
Community control	The policy helps to ensure that those who are or will be affected by the policy have meaningful participation in developing, implementing, enforcing, and/or evaluating the policy.
Cultural responsiveness	The policy protects and promotes cultural practices related to preparation and consumption of food, considering, for example, where, how, and with whom it is eaten.
Safety	The policy promotes physical and emotional safety for individuals engaging with the food system, by ensuring reasonable freedom from harm or danger and/or preventing further traumas from occurring.

Table 2. Policy Menus for Addressing Structural Discrimination in the US Food System

Production

POLICY NAME	POLICY DESCRIPTION	RACIAL JUSTICE IMPACT	FOOD JUSTICE IMPACT(S)	JURISDICTION LEVEL(S)	STATUS	EXAMPLES
Eased Insurance Requirements for Urban Farmers	By easing insurance requirements for community and urban gardens, these policies reduce operating costs and make it easier for individuals to create and manage these sites.	Distribution of resources, land, and capital	Availability	State Local	Adopted	<ul style="list-style-type: none"> ▪ § 154-3(D): Community gardening regulations (Springfield, Massachusetts)
Hunting and Gathering Rights on Public Land	These laws and policies protect the rights of individuals to hunt, fish, and gather wildlife on public land. They may specify public land access for tribes and Indigenous people and/or establish government-to-government co-management agreements. They aim to facilitate food access and community control, which can be specifically impactful in regard to land that has been removed from community control – an issue that disproportionately affects BIPOC communities.	Community power	Access Cultural responsiveness Community control	State Local	Adopted	<ul style="list-style-type: none"> ▪ Right to Hunt and Fish (Utah)
Incentives for Leasing Land and Equipment to New Farmers	These policies offer agricultural asset owners a state income tax credit if they lease land, equipment, livestock, and/or buildings to new farmers. Such policies can make it easier to access food production and income generation, especially for aspiring producers who may not have access to resources and wealth.	Distribution of resources, land, and capital	Affordability	State Local	Adopted	<ul style="list-style-type: none"> ▪ Beginning Farmer Tax Credit Program (Iowa) ▪ NextGen (Nebraska)
Land Returns and Grants	Land returns and grants create funds and/or procedures to return stolen land and support investment in land access and ownership efforts for BIPOC individuals.	Distribution of resources, land, and capital	Access Affordability	State Local	Adopted	<ul style="list-style-type: none"> ▪ Land Access & Opportunity Fund (Vermont) ▪ Tübatulabal Tribe Conservation Easement (California) ▪ State park transfer to Upper Sioux (Minnesota) ▪ Black Farmer Restoration Act (Illinois)
Seed Sharing and Saving Protections	Seed sharing and saving protections remove legal barriers to seed sharing activities and organizations. These policies explicitly exempt non-commercial seed sharing activities, like seed libraries and seed swaps, from regulation under commercial state seed laws. These policies also ensure that labeling, permitting, and testing requirements do not apply to non-commercial seed sharing, promoting pathways for food sovereignty and food access.	Community power	Access	State Local	Adopted	<ul style="list-style-type: none"> ▪ Minnesota Seed Law and Rules
Tax Incentives for Urban Agriculture	These laws reduce property tax assessments for vacant lots converted to urban agriculture use, lowering the barrier for individuals and communities that wish to produce food.	Distribution of resources, land, and capital	Access Community control	State Local	Adopted	<ul style="list-style-type: none"> ▪ Urban Agriculture Incentive Zone Contracts (Los Angeles, California)
Uniform Partition of Heirs' Property	These state acts require that courts provide heirs with an opportunity to buy out the share of the person who wishes to sell and instructs courts to consider the non-economic value of the property, including its cultural or historical significance, when deciding whether to order a partition sale. This requirement helps facilitate preservation of wealth for BIPOC farmers.	Distribution of resources, land, and capital	Affordability	State	Adopted	<ul style="list-style-type: none"> ▪ Uniform Partition of Heirs Property Act (Mississippi)
Zoning for Food Production	These laws define and create clear intent about specific agricultural land uses. Expanding zoning for food production across residential and commercial zoning districts increases opportunities for community food production.	Distribution of resources, land, and capital	Access Community control	Local	Adopted	<ul style="list-style-type: none"> ▪ Agricultural uses (Austin, Texas)

Consumption

POLICY NAME	POLICY DESCRIPTION	RACIAL JUSTICE IMPACT	FOOD JUSTICE IMPACT(S)	JURISDICTION LEVEL(S)	STATUS	EXAMPLES
Child Tax Credit	These laws change state tax law to provide child tax credits for individuals and families with children, supporting the economic security of these families.	Income and food supports	Affordability	State	Adopted	<ul style="list-style-type: none"> Child Income Tax Credit (New Mexico)
Elderly Simplified Application Project (ESAP) Waiver for Minors	Through the Elderly Simplified Application Project, some states offer simplified application and recertification requirements for households with older people and/or individuals with a disability with no income. This administrative change extends this flexibility to older people and/or individuals with a disability in households with children as well.	Income and food supports	Affordability	State	Adopted	<ul style="list-style-type: none"> ESAP Waiver for Minor Children (California)
Food and Cash Assistance for Immigrants Regardless of Immigration Status	States and localities can supplement existing federal food and cash assistance programs with policies that establish programs offering food and cash assistance to any income-eligible individual, regardless of immigration status.	Income and food supports	Affordability	State Local	Adopted	<ul style="list-style-type: none"> California Food Assistance Program (California)
Food and Cash Assistance for Individuals with Prior Felony Drug Convictions	An administrative flexibility of federal assistance programs allows states to opt to remove bans on SNAP and TANF for individuals with previous drug felony convictions, expanding eligibility and access to these programs' benefits.	Income and food supports	Affordability	State	Adopted	<ul style="list-style-type: none"> Public assistance: Eliminates restrictions on eligibility for certain public assistance for persons with prior drug convictions (Louisiana)
Food Service Guidelines	These policies regulate food and drink that are sold or served in retail environments and/or congregate meal settings (e.g., fast food restaurants, government buildings, correctional facilities, senior meal programs). These guidelines can prioritize values such as nutrition, valued workforce, local economies, and racial equity in food products sold and served.	Retail and commercial determinants	Access Cultural responsiveness	State Local	Adopted	<ul style="list-style-type: none"> Healthy Default Beverages Offered with Children's Meals (Berkeley, California) Healthy Procurement (Miami Gardens, Florida) Philadelphia Nutrition Standards
Increased Reimbursement Rates to Support Fair Pay for Home-Based Child Care Workers	These policies allow states to increase or supplement reimbursement rates for meals served in home-based child care settings. Such policies support fair pay for home-based child care workers, who offer a critical service for working families.	Income and food supports	Affordability	State	Proposed	<ul style="list-style-type: none"> Child Care Trailer Bill (California)
Prison and Jail Food Reform	These policies seek to improve food quality and nutritional value; increase availability of fresh, whole, nutritious foods; and make changes to the eating experience for people who are incarcerated.	Income and food supports	Access Choice and dignity	State Local	Adopted	<ul style="list-style-type: none"> Executive Order No. 509: Establishing nutrition standards for food purchased and served by state agencies (Massachusetts) Menu Planning and Meal Preparation and Service (Maine Department of Corrections)
Summer EBT	States and tribes can opt in to a federal program that offers cash assistance via electronic benefit transfer (EBT) to families with school-age children during the summer months when school is not in session and school meals are not available.	Income and food supports	Affordability	State	Adopted	<ul style="list-style-type: none"> 2024 Summer EBT Implementing States, Territories, and Tribes
Universal Free School Meals	This legislation provides free breakfast and lunch to all students attending public schools, regardless of household income.	Income and food supports	Affordability	State Local	Adopted	<ul style="list-style-type: none"> School Meals for All (Maine)

Retail

POLICY NAME	POLICY DESCRIPTION	RACIAL JUSTICE IMPACT	FOOD JUSTICE IMPACT(S)	JURISDICTION LEVEL(S)	STATUS	EXAMPLES
Commercial Kitchens	These laws support commercial kitchens in various ways – for example, by permitting kitchens in residential zones or simplifying licensing requirements. Adoption can lower the barrier to entry for food businesses and support local economies.	Distribution of resources, land, and capital	Access Community control	State Local	Adopted	<ul style="list-style-type: none"> Commercial Kitchens in Residential Zones (Montgomery County, Maryland) Defining Community Kitchen as an Approved Facility (Minneapolis, Minnesota)
Elimination of Grocery Sales Tax	These laws reduce or eliminate taxes on grocery sales or provide refundable tax credits based on income, reducing the cost of food for consumers.	Retail and commercial determinants	Affordability	State Local	Adopted	<ul style="list-style-type: none"> Grocery Tax Credit (Utah) Axe the Food Tax (Kansas)
Fee Waiver for Mobile Vendors of Farm and Food Products	These fee waivers exempt producers/manufacturers (farmers, butchers, cheese makers, dairy farmers, bakers) from paying merchant license fees required of mobile food vendors.	Retail and commercial determinants	Access	State Local	Adopted	<ul style="list-style-type: none"> Fee Exemption (Red Lion, Pennsylvania)
Food Procurement	Food procurement policies can be leveraged to drive governments and institutions to prioritize specific values, such as good nutrition, valued workforce, racial justice, sustainability, and local economies, in their procurement and contracting.	Retail and commercial determinants	Access	State Local	Adopted	<ul style="list-style-type: none"> Local Food Purchasing Policy (Albany County, New York)
Healthy Food Overlay District	Overlay districts – a zoning or planning tool – can be used to apply additional standards for previously established zoning districts. In the context of food retail, they can be used to promote healthy retail within existing zoning districts. For example, an overlay district may require that small box discount stores be physically distanced from one another to support better access to fresh, healthy foods and encourage more retail options.	Retail and commercial determinants	Access	Local	Adopted	<ul style="list-style-type: none"> Healthy Food Overlay District (Birmingham, Alabama)
Healthy Retail Food Environment	These policies promote healthy in-store and online food environments, restrict targeted marketing to children and BIPOC communities, and protect individual choice and dignity.	Retail and commercial determinants	Choice and dignity	State Local	Adopted	<ul style="list-style-type: none"> Grocery Minimum Stocking Requirements (Minneapolis, Minnesota) Healthy Food Retailer Incentives (San Francisco, California) Code, § 14-603(7): Relaxing design requirements for fresh food markets (Philadelphia, Pennsylvania)
Mobile Food Vending	Mobile food vending policies permit the operation of food trucks and other mobile vending methods within city limits and establish rules and regulations related to mobile food vending. These policies typically include specific instructions on obtaining and renewing permits to operate food trucks, carts, or other mobile vending methods.	Retail and commercial determinants	Access	State Local	Adopted	<ul style="list-style-type: none"> Economic Development and the Food Truck Industry (Boston, Massachusetts)
Prohibition of Restrictive Covenants on Supermarkets	These laws ban food retail stores from including use restrictions in contracts for sale, lease, or transfer of property that prohibit the future use of that and any property within one mile as a grocery or food retail store. This prohibition removes barriers to replacing closed food retail stores.	Retail and commercial determinants	Access	State Local	Adopted	<ul style="list-style-type: none"> Grocery Store Restrictive Covenant Prohibition (Washington, DC)
Sale of Produce on Residential Streets	These policies legalize the sale of fresh produce on residential streets, expanding access to healthy and affordable foods.	Retail and commercial determinants	Access	Local	Adopted	<ul style="list-style-type: none"> Urban Agriculture Regulations (Sacramento, California)

Workforce

POLICY NAME	POLICY DESCRIPTION	RACIAL JUSTICE IMPACT	FOOD JUSTICE IMPACT(S)	JURISDICTION LEVEL(S)	STATUS	EXAMPLES
Access to Affordable Civil Legal Assistance for Farm Owners and Workers	These policies provide farmworkers with access to affordable legal services and assistance so that workers in an industry with a high volume of immigrant workers have access to support to help ensure that their rights are protected.	Distribution of resources, land, and capital	Safety	State Local	Proposed	<ul style="list-style-type: none"> ■ Pilot Program Providing Free Legal Services for Undocumented Farmworkers (California) ■ Agricultural Workers' Rights (Colorado S.B. 87) ■ Universal Representation (Oregon S.B. 1543)
Anti-Wage Theft Laws	Anti-wage theft laws increase penalties for businesses that fail to pay wages to their employees. These laws are especially important for businesses through which employees earn an hourly wage and tips, as in the food service industry.	Distribution of resources, land, and capital	Affordability	State Local	Adopted	<ul style="list-style-type: none"> ■ Enforcement, Penalties, and Procedures for Law Regarding Failure to Pay Wages (New Jersey)
Collective Bargaining Rights for Agricultural Workers	These laws encourage and protect the right of agricultural employees to join unions and to collectively bargain with their employers.	Distribution of resources, land, and capital	Community control	State	Adopted	<ul style="list-style-type: none"> ■ Agricultural Workers: Wages, Hours, and Working Conditions (California)
Cooperative Incorporation Statutes	States may support formation of cooperatives under a general incorporation statute, a specific cooperative incorporation statute, or under a special agricultural cooperative associations act. These laws provide structure for the establishment of cooperatives.	Community power	Community control	State	Adopted	<ul style="list-style-type: none"> ■ Agricultural Cooperative Associations (Arkansas) ■ Cooperatives – General (Colorado)
Earned Paid Sick Time	Earned paid sick time policies require that employers provide paid time off, accrued based on time worked, for employees who are ill or caring for an ill family member.	Distribution of resources, land, and capital	Affordability Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Accrual of Earned Paid Sick Time (Arizona)
Easing of Commercial Lending Requirements to Support Small and Worker-Owned Businesses	These policies allow credit unions to make business loans to members without requiring a “personal guarantee,” which can help small and worker-owned businesses access this type of financing	Community power	Community control	State	Proposed	<ul style="list-style-type: none"> ■ NCUA 12 CFR Part 723: Member Business Lending
Health Care Benefits for Agricultural Workers	These policies require employers to provide agricultural workers with health insurance.	Distribution of resources, land, and capital	Safety	State Local	Proposed	<ul style="list-style-type: none"> ■ Expanding Health Coverage for California Farmworkers
Housing for Farmworkers	These policies enforce housing standards and/or incentivize housing development on agricultural land for farmworkers.	Distribution of resources, land, and capital	Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Worker Housing: State Funding: Streamlined Approval Process for Agricultural Employee Housing Development (California) ■ Oregon H.B. 2001: Relating to Housing and Declaring an Emergency ■ Temporary Worker Housing – Health and Safety Regulation (Washington)
Increased Access to Financing and Other Types of Support for Employee Ownership	These policies establish loan funds, grants, tax incentives, and/or technical support programs for businesses with employee ownership structures (e.g., worker cooperatives, employee stock ownership plans) and/or to help businesses offset the cost of converting to an employee-owned structure.	Community power	Community control	State Local	Adopted	<ul style="list-style-type: none"> ■ Employee Ownership Loan (Colorado) ■ State legislation in support of employee ownership ■ National Worker Cooperative Development and Support Act (H.R. 7721)
Independent Contractor Laws	Independent contractor laws require companies that hire independent contractors to reclassify them as employees, entitling them to minimum wage, health insurance, breaks, and other benefits.	Distribution of resources, land, and capital	Affordability Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Worker Status: Employees and Independent Contractors (California)

Workforce (continued)

POLICY NAME	POLICY DESCRIPTION	RACIAL JUSTICE IMPACT	FOOD JUSTICE IMPACT(S)	JURISDICTION LEVEL(S)	STATUS	EXAMPLES
Overtime Pay for Agricultural Workers	These laws mandate overtime requirements for agricultural workers to ensure that they are fairly compensated for time worked.	Distribution of resources, land, and capital	Affordability	State Local	Adopted	<ul style="list-style-type: none"> ■ Overtime for Agricultural Workers (Oregon)
Pesticide Bans and Protections	These policies outline general standards to regulate pesticide usage and offer protections for workers in industries with high pesticide use, such as agriculture, who may be exposed to harmful chemicals on the job. These policies can also reduce consumers' pesticide exposure.	Retail and commercial determinants	Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Pesticide Registration (New York)
Preferential Procurement and Contracting for Worker-Owned Businesses	These policies provide local or state government agencies with flexibility to prioritize worker cooperatives when selecting a vendor for food purchases or food services.	Community power	Community control	State Local	Adopted	<ul style="list-style-type: none"> ■ Supporting Worker Cooperatives (Berkeley, California)
Protections for People Who Are Incarcerated and Working in Agriculture and Production	These policies aim to provide fair wages and safe working conditions for people who are incarcerated and address the convict leasing system in the criminal justice system. To date, some states have amended their constitutions to eliminate the Thirteenth Amendment exception language, making it unconstitutional to impose slavery as punishment for a crime, but none have gone further to protect wages and working conditions.	Distribution of resources, land, and capital	Choice and dignity Safety	State	Proposed	<ul style="list-style-type: none"> ■ Captive Labor: Exploitation of Incarcerated Workers ■ "An Examination of Prison Labor in America"
Warehouse Worker Protections	These policies outline protections specific to workers in warehouses, including workplace safety, hour and wage protections, collective bargaining rights, and benefits.	Distribution of resources, land, and capital	Affordability Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Warehouse Distribution Centers (California A.B. 701) ■ Worker Safety Requirements (Minnesota H.B. 36)
Worker Protections Regardless of Immigration Status	These policies ensure that workers, regardless of immigration status, have access to protections such as wage and hour protections and workers compensation.	Distribution of resources, land, and capital	Affordability Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Rights of Workers Regardless of Immigration Status (California)
Youth Employment Protections	These policies strengthen the working standards for youth.	Distribution of resources, land, and capital	Safety	State Local	Adopted	<ul style="list-style-type: none"> ■ Remedies at Law for Violating Colorado Youth Act (Colorado) ■ Child Labor Law Amendment (Illinois) ■ Workers Compensation Law Amendment (Arkansas)

Governance

POLICY NAME	POLICY DESCRIPTION	RACIAL JUSTICE IMPACT	FOOD JUSTICE IMPACT(S)	JURISDICTION LEVEL(S)	STATUS	EXAMPLES
Disaggregation of Public Data	These policies seek to improve data collection and require data disaggregation by government offices and departments in order to better understand the impacts of structural racism on residents and communities and develop appropriate policy solutions.	Community power	Cultural responsiveness	State Local	Adopted	<ul style="list-style-type: none"> ▪ Racial Equity Plan (Minneapolis, Minnesota)
Government Offices of Food Policy and Racial Equity	Law and policy establishing these offices create a home for food justice and racial justice work within a jurisdiction and can align and promote food justice and racial justice efforts across government departments.	Community power	Community control	State Local	Adopted	<ul style="list-style-type: none"> ▪ Division of Community Nutrition and Food Policy (Marion County, Indiana) ▪ Office of Equity (Austin, Texas)
Land-Grant Institutions	States can use policy to increase funding and resources for 1890 land-grant institutions (historically black colleges and universities), 1994 land-grant institutions (tribal colleges and universities), and Hispanic-serving agricultural colleges and universities. States control how federal land-grant funding is allocated within the state and can provide matching funds.	Distribution of resources, land, and capital	Access Community control	State	Adopted	<ul style="list-style-type: none"> ▪ State Funding of TSU (Tennessee)
Language Access	These policies ensure that people have equal access to public services and programs, regardless of the language(s) they speak. Such policies can apply to a variety of services and settings, including hospitals and health care providers, school districts, businesses, and governments.	Community power	Cultural responsiveness	State Local	Adopted	<ul style="list-style-type: none"> ▪ Hawaii Language Access Law
Participatory Budgeting	Participatory budgeting is a process through which residents are asked to propose ideas for how to spend a set amount of funds before voting to determine the winning projects. Policies establishing participatory budgeting can be leveraged to engage residents who have historically been excluded from decision-making venues.	Community power	Community control	State Local	Adopted	<ul style="list-style-type: none"> ▪ Participatory Budgeting (King County, Washington)
Racial Justice in Planning	These policies incorporate food system needs and racial justice goals into government emergency and sustainability planning policies, guidance, and practices.	Community power	Access Availability Safety	State Local	Adopted	<ul style="list-style-type: none"> ▪ Emergency Management (Florida) ▪ Baltimore Sustainability Plan (Baltimore, Maryland)
Representation of BIPOC and Youth Voices in Decision-Making Venues	These laws establish, protect, require consultation of, and ensure BIPOC, tribal, and youth participation in decision-making venues such as food policy councils and advisory commissions.	Community power	Community control	State Local	Adopted	<ul style="list-style-type: none"> ▪ Council for Native American Farming and Ranching ▪ Youth Advisory Commission (Anchorage, Alaska) ▪ Cleveland Cuyahoga County Food Policy Coalition (Cleveland, Ohio)
Representation on Public Boards, Councils, and Committees	These policies require that the composition of each appointed public board and commission broadly reflect the general public racially, ethnically, and by gender.	Community power	Community control	State Local	Proposed	<ul style="list-style-type: none"> ▪ Indianapolis Community Food Access Advisory Commission

Community Spotlights

Law and policy can often feel overwhelming when viewed in the abstract. The following examples illustrate how communities across the United States have been working at the intersection of food justice, health justice, and racial justice. Their stories underscore the importance of advocacy, community leadership, and policy implementation in successful, equitable policymaking.



LEARN MORE

You can explore additional community stories and examples through the following resources:

- [Heirs' Property Case Studies](#) (Center for Agriculture and Food Systems at Vermont Law and Graduate School). Heirs' property – that is, property passed to family members by inheritance, usually without a will – “is most predominant among African American landholders in the South and has been a significant driver of African American land loss in the United States.” These case studies provide community examples as well as legal and policy strategies for navigating heirs' property issues. [This article from Inside Climate News](#) offers additional information on how some organizations are using sustainable forestry and conservation programs to keep heirs' property owners on their land.
- [Farmer Stories](#) (Center for Agriculture and Food Systems at Vermont Law and Graduate School). These stories are a part of a larger Farmland Access Legal Toolkit and describe creative ways that farmers have found to access and afford land.
- [Case Study: Illinois Limited Worker Cooperative Association Act](#) (Pathways to a People's Economy). This case study explains how the Illinois Coalition for Cooperative Advancement successfully advocated for passage of the Illinois Limited Worker Cooperative Association Act, which “works to provide more pathways for workers to maintain control of their businesses.”
- [Voices of the Food Chain](#) (Food Chain Workers Alliance and Real Food Media). This project shares “stories of the country's 20 million food workers in their own words” including “a video on the current challenges and victories at the intersection of labor and food.”
- [Procuring Food Justice: A Case Study of Rural Community Workers Alliance](#) (Food Chain Workers Alliance and HEAL Food Alliance). This case study “highlights an opportunity to use [the Good Food Purchasing Program] as leverage to hold suppliers for publicly-funded institutions accountable.”

Enabling Tribal Food Sovereignty by Reclaiming Rights to Land

Native Americans have lost nearly 99 percent of their ancestral lands in the United States due to colonialist tactics, unfair treaties, and centuries of oppressive policies.⁹⁸ Among other harms this land dispossession has caused, it has significantly limited access to ancestral lands for hunting, fishing, farming, and gathering food. Indigenous communities have responded by pursuing strategies to promote food sovereignty, such as reclaiming and protecting traditional foods and foodways that dominant, corporate food systems often do not provide. These strategies also provide opportunities for economic self-determination.^{99,100}

For example, the Land Back movement is an Indigenous-led effort to reclaim rights to stolen land, food, and other aspects of tribal culture.^{101,102} Many organizations are engaging in the Land Back movement at local and state levels. One of these organizations, the Sogorea Te' Land Trust, an urban Indigenous women-led land trust, has been facilitating the return of Indigenous land to Indigenous communities in the San Francisco Bay Area.¹⁰³ The trust sponsors projects and practices to revitalize cultural and spiritual traditions that were lost to colonization and forced assimilation – such as harvesting and gathering wild plants for food and medicine. Similar efforts for land returns and rematriation are being pursued in other local communities across the country.¹⁰⁴



Indigenous communities across the United States have also been reclaiming rights to stolen land and foodways through hunting and fishing agreements with state natural resources and land management agencies. In 2023, the Oregon Department of Fish and Wildlife made historic agreements with five tribes affirming their rights “to issue [their] own hunting and fishing licenses to tribal members for subsistence and ceremonial harvest [purposes].”^{105,106} These agreements are intended to “increase opportunities for tribal members to harvest fish and wildlife consistent with tribal values rather than state values” and will also allow tribes to pool finances for habitat restoration or do so jointly with states for cooperative restoration projects.¹⁰⁷

While many tribal members view these agreements as a positive step, they are not perfect. Licensing agreements like these raise complex legal questions related to tribal treaty rights, including rights for tribes to continue using their accustomed fishing and hunting locations away from their reservations. Which tribes hold these rights, and at which locations, can be contested. The issues are also often related to whether and when a tribe has received federal recognition as a sovereign nation – an issue that is currently playing out in Oregon.¹⁰⁸ Plus, in an ever-changing political climate, the agreements can be fragile and depend on whether new administrations choose to honor and enforce them. Ensuring that they work over the long term will require careful monitoring by local champions.

Yet as Janie Hipp, a long-time advocate and member of the Chickasaw Nation, shared during a conversation in June 2024, there is promise in seeing that these types of agreements “occur in a variety of political contexts[;]... it shows momentum... [and that] a clear alignment of parties and principles [is not necessary] to actually pull these off.” She says that it is encouraging to look across the country and “see that elsewhere these relationships are replicable.”

KEY THEMES AND TAKEAWAYS

- Food sovereignty – or peoples’ right to define and control their own food choices and food system¹⁰⁹ – is an important concept when it comes to correcting histories of land dispossession, forced assimilation, and the erasure of ethnic identities. While this story focuses on tribal groups, food sovereignty is also important for immigrants living in the United States, who have a right to culturally appropriate foods and should not be forced to assimilate their foodways.
- Secure land tenure – or stable rights to access or own land for a variety of uses, including food production, hunting, and gathering¹¹⁰ – is also a key strategy for Indigenous people and other BIPOC groups who have faced a long legacy of racist land policies and discrimination in real estate sales and lending. A variety of strategies to promote secure land tenure have been shown to be viable across the United States in a wide range of political contexts.

Ensuring BIPOC Agency & Representation in Food Systems Governance

Ensuring BIPOC representation in governing bodies that make decisions about local and regional food systems is integral to successful advocacy and changemaking to address structural racism, as demonstrated by the following examples:

Charlottesville Food Justice Network (Virginia)

Cultivate Charlottesville – a nonprofit focused on food justice in the local food system – houses the Food Justice Network program, which is a collaborative of individuals and over 30 organizations that have been working together to build a healthy and just food system in their city.¹¹¹ In 2018, the network successfully advocated for the Charlottesville City Council to support a Food Equity Initiative and allocate \$65,000 toward coordination of its activities.¹¹² One of the initiative's goals is to provide a vehicle for community members to inform policy decisions.¹¹³ Its policy platform was developed with input from hundreds of community members, dozens of local organizations, and 10 city departments.¹¹⁴ They also led “community engagement cohorts,” through which 21 Charlottesville residents aged 14–67 contributed over 6,600 of paid advocacy hours.¹¹⁵

Aleen Carey, co-executive director of Cultivate Charlottesville, described the persistent advocacy and collaboration that underpinned this policy win during a conversation in June 2024, stating, “We had to prove that we weren't just any old nonprofit [but rather] that we were led by people of color.” She explained that being truly grassroots and community-led – as opposed to being a “grass tops” national organization – was key to gaining city council support. “We hired community advocates and elders from specific neighborhoods to lead our informed community engagement process, which is what made it successful,” Carey said. The decision to partner with other organizations stemmed first from “always running into each other in the same spaces and then just deciding that we should work together – pooling our time, knowledge, and resources to make sure we're not re-doubling efforts.” Yet, the team notes, “We can't do everything by ourselves;... food security and food justice are not just about food, and we can't be the experts on everything.”

Cultivate Charlottesville is now in its second three-year partnership with the city council, and support and budget allocations have only grown; \$155,000 was allocated in fiscal year 2023.¹¹⁶

Farmer Equity Act (California)

In 2017, California passed the Farmer Equity Act, which requires representation from “socially disadvantaged farmers and ranchers” on government boards and commissions, where they can provide input on “the development, adoption, implementation, and enforcement of food and agriculture laws, regulations, and policies and programs.”^{117,118} This legislation is an example of racism-conscious policymaking in action. The act defines a “socially disadvantaged farmer or

rancher” as one who “[has] been subjected to racial, ethnic, or gender prejudice because of their identity as [a member] of a group without regard to their individual qualities. These groups include [African Americans, Native Indians, Alaska Natives, Hispanics, Asian Americans, Native Hawaiians, and Pacific Islanders].”¹¹⁹ In this way, the act acknowledges and seeks to address structural racism within the prevailing constraints of state and federal civil rights legal doctrines; the act has also spurred innovation in other states!

The act has achieved some measure of success: California’s 2020 Farmer Equity Report provided evidence that the policy has increased BIPOC representation on California Department of Food and Agriculture boards and commissions, including the newly formed BIPOC Producer Advisory Committee.^{120,121,122} This increased BIPOC representation in decision-making bodies has translated directly into food justice wins. For example, with the committee’s support, one food justice leader, Nelson Hawkins, successfully advocated for state funding to acquire farmland for the Ujamaa Farmer Collective, which seeks to secure access to resources for Black farmers in the Greater Sacramento region.^{123,124}

KEY THEMES AND TAKEAWAYS

- Ensuring BIPOC decision-making authority over meaningful aspects of the food system can begin to address long-standing racial disparities in access to resources and opportunities and can itself improve health and well-being.^{125,126}
- Strategies to increase BIPOC representation in food system governance do not need to be costly; they can leverage small investments and policies that are cost-neutral to government. That said, it is important to compensate BIPOC community leaders for sharing their lived experience and expertise.

i In 2021, Washington passed “Ensuring equity in farming” using similar identifying language. See H.B. 1395, 67th Leg., 2021 Reg. Sess. (Wa. 2021).
<https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1395-S.pdf>

Achieving Justice for Black Farmers

Black-led organizations across the country, including the National Black Food and Justice Alliance (NBFRA) and the National Association for the Advancement of Colored People (NAACP), have been advocating for legislation to restore land rights for Black farmers. In the decades since the Civil War, Black people have lost about 70 percent of the land that they formerly owned, in large part due to discrimination in federal financial assistance programs.^{127,128} Today, Black farmers are still more likely than white farmers to be denied USDA financial support and private bank loans.¹²⁹ Economists have estimated that this history of displacement represents \$326 billion in lost earnings.¹³⁰ These pervasive policies have pushed many farmers of color into debt or to give up farming entirely.¹³¹

NBFRA and the NAACP have been engaging legislators at multiple government levels to counteract these historical and ongoing wrongs. At the national level, they successfully worked with senators Cory Booker and Elizabeth Warren to introduce the Justice for Black Farmers Act in 2020 and 2023.^{132,133} This action prompted state legislators to pursue parallel efforts, including North and South Carolina's Black Farmer Restoration Programs and Illinois's Black Farmer Restoration Act.^{134,i} Each of these bills aims to restore agricultural land to Black farmers and "encourage the growth of Black farmers in the field of agriculture."¹³⁵ Although advocates and policymakers have not yet been successful in passing these bills, they have helped to start a national conversation about possible solutions to address a legacy of discrimination that has negatively affected Black farmers.

Many remain dedicated to the cause and continue to put in long hours to gain support for these bills and others like them. North Carolina state senator Natalie Murdock and state representative Ray Jeffers have been working with farmers and advocates across the state to call for increased investment in Black-owned farms.¹³⁶ In 2023 and 2024, the two legislators teamed up to host a Black Farmer Lobby Day at the State Capitol. They also organized tours of four Black-owned farms for state legislators, who had an opportunity to hear firsthand about the barriers to opportunity that Black farmers face and build trust with their constituents.¹³⁷

KEY THEMES AND TAKEAWAYS

- Using policymaking to address structural discrimination in the US food system is a long game. It can be easy to get discouraged, but even legislation that is not passed can help to move an idea into public discourse, shift mindsets, and soften the ground for changes in other jurisdictions or at other government levels.
- The policy process is iterative. It requires identifying a policy and then refining it over time to home in on an approach that is broadly replicable. So, getting the conversation started in one community can inform policymaking in other communities down the road. It's all part of the process!

i The same Illinois legislator who introduced the Black Farmer Restoration Act, Rep. Sonya Harper, also introduced an amendment to the Local Food, Farms, and Jobs Act to ensure that 20 percent of state food procurement came from socially disadvantaged farmers. See A.B.3089, 2021-2022 Reg. Sess. (Ill. 2021). <https://www.ilga.gov/legislation/102/HB/PDF/10200HB3089.pdf>

Expanding Agricultural Worker Protections at the State Level

Agricultural workers were intentionally excluded from the federal Fair Labor Standards Act, which established prohibitions on child labor and protections for overtime pay and minimum wage, and the National Labor Relations Act, which established protections for unionizing and labor organizing.^{138,139,140} Following the adoption of these laws in the 1930s, many states emulated the exclusions in their own minimum wage and labor laws. These exclusions are known as *agricultural exceptionalism* and are rooted in historical efforts to maintain a system of labor exploitation established during slavery.^{141,142} Agricultural exceptionalism has perpetuated racial wealth gaps, poverty, and exploitative labor practices related to farmworkers and people working in other agricultural industries, such as meatpacking.^{143,144}

In response to grassroots advocacy, some states have now adopted their own laws to establish overtime pay and other labor protections for farmworkers.¹⁴⁵ In 2021, Washington adopted the strongest overtime law for farmworkers in the nation. Advocacy efforts had begun in 2016, when a group of approximately 300 dairy workers successfully sued the state, arguing that denying a largely Latine workforce the same overtime pay protections guaranteed to other workers constituted racial discrimination, which was in violation of the Washington constitution.^{146,147,148} The litigation sparked a heated debate in the Washington



legislature and among labor rights advocates, including dairy workers involved in the lawsuit, unions like the United Farm Workers and Familias Unidas por la Justicia, advocacy groups like Community to Community, and the Washington State Labor Council, AFL-CIO.^{149,150} Despite pushback from agricultural industry representatives who argued that an agricultural overtime law would be economically burdensome and raise prices for consumers, advocates eventually won passage of Senate Bill 5172.^{151,152} President Biden issued a statement in support of the legislation, asserting,

*For too long – and owing in large part to unconscionable race-based exclusions put in place generations ago – farmworkers have been denied some of the most fundamental rights that workers in almost every other sector have long enjoyed, including the right to a forty-hour work week and overtime pay... It is long past time that we put all of America’s farmworkers on an equal footing with the rest of our national workforce when it comes to their basic rights.*¹⁵³

Washington followed in the footsteps of several other states, including California, Oregon, New York, and Colorado, which have also passed legislation to establish basic labor protections for agricultural workers. In the long term, these state-level wins may spur the adoption of federal protections to extend rights to farmworkers across the nation. Congress has already considered such proposals; the Fairness for Farm Workers Act, first introduced in 2021 and reintroduced in 2023, would end the denial of overtime pay and other exemptions for agricultural workers under the Fair Labor Standards Act.¹⁵⁴

KEY THEMES AND TAKEAWAYS

- Labor organizing is a tried-and-true strategy for winning worker protections. Unions can be a tool not just for negotiating with employers but also for building a power base to advocate for community-wide policy changes.
- In addition to working across multiple jurisdictional levels, advocates can move policy ideas across multiple branches of government by pursuing public interest litigation. When legislators and government agencies are unwilling to act, litigation wins can spur or even require legislative or regulatory changes to address structural racism or secure fundamental rights.

Practical & Legal Considerations for Policymaking to Promote Food Justice, Health Justice & Racial Justice

The information in this section is for informational purposes only and does not constitute legal advice. Individuals working on policy change should always consult an attorney licensed to practice in their own jurisdiction for guidance on specific legal questions.

Practical Considerations

When it comes to advancing racial justice, policies are only as effective as the processes used to develop and implement them. In other words, the process is just as important as the content. Even a policy that is racism-conscious will fall short in reaching its goals if the process used to develop and implement it is inequitable. This section maps out common themes or principles for addressing structural racism in the food system, which were drawn from engagements with food system scholars and advocates during the policy scan process and from the community spotlights in the previous section.

Center People with Lived Experience in the Policy Process

In the end, even the most well-intentioned policies will fail to advance racial justice in the food system if they are done *to* or *for*, rather than *by* the people closest to the problems the policies are trying to address. People with lived experience – specifically, BIPOC groups, who experience a disproportionate burden of harms related to racial inequities in the food system – should lead and be at the forefront of any policy development and advocacy efforts seeking to advance racial justice in the US food system. Leadership should include defining the vision and goals; selecting, analyzing, and designing specific policy solutions; strategizing and organizing on the ground; and implementing and evaluating policies once they

are adopted. Policymakers and other changemakers with power and privilege can work in solidarity and partnership with people with lived experience to support policy change efforts. As demonstrated by the community spotlight on Charlottesville, Virginia, people with lived experience may also be more successful than large, intermediary organizations at persuading policymakers to take certain actions, making their leadership key to successful organizing.

Pursue Advocacy Through Multiple Avenues

Policy wins can be achieved through multiple pathways:

- Grassroots advocacy “on the streets” (e.g., peaceful protests, strikes, boycotts)
- Legal advocacy through the courts (e.g., lawsuits to challenge government policies or private conduct)
- Legislative and administrative advocacy to influence adoption of new public policies (e.g., statutes adopted by legislative bodies, regulations adopted by administrative agencies)

When seeking policy changes to promote food justice, health justice, and racial justice, it can be helpful to strategically pursue all three approaches at once and sometimes also at multiple government levels. These different avenues for advocacy can be interconnected, and wins in one forum can prompt change in another. For example, litigation can often spur legislative action. This was the case in the community spotlight on Washington’s law granting overtime wages to agricultural workers, which was motivated by successful litigation concluding that the failure to provide overtime pay to farmworkers was discriminatory. Similarly, policy wins at local and state levels can often help to make the case for federal policy changes, especially when structures to measure policy impacts over time and show success are already in place.

Pursuing advocacy via multiple avenues can also be strategic when one branch of government is less open to change than another. For example, tribal hunting and fishing agreements restoring access to traditional foodways, discussed in the community spotlight on tribal food sovereignty, have sometimes been mandated by courts as a result of litigation when the executive branch has failed or refused to recognize these rights.¹⁵⁵ Alternatively, sometimes people in government and non-government roles already share common goals. In these cases, strategic cross-sector partnerships between government officials and community-based groups – also known as an *inside-outside strategy* – can help the cause and provide mutual benefit. Community-based groups may be able to act more nimbly than their government partners or engage in lobbying activities that government partners cannot.

LEARN MORE

To learn more about community leadership and partnerships, see [Principles for Equitable and Inclusive Civic Engagement: A Transformative Guide](#) from the Kirwan Institute at The Ohio State University.

LEARN MORE

To learn more about strategic advocacy approaches, see [Using an Inside-Outside Strategy to Build Power and Advance Equity](#) from Human Impact Partners.

Assess Racial Equity Impacts

A broad national policy scan like the one conducted for this project cannot capture jurisdictional-level considerations or foresee unintended consequences that may be unique to a community. When advocating for policies to promote racial justice through the food system, it can be helpful to use a racial equity assessment tool to help identify community-specific factors at the outset of the policy development process. Based on the findings, policy options can be prioritized and tailored to unique contexts. These assessments can also be used after a policy has been adopted, to evaluate its impact over time and adjust as needed. Race Forward explains:

A Racial Equity Impact Assessment (REIA) is a systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision. REIAs are used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, plans and budgetary decisions. The REIA can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities.¹⁵⁶

In recent years, REIAs have been increasingly used in communities across the country, moving “from the margins to the mainstream of thinking about how government can serve everyone more effectively and address a history of exclusion in the process.”¹⁵⁷ REIAs can be an opportunity to meaningfully engage community partners who can either lead or participate in the process. REIAs can also be an opportunity to build partnerships and coalitions across government agencies, sectors, and social justice movements. As noted previously, a large multisectoral and multidisciplinary coalition of partners is necessary to achieve transformational change for food justice, health justice, and racial justice. As Brookings Institution argues, “Equity impact assessment can and should be embraced by a bigger tent of allies, because it makes better, more innovative government possible.”¹⁵⁸

LEARN MORE

To learn more about racial equity impact assessments, see [Racial Equity Toolkit: An Opportunity to Operationalize Equity](#) from the Government Alliance on Race and Equity.

GENERAL POLICYMAKING AND ADVOCACY RESOURCES

The following resources provide additional guidance on the policy process generally as well as within the food justice and racial justice spaces.

POLICY PROCESS

- [Strategies for Equitable Policymaking](#) (ChangeLab Solutions). This guide explores equitable policymaking frameworks and grounds the concepts in real-world examples.
- [Pathways to Policy](#) (ChangeLab Solutions). This resource is a “step-by-step playbook for young people who want to change the world.”
- [Policy Process Playbook](#) (ChangeLab Solutions and Moving Health Care Upstream). This playbook “guides partners through each step of the policy process and provides information on how and why policy can be a useful tool for addressing chronic disease,” among other issues.
- [Influencing Policy Development](#) (Community Tool Box)
- [Advocating for Change](#) (Community Tool Box)

FOOD JUSTICE ADVOCACY

- [Food Sovereignty Action Steps](#) (Soul Fire Farm and the Northeast Farmers of Color). These steps include “simple actions for individuals to end racism in the food system” and tips for building “alliances and relationships with community.”

- [Food Policy 101](#) (FoodPrint). This article explains how each branch of government, as well as non-governmental institutions, can engage in food policy.
- [Advocacy & Lobbying 101 for Food Policy Councils](#) (Harvard Law School’s Food Law and Policy Clinic and the John Hopkins Center for a Livable Future). This toolkit “explains the legal definitions and laws applicable to lobbying to help [food policy councils] understand how they can influence the decisions of local, state, and federal government officials.”

RACIAL JUSTICE ADVOCACY

- [Organizing for Racial Equity Within the Federal Government](#) (Race Forward). This resource “provides multiple actions civil servants can take to strengthen and grow the influence of our public institutions so they serve their highest purpose.”
- [Justice Action Toolkit](#) (Community Tool Box). This web page offers several resources “to support community members working towards racial justice and gender equity.”
- [Racial Equity Tools](#) has collected a number of advocacy resources.
- [Setting an Anti-Racist Table](#) offers a compendium of trainings and resources on anti-racist organizing.

Legal Considerations

When thinking about how to select, prioritize, draft, and design policies to promote racial justice in the food system, changemakers should weigh community aspirations and various feasibility and impact criteria, along with whether a policy will be legally feasible in their jurisdiction. In other words, consider this question: Which policy approaches are more or less likely to face a lawsuit?

Many possible legal considerations could apply to any particular policy approach. These will vary, depending on where the policy is being pursued and how it is drafted, among other factors. Which legal issues are relevant and how courts might resolve them is highly place- and fact-specific, making it impossible to account for all potentially relevant legal considerations in a broad national policy scan. However, when it comes to promoting racial justice, one legal consideration that may be a primary concern for advocates and policymakers is navigating civil rights protections, gaps, and opportunities.

Affirmatively advancing civil rights is a central aspect of the government's work to deliver more equitable outcomes for underserved communities, across all types of agencies and at multiple jurisdictional levels. Present-day racial and structural disparities are the result of long-term government-sponsored or government-tolerated violence and failures to protect all citizens.¹⁵⁹ While civil rights protections have been promised in the US Constitution, historical advancements of civil rights have been met with legislative and judicial backlash.¹⁶⁰

For example, the Fourteenth Amendment is known for its Equal Protection Clause, which establishes that a governmental body may not deny people equal protection of its governing laws. Put another way, governing bodies must treat an individual in the same manner as others in similar conditions and circumstances.¹⁶¹ Congress later passed Title VI of the Civil Rights Act of 1964 to address racial injustices, reduce health disparities, and fill in the gaps left by the Fourteenth Amendment. Title VI "prohibits discrimination on the basis of race, color, or national origin by both public and private entities that receive federal financial assistance."¹⁶²

While the Equal Protection Clause and Title VI have had some impact on advancing racial and health justice, their effectiveness has been limited by (1) a lack of consistent, equitable enforcement and (2) judicial interpretations of the meaning and purpose of these laws – most notably by the US Supreme Court. One significant example is the June 2023 decision in *Students for Fair Admissions v. Harvard*,¹⁶³ which curtailed the use of affirmative action in higher education and left some open questions about whether and how courts might apply the decision in future cases, including those dealing with policies on topics like environmental, economic, and food justice.¹⁶⁴

A successful approach to addressing structural racism in the US food system involves finding opportunities within the limitations of the prevailing legal landscape. Since the limitations on using civil rights laws to advance equity hinge largely on judicial interpretations, a deeper look at these interpretations can shed light on where opportunities may lie.

The courts have read the Equal Protection Clause's prohibition on discrimination to limit "state and local governments' abilities to confer benefits or impose burdens based on race"¹⁶⁵ and other "suspect classifications," such as ethnicity or national origin. The language of "benefits" and "burdens" means that this prohibition applies not only to discrimination against certain groups but to affirmative action or discrimination in favor of certain groups. The courts apply different legal standards depending on the class of individuals to whom a challenged policy applies, as laid out in Table 3.

Table 3. Legal Standards for Evaluating Claims of Unlawful Discrimination

Legal standard	When does the standard apply?	What is needed to meet the standard?	What does this mean in practice?	What are examples of policies that would likely be subject to the standard?	What types of data and evidence are needed to meet the standard?
Strict scrutiny	Strict scrutiny applies to laws, policies, and other government actions that make explicit distinctions based on race, ethnicity, and national origin – also known as <i>protected classes</i> .	The government must prove that the policy promotes a “compelling government interest” and that the goals cannot be achieved through less discriminatory alternatives – also known as <i>narrow tailoring</i> . The Supreme Court has recognized at least two types of “compelling government interests” that will satisfy this standard: (1) remediating “specific, identified instances of past discrimination that violated the Constitution or a statute”; and (2) avoiding “imminent and serious risks to human safety.” ⁱ	Policies that make explicit distinctions based on race and other protected classes are very likely to face a lawsuit and be struck down in court unless the government meets a very high burden of proof.	A local food procurement policy that sets aside a certain portion of contracting dollars for certified minority-owned businesses	Data that show how the policy remediates harms specifically traceable to unlawful discrimination in the geographic area covered by the policy
Intermediate scrutiny	Intermediate scrutiny applies to laws, policies, and other government actions that make explicit distinctions based on “quasi-protected classes” such as sex or gender. ⁱⁱ	The government must prove that the policy serves an important government interest using means that are substantially related to that interest. ⁱⁱⁱ	Policies that make explicit distinctions based on gender and other quasi-protected classes are likely to face a lawsuit and be struck down in court, unless the government meets a moderately high burden of proof.	A state program that prioritizes women for loans to ensure that women have access to financing for farm ownership and operating expenses	Data that show how the policy remediates harms specifically traceable to unlawful discrimination in the geographic area covered by the policy
Rational basis review	Rational basis review applies to laws, policies, and other government actions that make distinctions based on non-suspect categories such as income, veteran status, immigration status, criminal record, or disability status.	The government must prove that the policy or action is rationally related to a legitimate government interest.	Policies that make explicit distinctions based on non-suspect categories are least likely to face a lawsuit and be struck down, in comparison with the preceding two types of policies.	State-level laws expanding protections – like mandatory meal and rest breaks – for agricultural workers	If challenged, there’s a low bar here; the government can provide a “facially legitimate” reason for the policy, or sometimes the court will come up with one.

i Language taken from the majority opinion in *Students for Fair Admissions v. Harvard* (2023).

ii As of publication, the Supreme Court has not found sexual orientation or gender identity to be protected. So, at this time, those are unprotected classes and receive only rational basis review. The decision in *Bostock v. Clayton County* (2020), in which the Court recognized the inherent link between sex, sexual orientation, and gender identity, seems to leave open the opportunity for these classifications to trigger heightened scrutiny under the Equal Protection Clause, but that has yet to be decided. See also [“The US Supreme Court Can Protect the LGBTQ+ Community, But Will It?”](#)

iii See, for example, *United States v. Virginia*, 518 U.S. 515 (1996).

Two takeaways from Table 3 may be relevant to individuals who are navigating legal standards and considerations as they seek to engage in racism-conscious policymaking:

- First, despite facing a higher legal hurdle, race-based policies, which make explicit distinctions based on race, are likely to be legally permissible as long as they remediate specific past instances of government-sponsored racial discrimination within the geographic area covered by the policy. It will be important for people pursuing these policies to partner with researchers to build the evidence base demonstrating these connections. Changemakers should also ensure that this type of evidence is introduced into the legislative record to support the policy's adoption, via public hearings, written comments, or other avenues. Policymakers can also directly cite such evidence in the text of the adopted policy – for example, in a purpose statement. Strategies like these can increase the likelihood that the policy will withstand a legal challenge.
- Second, race-neutral policies, which do not make explicit racial distinctions in their text but have a disproportionate positive impact on different racial groups – for example, laws expanding agricultural worker protections – are also likely a legally viable path forward. When such policies are adopted with the explicit purpose of remediating past instances of government-sponsored racial discrimination, they may be subject to a legal standard that is more rigorous than rational basis review, although this area of law is evolving. Such policies should be supported by evidence demonstrating the remedial effects of the policy, as described in the preceding paragraph. When such policies are not adopted with any racial purpose, they may be far less vulnerable to a legal challenge. However, they may also raise other concerns by failing to directly acknowledge or address the role of racism in policy outcomes as detailed in the discussion of color-blind approaches earlier in this resource.

In addition to being mindful of these opportunities, changemakers should also consider the ways in which different racism-conscious or race-based policy approaches may be influenced by or influence election outcomes, political discourse, budget decisions, and other aspects of the political system. These realities can vary greatly by geography, level of government, and along other dimensions. People working on the ground to advance a more racially just food system will likely be acutely familiar with the political context in their own state and communities.

It is also important to be cognizant of the risk of creating harmful precedent. Consider what courts might say in response to a given policy approach if it is subjected to litigation, and the potential long-term impact those statements could have. Would pursuing a particular policy approach pose a risk of making the future legal landscape worse for people advocating for racial justice? This is a risk, though one that should be weighed carefully against the risk of not acting. Using risk framing when talking about policies to address structural racism is complex and potentially problematic; there is a huge risk in not talking about race and racism, as well as in disguising a racism-conscious purpose or ignoring race altogether and taking a universal approach.¹⁶⁶ The use of the risk terminology here is meant to apply only to legal risks, which can be weighed differently, depending on an advocate's approach: courageous defiance, risk avoidance, or a middle path.

LEVELS OF RISK IN POLICYMAKING

Stephen Menendian, a legal scholar at the Othering and Belonging Institute, has outlined three paths forward in light of the Supreme Court's recent retrenchment on Equal Protection:¹⁶⁷

Courageous defiance, or moving forward without fear of possible legal challenges and sometimes even contrary to prevailing law, even if it will generate backlash.

Risk avoidance, or adopting only "universalistic, class-based, or wholly race-neutral approaches that may ultimately help reduce racial disparities or inequities, but while disguising the racial purpose or goal." Menendian warns that this approach "cedes the symbolic and narrative importance of centering racial equity in policy and programming debates."

Risk aversion, or taking "a middle course" that "seeks to forthrightly advance racial equity objectives while hewing as closely as possible to prevailing legal constraints and limitations."¹⁶⁸ This approach "seeks to place carefully designed racial equity efforts onto a firmer legal foundation and avoids obvious legal pitfalls, but it is not so fearful that it believes it must avoid any possible legal challenge."

Choosing which approach to pursue is a decision best left to advocates, policymakers, and others on the ground, who will choose according to their goals and political and legal contexts.

These considerations have not been offered to dissuade people from pursuing racism-conscious policies for fear of a lawsuit. Rather, this information is provided so that people fighting for racial justice can make their own decisions about which policies to pursue and how they want to draft and design them, given their goals, political contexts, and tolerance for legal risk. Despite the affirmative action decision and prevailing legal constraints, law and policy still offer many ways to promote racial equity in the food system and beyond. That said, this area of the law is complex and evolving. Those who wish to pursue racism-conscious policies should always partner with an attorney early in the process, to obtain assistance with formulating a legally feasible approach and evaluating legal considerations in depth.



LEARN MORE

- [Advancing Racial Equity in Rural Communities: Legal & Policy Strategies to Support Opportunity, Health & Justice](#) (ChangeLab Solutions). This resource offers a more in-depth discussion of the Equal Protection Clause and other civil rights protections, gaps, and opportunities. While focused on rural communities, its explication of civil rights legal doctrines is broadly applicable.
- [Advancing Racial Equity: Legal Guidance for Advocates](#) (Othering and Belonging Institute). This publication clarifies key terms and ideas related to race-conscious policy design and provides guidance for advocates seeking to advance racial equity within prevailing legal constraints.

Appendix A: Key Terms Used in This Resource

Food access. Availability of nutritionally adequate, affordable, and culturally responsive food for all residents.^{169,170} There are three common barriers to food access:

- **Physical issues.** Is healthy, affordable, and culturally responsive food easy to find in a neighborhood or region? Do residents perceive that it is safe to travel to food sources?
- **Economic issues.** Do residents have sufficient income to purchase and prepare healthy and culturally appropriate food?
- **Resource issues.** Do residents have resources for shopping and cooking, including personal time, ability, access to a kitchen, and access to transportation?¹⁷¹

Food insecurity. According to USDA, food insecurity is “a household-level economic and social condition of limited or uncertain access to adequate food” and is distinct from hunger, which is “an individual-level physiological condition that may result from food insecurity.”¹⁷² “Lack of access [to food] is, in all cases, due to lack of monetary resources or the inability to afford adequate food.”¹⁷³

Food justice. Food justice promotes the right and power of all people to grow, sell, and/or eat nourishing foods. According to FoodPrint, “Food justice is a holistic and structural view of the food system that sees healthy food as a human right and addresses structural barriers to that right.... Food justice efforts (which are generally led by indigenous [sic] peoples and people of color) work not only for access to healthy food, but for an end to the structural inequities that lead to unequal health outcomes.”¹⁷⁴

Food security. The Food and Agriculture Organization of the United Nations states, “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.”^{175,176,177}

Food sovereignty. While food sovereignty is hard to define and may be different for different groups,^{178,179} one helpful definition is “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems.

LEARN MORE

Equity and racism can be sensitive subjects. Everyone may not always agree on the best terms or definitions to use in discussing these topics. While this resource aims to use strength-based vocabulary that avoids negative and pathologizing connotations, the authors acknowledge that this concept may be imperfectly executed.

For a detailed discussion of some of these terms, refer to the following resources:

- [Towards Equitable and Just Food Systems: Exploring Food Justice, Food Sovereignty, and Ending Food Apartheid Policy & Practice](#) (Healthy Food Policy Project)
- [NBFJA's Glossary of Black Food Movement Terms](#) (National Black Food and Justice Alliance)
- [What is Racial Equity?](#) (Race Forward)
- [Advancing Racial Equity: Legal Guidance for Advocates](#) (Othering and Belonging Institute)

It puts the aspirations and needs of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations.”¹⁸⁰

Food system. Scholars have defined a food system as “the set of operations and processes involved in transforming raw materials into foods and transforming nutrients into health outcomes, all of which functions as a system within biophysical and sociocultural contexts.”¹⁸¹

Health inequity. A health disparity resulting from systemic barriers to education, employment, housing, income, self-determination, and other elements needed to attain full health. Also, “differences in health which are not only unnecessary and avoidable but, in addition, are considered unfair and unjust.”¹⁸²

Health justice. As discussed in ChangeLab Solutions’ “Health Justice and the Drivers of Inequity,” “[t]he health justice framework is an approach to eliminating health disparities based on law and policy reforms that center subordination as a key driver of disparities.... Three tenets of the health justice approach assert that ...

1. Legal and policy responses must address the social and political mechanisms that generate, configure, and maintain social hierarchies;
2. Health interventions should be holistic and supportive – offering legal protections, providing financial supports, and fostering material and environmental contexts that facilitate compliance and minimize harms; and
3. Frontline communities must be prioritized as critical partners in the development and implementation of health interventions.”¹⁸³

Race-based policies. Policies that make explicit racial distinctions or “use race as a decision or selection criterion, generally at the individual level.”¹⁸⁴

Racism-conscious policies. Policies that seek to eliminate structural racism. They “address racism by identifying, understanding, and responding to the structural barriers and inequities that give rise to and maintain the social, political, and economic limitations imposed on minoritized groups in the US.”¹⁸⁵ They can be explicitly race-based or facially race-neutral.

Race-neutral policies. A legal term used to describe policies that are “facially neutral,” meaning that they do not make explicit racial distinctions in their text.^{186,187} Some scholars equate *race-neutral* with *color-blind*, and use it to describe policies that “attempt to improve quality and outcomes for everyone, regardless of race,” and that “do not consider the potential and inevitable role of racism, or even race, in policy outcomes.”¹⁸⁸ This resource uses *race-neutral* in the more narrow legal sense, in which race-neutral policies may still be racism-conscious.

Racial equity. As described in ChangeLab Solutions’ “Pathways to a Racially Just Food System,” racial equity is “[t]he process of changing policies, practices, systems, and structures to eliminate racial disparities and prioritize measurable improvement in the lives of people of color.”¹⁸⁹

Racial justice. “Racial Justice is a vision and transformation of society to eliminate racial hierarchies and advance collective liberation, where Black, Indigenous, Latinx, Asian Americans, Native Hawaiians, and Pacific Islanders, in particular, have the dignity, resources, power, and self-determination to fully thrive.”¹⁹⁰

Structural discrimination. Interlocking systems of oppression, including public policies, institutional practices, and cultural norms, that shape individuals’ experience across multiple dimensions of identity.

Structural racism. According to the Aspen Institute, “[a] system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with ‘whiteness’ and disadvantages associated with ‘color’ to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead, it has been a feature of the social, economic and political systems in which we all exist.”¹⁹¹

Appendix B: Policy Scan Methodology

ChangeLab Solutions used a three-phase policy scan process to identify state and local policies – along with opportunities for states to implement federal food policies – that can advance racial justice in the US food system. In line with the core principles of food justice, health justice, and racial justice movements, these methods were intended to center voices from the food justice movement as well as the perspectives of scholars and advocates who have faced barriers to leading conversations about food system research, policy, and action.

Phase 1: Scoping

The scoping phase included roundtable discussions and an informal scan of peer-reviewed and gray literature to identify promising and tested policies and explore contextual factors that can influence how the policies may work in practice.

Roundtables

Between May and September 2023, ChangeLab Solutions conducted five 90-minute virtual roundtables with food system scholars and advocates. The roundtables included a total of 34 participants. After each roundtable, participants had an opportunity to recommend participants for future discussions, who were then added to the invitation list for the next roundtable. Discussion questions evolved based on learnings and shifted depending on the participants in each roundtable. Discussion topics included describing how structural racism appears in the US food system; identifying legal and policy approaches to advance racial and food justice; and understanding how research and policies aimed at eliminating obesity have contributed to stigma and other unintended harms and what could be done to repair those outcomes. From the roundtables, the team produced an initial list of policies and themes to inform subsequent phases of the policy scan.

Informal Scan of Peer-Reviewed & Gray Literature

Building on learnings from the roundtables, between September and October 2023, a team of policy analysts, planners, and attorneys at ChangeLab Solutions conducted an informal scan of peer-reviewed and gray literature to expand the list of emerging and tested food system policies. The scan was conducted using various search engines, including Google, Google Scholar, PubMed, and ProQuest. The research team sought to gather state and local policies and opportunities for states and localities to implement and administer federal policies that could be leveraged to promote food justice, health justice, and racial justice. Federal

policies were otherwise excluded from the list. For each policy option identified for inclusion, researchers collected information on the jurisdictional level at which the policy has been adopted (state and/or local); policy status (proposed or adopted in at least one jurisdiction); and primary food system component involved (production, consumption, retail, workforce, and governanceⁱ), among other factors. At the conclusion of this phase, the team had identified a list of approximately 200 policy options for further assessment.

Phase 2: Assessment

The assessment phase involved analyzing the policies collected during the scoping phase, to understand which options had the greatest potential to advance food justice, health justice, and racial justice. Between October 2023 and February 2024, the same team of policy analysts, planners, and attorneys from the scoping phase consulted additional peer-reviewed and gray literature to conduct an impact assessment, focusing primarily on the advancement of racial justice and food justice. Impact criteria, identified through the roundtables and informal literature review, were critical benchmarks for advancing food justice and racial justice. While the team collected data on other characteristics of the policies, such as cost of implementation and return on investment, these were not included in the final assessment process because the values assigned to these criteria are very specific to local context.

The assessment resulted in a list of 44 policies that performed strongly across racial justice and food justice impact criteria.

Phase 3: Ground Truthing

In the ground truthing phase, ChangeLab Solutions partnered with the Odoms-Young Nutrition Liberation, Food Sovereignty, and Justice Lab at Cornell University to host a two-day, in-person convening in Chicago, Illinois, in March 2024. At the convening, the team shared the outcomes of the policy scan and assessment with colleagues in the field and gathered feedback on findings. ChangeLab Solutions solicited feedback on which policies to prioritize, gaps in the findings, tools and resources that would be most helpful for translating the policy options into action, and other areas. Based on the feedback, the policy table content and organization were then updated. The update included adding policies that had initially been overlooked, removing policies that were flagged to have negative unintended consequences, adding depth and clarity to the definitions of assessment criteria, and organizing the table to facilitate accessibility and ease of use by changemakers.

ⁱ Development of the food system components was based on Sobal J, Khan LK, Bisogni C. A conceptual model of the food and nutrition system. *Soc Sci Med*. 1998;47(7):853-863. doi:10.1016/S0277-9536(98)00104-X

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ChangeLab Solutions recognizes that Indigenous peoples are the original stewards of lands across the United States. We honor them and offer gratitude to their ancestors and descendants for their commitment to protecting this land. We encourage our readers to learn about the history and struggles of Indigenous peoples in their region and to support Indigenous people's efforts to preserve their culture and their ancestral lands. This resource highlights policy approaches to returning land to Indigenous communities and securing tribal access and land tenure for uses that include food production, hunting, and gathering.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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