# ORGANIC FARMERS ASSOCIATION

June 15, 2022

Jaina Nian
Agricultural Marketing Service
USDA
Room 2055-S, STOP 0201
1400 Independence Avenue SW
Washington, DC 20250-0201

Re: Notice, Request for Public Comments: Competition in Food Retail and Distribution Markets and Access for Agricultural Producers and Small and Midsized Food Processors, Docket # AMS-AMS-22-0026

To Whom It May Concern:

The Organic Farmers Association (OFA) is a membership organization that represents U.S. certified organic farmers. Our organization was founded by and is controlled by certified organic farmers, and only domestic certified organic farmers vote on OFA's policies and leadership. We appreciate the opportunity to comment on "Competition in Food Retail and Distribution Markets and Access for Agricultural Producers and Small and Midsized Food Processors" (Docket No. AMS-AMS-22-0026).

Organic is a growing sector of the U.S. agriculture system, with tremendous potential to address climate change, help family farms flourish, revive rural communities and protect public health. Organic farms are often regarded as a success story in terms of farm economic viability. For example, according to USDA's Economic Research Service (ERS), the premiums associated with certified organic crops "more than offset" higher production costs on organic farms raising crops like corn and soybeans. The ERS also found that "organic field crop production was, on average, conducted on farms with less total acreage and less field crop acreage than conventional farms. Despite having fewer acres, producers of some organic field crops were less likely to work off-farm."[1] The USDA's 2019 Organic Survey supports the concept that organic farms can survive economically at a smaller scale. The survey shows that 71 percent of organic farms in the U.S. had annual sales under $250,000.[2]

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[1] William D. McBride et al. July 2015. "The Profit Potential of Certified Organic Field Crop Production." https://www.ers.usda.gov/webdocs/publications/45380/53408_err188_summary.pdf?v=3965.3

[2] USDA National Agricultural Statistics Service. October 2020. ACH17-21. "Organic Farming: Results from the 2019 Organic Survey." https://www.nass.usda.gov/Publications/Highlights/2020/census-organics.pdf

The potential for economic viability for smaller farms has been a major strength of the organic sector, and is an important component of creating a domestic food supply that is resilient. But the dramatic growth of the overall organic sector and the comparative success of organic farms relative to their conventional peers does not mean that there are no risks that could undermine the continued success of the organic sector. OFA members are increasingly concerned about changes in the organic marketplace, ranging from a growing share of the demand for organic product that is being filled by imports to increased merger and acquisition activity among various buyers of organic crops, including food retailers.

The continued economic viability of farms requires improved organic standards and stepped up enforcement to make sure that organic markets provide a level playing field and a fair price for farmers and a fair wage for workers. It also requires more options for marketing organic products through retailers that are competing to pay farmers a fair price.

Questions for Comment

> (*3) How does competition and concentration among distributors and other parts of the wholesale food market relate to food retail concentration and competition? How do distribution and wholesale food market competition and concentration affect access to markets for agricultural producers and SME food processors? Does buying power of some retailers at the wholesale level make it difficult for some producers or SME processors to access distribution within these channels?*

U.S. organic farmers are more reliant on direct marketing to consumers (bypassing retailers) than their conventional counterparts.[3] Organic is more reliant on direct markets in part because organic farms tend to be smaller and many organic farms raise produce that can be sold to consumers without further processing. But organic farms also rely on direct markets because an increasingly consolidated food retail sector does not serve most organic producers adequately, if at all.

The trend of consolidation through mergers and acquisitions is widely acknowledged in conventional agriculture supply chains, while the organic and natural food sector is often regarded as home to more innovative start-up operations and brands. But the organic sector has not escaped the consolidation trend, in consumer facing brands and also distribution. This trend has been documented by Dr. Phil Howard, a researcher at Michigan State University, who notes that the trends of consolidation "have only intensified, to the point that nearly all of the

[3] U.S. Department of Agriculture Economic Research Service. "Organic Market Summary and Trends." May 6, 2022. https://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-summary-and-trends/

30 largest processors in North America have acquired organic brands."[4] This roll up of organic processing and consumer brands results in less competition in organic markets, potentially lowering prices paid for farm products and creating tighter linkages between large processors and large retailers that can thwart the access of new entrants to organic retail shelf space. A particularly dramatic consolidation trend in the organic sector has been in distribution. Dr. Howard notes that in 1982 there were 28 consumer cooperative distributors, but by 2008 there was just one.[5]

Because the organic and natural food sector is a distinct market, dominance by a small number of companies can have dramatic effects. For example, United Natural Food, Inc. (UNFI) is the largest distributor of natural and organic groceries and is nearly three times larger than the only other nationwide distributor.[6] UNFI has been a key supplier for Whole Foods Market, which often has represented a third of UNFI's business, and maintains a supply contract with Whole Foods that runs through 2025.[7] Amazon pursued Whole Foods Market in part to capture its supplier relationships,[8] potentially including the relationship with UNFI, which could distort or foreclose supplies of organic and natural grocery merchandise to other organic, natural and healthy grocery retailers.[9]

> *(8) Please describe the role that slotting fees, category captains, and other preferential access or discounts play in retail food markets, including but not limited to meat and poultry. Are certain segments, such as organic or value-added products like grass-fed meats, affected differently? What affect do such behaviors have on access to the retail marketplace? How are preferential relationships in the marketplace manifested, and do those relationships limit new market entrants from accessing the marketplace? Do those relationships improve risk management or otherwise enhance market access in certain circumstances? Should any of these practices be limited or changed to support new market entrants, and if so, how?*

A white paper by the National Grocers Association details how "power buyers" in food retail rely on unfair practices that disadvantage independent grocery retailers in many urban and rural areas.[10] These types of practices imposed on those who wish to supply food retailers can

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[4] Philip H. Howard. "Organic Processing Industry Structure 2020." https://philhoward.net/2020/09/24/organic-processing-industry-structure-2020/

[5] Philip H. Howard. "Organic Distribution & Retail Structure." https://philhoward.net/2011/11/01/organic-distribution-retail-structure/

[6] UNFI. "Building out the store." Stephens Non-Deal Roadshow. Boston, Mass. September 1, 2015 at 5 and 14.

[7] Springer, Jon. "UNFI takes a hit in Whole Foods investment." *Supermarket News*. April 11, 2017; Richards, Brian. "How Whole Foods transformed its relationship with United Natural Foods." *Motley Fool*. February 19, 2013.

[8] Deutsche Bank Markets Research. "WFM+AMZN: Making Fresh Prime." June 19, 2017 at 2.

[9] UNFI (2015) at 13.

[10] National Grocers Association. "Buyer Power and Economic Discrimination in the Grocery Aisle: Kitchen Table Issues for American Consumers." https://www.nationalgrocers.org/wp-content/uploads/2021/03/NGA-Antitrust-White-Paper25618.pdf

serve as insurmountable obstacles, blocking farms or small processors from being able to sell through traditional retail outlets. A recent article by *Food & Power* provides a useful case study of how changes to various terms imposed by Whole Foods Market after the retailer was acquired by Amazon has served to stifle access by innovative food startups to the retailer. This is notable because for many years, the company served a unique role as the first significant retail account for many small companies.[11]

Another practice that deserves scrutiny is the growth of private label food products, controlled through contracts or outright owned by retailers (both online and brick and mortar), and the impact this has on competition in upstream markets for crops and livestock. There is currently a growing trend of large retailers creating their own supply chains, with Costco branching out into chicken production and Walmart opening a milk processing plant and establishing its own beef supply chain.[12] The continued rise of private label products controlled or owned by retailers needs to be examined in terms of obstacles created for new entrants or existing rival brands that cannot access store shelves because the retailer is promoting its private label brand. The potential for online retailers to manipulate the visibility of rivals to their private label brands should also be examined.

This issue is especially important for organic milk markets. The leading retail seller of organic dairy products is store brand/private label products supplied by one dominant cooperative and very large, confinement-style, vertically integrated organic dairies. The vertically integrated dairies have the economies of scale that allow them to undercut competitors in the price sensitive store brand/private label retail market, which by its nature has a lower retail price than branded organic product. This downward pressure has created tremendous economic disadvantages for small-scale organic producers in some regions of the country, such as the Northeast, and created negative consumer impressions of the organic label due to lack of enforcement of the organic standards at the largest facilities.

> *(11) Please comment on implications, negative or positive, of mergers in the food retail or distribution sectors. Have certain mergers changed contracting or sales practices? Have certain mergers allowed the acquisition of rivals or technologies or companies that competitor firms rely on? Have mergers negatively or positively impacted workers? Have mergers delivered efficiencies?*

A specific example of the impacts that inadequate review of mergers has on farm families is a crisis in the organic dairy market in the Northeast that is happening right now. In August 2021,

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[11] Claire Kelloway. “The Amazonification of Whole Foods Goes Beyond Store Tech.” *Food and Power*. April 28, 2022. https://www.foodandpower.net/latest/whole-foods-amazon-purchasing-changes-labor-cuts-2022

[12] Grant Gerlock. “Costco Builds Nebraska Supply Chain For Its $5 Rotisserie Chickens.” National Public Radio. October 22, 2018; Anna-Lisa Laca. “Dozens More Farmers Lose Milk Contracts.” *Dairy Herd Management*. March 5, 2018; Tom Polansek. “Walmart creates Angus beef supply chain, cutting out meat processors.” *Reuters*. April 24, 2019.

Horizon Organic (owned by Danone North America) notified organic dairy farms in Maine, Vermont, New Hampshire and several counties in New York that it would terminate their contracts in the summer of 2022. This decision is directly impacting 89 organic family farms. Since the original announcement, Danone announced that it will keep the impacted farms on contract for an additional six months (for a total of 18 months from the original notice), but will still be pulling out of Maine, Vermont, New Hampshire and several counties of eastern New York. This is a crisis for the farm families who have to cope with the loss of their milk contract, but will also have a devastating effect on the rural communities where these farms are located, other organic farmers who supply these operations with feed and local businesses who provide services to these farms.

While the crisis caused by Horizon's decision to exit the Northeast is focused in one region of the country, extreme consolidation plagues the entire organic dairy sector nationwide. In the organic dairy market, there are two national brands: Horizon Organic owned by Danone North America, whose parent company is Danone with headquarters in France, and Organic Valley, owned by CROPP Cooperative based in Wisconsin. The leading retail seller of organic dairy products is store brand/private label products supplied by CROPP Cooperative and very large, confinement-style, vertically integrated organic dairies, such as Aurora Dairy farms and milk plants in Texas, Colorado and Missouri. The vertically integrated dairies have the economies of scale that allow them to undercut competitors in the price sensitive store brand/private label retail market, which by its nature has a lower retail price than branded organic product.

In addition to economies of scale, there are ongoing problems with the enforcement of organic standards at these large operations, including requirements that organic dairy cows receive access to pasture and rules for how conventional animals can be transitioned into organic production. This enforcement is the responsibility of the USDA, which oversees organic certification. This enforcement problem goes hand in hand with the consolidation of the organic dairy sector – as these large vertically integrated operations entered the market, weaknesses in USDA's enforcement system became more pronounced, and small-scale operations now compete on an unlevel playing field that puts them at a significant economic disadvantage in a market dominated by a few large buyers.

Previous decisions about mergers in the organic dairy market have allowed consolidation to worsen and should be revisited. When Danone purchased White Wave in 2017, the Department of Justice mandated that a condition of purchase was that Stonyfield Organic (owned by Danone with a supply contract with CROPP Cooperative) would have to be sold as a remedy to prevent monopsony in the region. Stonyfield Organic was sold to Lactalis, the second largest dairy company in the world. This means that the exit of Horizon from the Northeast leaves only one major alternative buyer for the organic milk from the 89 farms that are losing their contracts, CROPP Cooperative. CROPP's major customer in the northeast for their raw milk is Lactalis. Lactalis purchases 80 percent of its total milk supply from CROPP and purchases the other 20 percent by direct procurement from Northeast farms or other sources. CROPP milk from New England and eastern New York is also used in packaged product under the Stonyfield Organic label licensed to CROPP by Lactalis. Recently, rumors have surfaced that Lactalis could be poised to buy some brands, potentially including dairy brands such as Horizon, from Danone.[13] This would make the inadequate remedy of the 2017 sale even more ineffective for organic dairy farmers around the country.

The consolidation of the organic dairy market gives disproportionate power to international companies to dominate both the supply side and the retail market, which has resulted in a lack of regional processing infrastructure in the Northeast and only one major buyer for organic milk. That one buyer can set the price and conditions of any contract or cooperative agreement, leaving the organic dairy farmer only two choices, take the deal or leave organic dairy (or dairy farming altogether), with the resulting repercussions on their family and their rural community.

Another merger that has had significant impacts on the organic sector was the acquisition of Whole Foods Markets by Amazon in 2017. This would be a particularly useful merger to examine for several types of impact, including effects on innovative food companies that were very dependent on Whole Foods' regional procurement model for accessing store shelves when they were in their early stages of growth; the impact on small farms serving regional markets who were dependent on Whole Foods Market's regional procurement system; and the creation of tighter linkages between dominant distributors like United Natural Foods Inc. and Whole Foods and the impacts this had on other retailers and sellers in the natural and organic foods market.

> *(13) Describe the role that retailer ownership, including financing, of livestock and packing play in supply chain competition and access to retail for producers and SME processors? Are competition concerns, if any, similar in other agricultural commodity markets? Have these practices reduced or eliminated the need for, or competition among, certain suppliers to some retail firms? Are certain segments, such as organic or value-added products like grassfed meats, affected differently? Should ownership, financing, or other forms of vertical integration be promoted, limited, or otherwise changed, and, if so, how?*

Please see our description of the impact of private label organic milk production on organic farms in response to earlier questions. Consolidation in meat processing has also greatly affected the organic meat market. Because large processing facilities are less likely to go through the process of becoming certified organic, the consolidation of meat processing plants has an extra impact on organic producers beyond those facing all livestock producers. If there were more independently-owned small processing facilities, these processors could decide to

[13] Corinne Gretler and Albertina Torsoli. "Danone Gains on Lactalis Takeover Speculation, Evian Rebound." *Bloomberg*. April 20, 2022.

become certified organic and thus, increase access for organic farmers to process their meat for sale as certified organic.

> *(15) Describe the role that label claims and labeling standards play in access to retail markets for agricultural producers. Are public or private resources sufficiently available for smaller agricultural producers seeking to develop or use labels? Do labels standards, verification, and enforcement appropriately support access to markets for agricultural producers and SME processors? Are there any instances when a larger supplier used, including potentially misused, a label to gain market access or advantage over smaller producers or SME processors? Please share concerns and recommendations, if any.*

Organic producers typically have lower yields than their conventional counterparts, but many are able to remain economically viable because of premiums paid for certified organic product. This premium is built on consumer confidence and trust in the organic label. If USDA's oversight of the organic standards and enforcement process is not vigilant, consumers could abandon the label, taking the economic viability of the organic marketplace with them.

U.S. organic farmers have already experienced significant economic harm from fraud in organic markets, in both domestic and import supply chains. The need for stronger enforcement efforts by the USDA was brought to the forefront by years of effort by organic farmers and advocates.[14] U.S organic grain farmers reported negative impacts on the prices they could get for their products after increased volumes of organic grains abruptly started to arrive in the United States several years ago. Since then, imports from regions with questionable oversight and that seem to lack sufficient organic acreage to produce the amount of organic product being exported from that region have continued, while several high profile investigations have also revealed large-scale domestic efforts to sell fraudulent organic products. The net effect of both domestic and imported products being revealed or suspected to be fraudulent has not only economic impacts on the producers who are complying with organic standards but are being undercut in the market by fraudulent products, but also in consumer confidence in the organic label as a whole. USDA must increase enforcement to prevent fraud in organic supply chains and speed up the process of updating organic standards to reflect new realities in these markets.

We also urge the USDA to coordinate with other federal regulators to address food labels that cause confusion in the marketplace, such as the Federal Trade Commission and the Food and

[14] "U.S. Farmers Stalk Fraudulent Imports to Save Their Markets." *Minneapolis Star Tribune*. July 16, 2019. https://www.startribune.com/organic-farmers-stalk-fradulent-imports/511952972/?refresh=true; "The Labels Said 'Organic.' But These Massive Imports of Corn and Soybeans Weren't." *Washington Post*. May 12, 2017. https://www.washingtonpost.com/business/economy/the-labels-said-organic-but-these-massive-imports-of-corn-and-soybeans-werent/2017/05/12/6d165984-2b76-11e7-a616-d7c8a68c1a66_story.html?utm_term=.bc595122d7b9; "the Tragedy of Fraud." Organic Farmers Association. Summer 2020. https://organicfarmersassociation.org/news/the-tragedy-of-fraud/.

Drug Administration. In particular, the "natural" label on food must be addressed because consumers often assume it is as rigorous as the USDA organic label, when in fact it provides virtually no useful information to consumers when used on most foods. The FTC should also examine various sustainability claims made for food products, and contrast them with the organic standards and verification system. Inside the USDA, we urge you to close the loopholes in the voluntary country of origin labeling standards to require that "Product of the US" only be allowed on meat from animals that were born, raised and slaughtered in the United States, and to clarify the requirements for the "natural" label on meat to actually address the conditions under which livestock are raised (not just the types of processing used on the meat.)

> *(20) How could other USDA programs, services, and authorities be further deployed to enhance access to retail markets for agricultural producers and SME food processors? For example—*
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> *• How might USDA marketing programs enhance access to retail markets for agricultural producers and SME food processors, including programs which facilitate access to a variety of markets, support value-added production and product diversification; increase diversification in distribution channels and market development, such as food hubs, non-profit and cooperative distribution models; and provide technical assistance to producers that helps access USDA programs and improve market readiness?*

There are several areas that the Agricultural Marketing Service National Organic Program (NOP) should prioritize. For organic agriculture to meet its potential, we need USDA to take several steps to protect the integrity of the USDA certified organic label. The USDA sets the regulations and standards that must be met by products that bear the organic label. Certified organic farmers rely on this label to accurately convey information about their products in the marketplace. Because consumers believe in the integrity of the organic label, the organic sector has enjoyed tremendous growth and provided a path to economic viability for many family farms. The USDA has considerable work to do to maintain the standing of the organic label with consumers and ensure a level playing field for organic farmers, including finishing long-delayed updates to regulations and increasing the agency's focus on enforcement.

Organic Certification: The USDA's National Organic Program (NOP) has recognized the need to ensure a healthy ecosystem of organic certification agencies and trained organic inspectors through its Human Capital Capacity Building Initiative.[15] This infrastructure to provide quality, affordable, accessible inspection and certification for organic operations must grow as the organic sector grows in order to maintain the integrity of the organic label and consumer trust in it. This effort to expand the infrastructure for organic certification should prioritize increasing the diversity of organic professionals to better serve a growing diversity of organic farmers.

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[15] USDA Agriculture Marketing Service, National Organic Program. "Request for Applications: Human Capital Capacity Building." https://www.ams.usda.gov/sites/default/files/media/NOPHumanCapitalRFAMRP.pdf

Oversight and Accreditation: One of the critical roles played by the NOP is providing oversight of accredited certifying agencies who inspect and certify organic operations. But many of the controversies that have been long-debated in the organic community boil down to inconsistent interpretation or application of organic regulations by certifiers. We urge the NOP to take seriously its role as an accreditor and to acknowledge that this role is inextricably tied to its enforcement mandate. Ensuring that certifiers consistently interpret and apply the standards, everywhere they operate, is critical to the integrity of the organic label. The NOP is the only entity that can ensure that this happens.

Organic Certification Cost-Share Program: All certified organic operations must complete annual inspection and certification. The federal government has historically reimbursed up to 75 percent of organic certification fees paid by organic farms and businesses, with a maximum reimbursement of $750 per certification scope (crops, livestock or handling) per operation. The cost share program is particularly important to small and mid-sized organic farms, socially-disadvantaged farmers, and those who are just starting out with organic certification. USDA must work with Congress to increase the funding levels for this program and improve its performance.

• *Are there ways to facilitate easier access to food safety compliance resources, and other ways to level the playing field for SME processors?*

USDA should consider funding small and mid-sized meat and poultry processing plants for:

- Validation studies for HACCP plans for unique products.

- Upgrades to equipment and facilities, including construction of separate rooms for slaughter and processing, stainless steel equipment, expanded freezer space, or upgraded HVAC systems.

- Upgraded IT and digital recordkeeping systems (for food safety, organic certification or other recordkeeping purposes).

- Professional development and technical assistance for new plants, including staff training and training on organic certification.

In addition to providing resources directly to facilities, USDA should commit to removing some of the common obstacles these types of plants face when dealing various USDA policies, by:

- Training FSIS, NRCS, extension and other USDA employees on the range of certifications and practices used by small and mid-sized plants serving specialized markets (organic, grass-fed, halal, kosher, animal welfare certifications, and others.)

- Streamlining the FSIS label approval process (small plants are more likely to have a variety of products and to change formulations more often, which requires more frequent FSIS label approvals).

- Lowering the cost of voluntary inspection for non-amenable species.

- Filling FSIS vacancies so that inspector shortages do not become a limiting factor for a new plant to come online or an existing plant to be able to expand production.

- Supporting agricultural extension services, with a requirement that a minimal level of meat industry expertise be available in every state.

- Supporting research into rendering and wastewater treatment options for small and mid-sized plants.

*• What additional information or transparency could USDA's Market News Service provide on retail, wholesale, or distribution markets, through the Livestock Mandatory Reporting Act of 1999 or otherwise? Are there information or educational tools, services, or access to data that could be helpful?*

We agree with the statement in the Notice that "insufficient analytic attention has been paid to the connection between retail distribution, and processing firms and the implications for competition in the food and agricultural supply chains" and urge USDA to dedicate resources to tracking consolidation and the state of competition in all sectors of agriculture, including organic. One way to start to collect this information would be to include questions about marketing choices – and producers' concerns about their markets – in tools such as the Census of Agriculture and organic surveys. USDA should ask producers if they are satisfied with their options for marketing their crops and livestock, whether direct marketers see a viable path to retail or wholesale accounts, whether their prices actually cover their cost of production, and other concrete statistics about whether the markets they sell into are working well for them. The agency should utilize methods to provide confidential options for providing this information and provide more regional and sector specific information.

One specific sector of organic with unique data needs is dairy. As the organic dairy sector has grown, organic dairy producers have not been able to access the same information about their industry from USDA's Agricultural Marketing Service as their conventional neighbors. We urge USDA to work with organic dairy producers to design reports with statistics available through the federal milk marketing order system to provide insight into the dynamics of how organic milk flows through national supply chains. Lack of transparency about supply and utilization of organic milk has been a source of confusion and frustration for organic dairy producers who would like to better understand these trends so they can adapt to an evolving industry.

- *How else can competition be enhanced in food retail, distribution, and related areas? Please discuss any other relevant matters USDA should consider.*

Because consumers believe in the integrity of the organic label, the organic sector has enjoyed tremendous growth and provided a path to economic viability for many family farms. But the USDA has considerable work to do to maintain the standing of the organic label with consumers and ensure a level playing field for organic farmers. We urge USDA to act swiftly to finalize long-delayed rulemaking to update the organic standards, with two rules being the most urgent.

Organic Livestock and Poultry Standards: The Organic Livestock and Poultry Standards rule is another long-overdue measure to strengthen the organic standards. This rule would allow the NOP to consistently enforce stronger animal welfare standards on organic farms and close loopholes being taken advantage of by some large operations. The need for improved standards for animal welfare has been discussed and vetted in the organic community for more than a decade and has widespread support. We urge the USDA to finalize this rule as quickly as possible.

Strengthening Organic Enforcement: The organic market has grown so rapidly that the USDA's National Organic Program (NOP) has lagged behind in building the enforcement capacity necessary to oversee a $50 billion industry with global supply chains. U.S organic grain farmers reported negative impacts on the prices they could get for their products after increased volumes of organic grains abruptly started to arrive in the United States several years ago. Since then, imports from regions with questionable oversight and that seem to lack sufficient organic acreage to produce the amount of organic product being exported have continued, while several high profile investigations have also revealed large-scale schemes in the United States to sell fraudulent organic products. The USDA must finalize and implement the "Strengthening Organic Enforcement" proposed rule as quickly as possible.

We appreciate the opportunity to comment on these critical issues. If you have questions or need more information, please contact our policy director, Patty Lovera, patty@organicfarmersassociation.org, (202) 526-2726.

Sincerely,

Kate Mendenhall
Director