

July 3, 2023

Hon. Tom Vilsack
Andrew Green
United States Department of Agriculture
1400 Independence Ave. SW Room 1643-S
Washington, DC 20250-3604

RE: USDA Agricultural Competition Challenge

Dear Secretary Vilsack and Mr. Green:

We, the undersigned State Attorneys General (“State AGOs”), write to the United States Department of Agriculture (“USDA”) in response to the announcement of the Agricultural Competition Challenge issued by the USDA. The undersigned State AGOs seek to advance the establishment of a support program for state antitrust enforcers to promote cooperation between State AGOs and USDA in the promotion of fair and competitive food and agricultural markets and complementary to coordination occurring with the Federal Antitrust Agencies. Pursuant to the Agricultural Competition Challenge, the undersigned State AGOs (the “State AGO Partners”) elect to be the inaugural members of the USDA Agriculture Competition Partnership (“Partnership”).

I. Background

On December 21, 2021, sixteen (16) State Attorneys General sent a letter to USDA Secretary Tom Vilsack providing several recommendations to enhance and bolster the USDA’s enforcement and protection of fair agriculture markets. One such recommendation asked the USDA to consider establishing an agricultural antitrust enforcement support program for State AGOs through the American Rescue Plan Act of 2021, asserting that such a program would strengthen enforcement under the Packers and Stockyards Act. In response, on September 26, 2022, the USDA announced its “Agricultural Competition Challenge,” which would utilize up to \$15 million in funds from the Consolidated Appropriations Act to provide enduring and sustainable support for State Attorneys General to vigorously enforce the antitrust laws for the benefits of consumers, producers and growers, and workers in the agricultural space. This letter named three focus areas of the Agricultural Competition Challenge and invited the State Attorneys General to identify their most pressing needs and develop specific details of the challenge.

For the purpose of developing and administering a support fund program through which the Challenge funds may be effectively and efficiently distributed to State AGOs, the USDA has partnered with the Center for State Enforcement of Antitrust and Consumer Protection Laws, Inc. (“State Center”). There are existing revolving fund models that State AGOs use in the multistate enforcement context. These models provided useful guidance for the establishment of this State Center-administered fund.

II. Cooperative Agreement between the USDA and the State Center

On May 19, 2023, the USDA’s Agricultural Marketing Service (“AMS”) and the State Center entered into a Cooperative Agreement for purposes of facilitating the Partnership effective May 31, 2023 – May 31, 2028. The objectives of the Partnership, focusing on food and agriculture markets, include providing support for (a) enforcement of state and federal competition laws; (b) research regarding competition and fair practices for consumers, producers and growers, and workers; and (c) educational and training initiatives. Payments to the State Center shall be made in amounts reflecting the disbursement needs for approved support. The State Center is authorized to use a specified portion of the funds to hire additional staff, engage third-party vendors, or to both efficiently administer the overall process and satisfy any regulatory processes required of the program.

III. USDA Agricultural Competition Partnership Membership Benefits

Membership in the Partnership provides opportunity for those State AGO Partners individually or collectively to seek support funds for the following purposes:

- a. Quick support: Small amounts of funding for a limited number of hours of expert assistance or pre-established maximum support amount, e.g.: for purchases of support technologies, including licenses or services; preliminary analysis services; auditing or economic services.
- b. Enforcement support: Support for enforcement actions of a larger scale. Project selection shall prioritize activities that include multiple states and USDA and activities that are additive enforcement, including novel matters, theories, or authorities.
- c. Research support: Academic and market-related research focused on antitrust and fair business practice enforcement relevant to State AGOs and/or USDA.
- d. Education and training: Facilitation of events that would increase understanding of competition law or policy market realities.
- e. Innovation: Development of new enforcement infrastructure or practices, e.g.: creating new mechanisms to collect complaints at the appropriate agencies; developing resources and technologies to enhance enforcement or promote market fairness, such as exchanges.

IV. Partnership Organizational Plan

The Partnership Organization Plan (“Organizational Plan”) outlines the mechanisms for implementing the Partnership. The development and functioning of the Partnership will be managed by the Oversight Committee and the Project Selection Advisory Committee.

Oversight Committee: The Oversight Committee will consist of a bi-partisan group of State AGO Partner representatives elected from the group of AGOs that have joined the Partnership. Selection of Oversight Committee members will be by a process chosen by a majority of the State AGO Partners.

Key duties of the Oversight Committee will include:

- Developing general criteria for the selection of projects to be funded by the Partnership;
- Developing a process for selecting the Project Selection Advisory Committee (PSAC) members, in accordance with the Cooperative Agreement;
- Establishing governance and transparency standards for the Oversight Committee;
- Establishing guidelines and providing oversight for use of Partnership funds;
- Developing confidentiality requirements and standards to reduce conflicts of interest for the PSAC; and
- Determining the appropriateness of other activities to support the objectives of the Partnership.

The Oversight Committee may also have on-going advisory responsibilities regarding allocation among the several support projects and the usage of Partnership support funds.

Project Selection Advisory Committee: The PSAC will be comprised of State AGO Partners with the State Center serving as an ex officio member.

Key duties of the PSAC will include:

- Facilitating coordination between relevant AGOs and USDA regarding specific projects;
- Advising the State Center in its review of support applications;
- Advising the State Center in its selection of specific projects;
- Updating the Oversight Committee regarding specific projects as appropriate; and
- Making project funding recommendations which the State Center shall consider in making its final funding determinations—the USDA may direct the State Center to approve an application for support.

The State Center shall submit to oversight and audits as required by USDA. To the extent possible, the USDA support will be used to create a revolving fund to provide for a continuing impact on competition in food and agriculture markets and ideally bring about substantive change for years to come. USDA's involvement in the program will wind down after the disbursement of initial funds within five years unless additional cooperative agreements or other forms of partnership are developed.

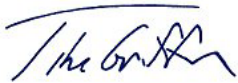
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V. Conclusion

The State AGO Partners appreciate the opportunity provided by the USDA Partnership and look forward to working with both the USDA and the State Center to realize the value of the Agricultural Competition Challenge funds. We likewise look forward to strengthening cooperation with USDA and federal agency partners in the promotion of fair and competitive food and agricultural markets.



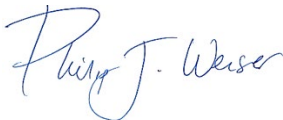
Kris Mayes
Arizona Attorney General



Tim Griffin
Arkansas Attorney General



Rob Bonta
California Attorney General



Philip J. Weiser
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William Tong
Connecticut Attorney General

A handwritten signature in black ink, appearing to read 'Kathleen Jennings'.

Kathleen Jennings
Delaware Attorney General

A handwritten signature in blue ink, appearing to read 'B. Schwalb'.

Brian Schwalb
District of Columbia Attorney General

A handwritten signature in blue ink, appearing to read 'Anne E. Lopez'.

Anne E. Lopez
Hawaii Attorney General

A handwritten signature in black ink, appearing to read 'K. Raoul'.

Kwame Raoul
Attorney General of Illinois

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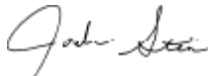


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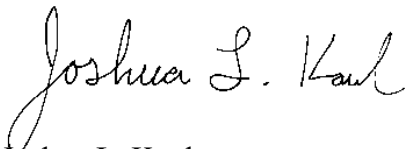
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