



Washington D.C. November 14, 2022

Elizabeth Archuleta
Director, Office of Intergovernmental & External Affairs
U.S. Department of Agriculture

Re: Docket No. [USDA-2022-0015](#). Public Comment on Providing Financial Assistance for Producers and Landowners Determined To Have Experienced Discrimination

Dear Ms. Archuleta,

On behalf of the members of the National Family Farm Coalition, we thank you for the opportunity to offer comments on the best way to implement Section 22007 of the Inflation Reduction Act (IRA), a provision that aims to provide assistance to the nation’s farmers, ranchers, and forest landowners who experienced discrimination in USDA’s farm lending programs. As stated in the announcement, Section 22007 can potentially “[provide] a transformative opportunity for USDA to help farmers, ranchers, and forest landowners impacted by discrimination in the USDA farm lending program.”¹

National Family Farm Coalition (NFFC) is a Washington, DC-based alliance of grassroots farmer- and advocate-led groups across 42 states, representing the rights and interests of independent family farmers, ranchers, and fishermen. NFFC was founded at the height of the 1980s farm crisis, with support from Farm Aid. Today, NFFC’s 31 state, national, and regional farm and rural organizations are bound by a common belief that communities have the right to determine how their food is grown and harvested; that everyone in the food system should receive fair prices or wages; that all producers should have equitable access to credit, land, seeds, water, markets, and other resources; and that our food and agriculture policy must support sustainable farming, ranching, and fishing practices.

NFFC has seen positive actions from the current administration to address historic acts of discrimination and acknowledge the additional hurdles that socially disadvantaged producers and landowners faced. In the words of NFFC president, Jim Goodman, “It’s been hard on all of us [White farmers], but some have it far worse. Farmers of color — the more than 45,000 Black, 112,000 Latino, 50,000 Indigenous and 25,000 Asian-American and Pacific Islander growers working across the United States — have to deal not only with the razor-thin earnings that come with independent farming, but must also swim against the tide of historic and ongoing discrimination within the industry, from the government and even from some of

¹ USDA. (2022) USDA Seeking Public Comment on a New Provision to Provide Assistance to Agricultural Producers Who Have Experience Discrimination. <https://www.usda.gov/media/press-releases/2022/10/13/usda-seeking-public-comment-new-provision-provide-assistance>



their neighbors. Black farmers alone have lost more than \$326 billion in generational wealth due to land loss and predatory lending by the USDA over the last century.”²

The system hurts us all because, as USDA correctly noted, “[w]hen USDA commits acts of discrimination, it not only hurts the individuals and entities directly impacted, it also breaks a trust with those directly affected and the communities of which they are part”³; and we all are part of the farming community. The reality is that, for decades, the nation’s food and agriculture policies have favored a dominant system encouraging consolidations by rewarding “efficiency” and expansion, hurting small farmers and ranchers. “Ask most Americans today what breaks the bank, and they’ll tell you it’s the cost of feeding their families. Skyrocketing costs and stagnant wages have made it tougher to afford life’s basics. The family farmers who produce our food know this struggle all too well. With fuel, land and equipment growing more expensive by the day, and Big Ag monopolies pulling the strings of the market, it’s a miracle any of us can make a living.”⁴

We can’t ignore what is evident: even though the purpose of the program is to provide the USDA the tools to rebuild trust⁵, it is not only the institution who must make amends with discriminated farmers, but transforming our food chain system must lead to correcting our damaging legacies and structural injustices. We understand this is not an easy task, as we learned with Section 1005 of the American Rescue Plan Act, which failed to honor its promise. The Senate’s IRA repeal of Section 1005 of IRA however, created additional hurdles as the funding was decreased from \$4 billion to \$2.2 billion, significantly reducing the amount available to make these amends.

Sadly, it remains clear that addressing the historical inequities toward marginalized farmers is not a priority even at the USDA, which recently was able to triple its funding for the Climate Smart Commodities from \$1 billion to \$3 billion which favors large corporations. Corporate interests and political commitments run counter to the needs of producers and landowners of color and other small farmers.

In order to achieve parity in our food system we must immediately, substantially, and permanently address issues of discrimination from the bottom up, from the racial, ethnic, social, sexual inequalities, to the discriminated system of corporations against our individual agency and democracy. As regards IRA

² Jim Goodman. (2022). Lawmakers: stop breaking your promises to farmers of color. Kenosha News OpEd.

https://www.kenoshanews.com/opinion/columnists/commentary-by-jim-goodman-lawmakers-stop-breaking-your-promises-to-farmers-of-color/article_8117eeee-387d-5432-b27f-16ac5838cc14.html

³ Federal Register. (2022) Notice of Request for Public Comment on Providing Financial Assistance for Producers and Landowners Determined to Have Experience Discrimination. <https://www.federalregister.gov/documents/2022/10/14/2022-22435/notice-of-request-for-public-comment-on-providing-financial-assistance-for-producers-and-landowners>

⁴ Jim Goodman, *ibid.*

⁵ FR. *ibid.*



Section 22007, we fear that once again good intentions can only go so far but the comments below offer our good faith recommendations to maximize the impact of the program.

USDA outlines four issues to be addressed in the current program: who is eligible, how to determine the amount and type of financial assistance; how the program will be administered, and finally, how to link the current program with other USDA programs. The comments below reflect our position under the guidance of three of our members: The Federation of Southern Cooperatives/Land Assistance Fund (FSC), the Land Loss Prevention Project, and the Dakota Resource Council.

Eligibility

- How should USDA identify those who have experienced discrimination under the USDA farm loan programs?

More than 17,000 farmers applied and qualified for assistance under ARPA Section 1005, including 3,100 Black farmers. All these farmers should be prioritized. We know that a lot of small farmers are struggling, and many could use some debt forgiveness. But debt relief that addresses racial injustice is desperately needed, given our country's history of theft, segregation and broken promises. To deny farmers of color debt relief now — a promise that was made more than a year ago by our government — is flat-out immoral.

- What kind of documentation or evidence should be submitted in support of a determination of discrimination?

In a perfect world, farmers who received letters promising debt relief under ARPA should be recognized as discriminated against by simply providing such a letter. Unfortunately, this process may be questioned, so additional documentation can be collected, like the number of times farmers have been denied USDA loans, and even sworn statements about discrimination and neglect by officials against farmers.

The U.S. Department of Agriculture (USDA) has long been accused of unlawfully discriminating against minority and female farmers in the management of its various programs, particularly in its Farm Service Agency loan programs. Many processes at the start of the century could provide useful information⁶ and we suggest looking at previous tools used to document discrimination.⁷

Amount

- Should USDA attempt to estimate only economic losses or also non-economic losses of those who have suffered discrimination in USDA farm loan programs when calculating the amount of

⁶ Feder, J., & Cowan, T. (2013). Garcia v. Vilsack: A policy and legal analysis of a USDA discrimination case. *Congressional Research Service*, 40988.

<http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40988.pdf>

⁷ Ginapp, K. B. (2003). Jim USDA Crow: Symptomatic discrimination in agriculture. *Drake J. Agric. L.*, 8, 237. <http://aglawjournal.wp.drake.edu/wp-content/uploads/sites/66/2016/09/agVol08No1-Ginapp.pdf>



financial assistance provided? Alternatively, should USDA apply a fixed, uniform formula for calculating the amount of financial assistance provided? In any case, how should that calculation be done?

At a minimum USDA should, citing FSC, the USDA should define “financial assistance” as monetary relief, including actual, general and/or punitive damages directly to the farmer that is able to prove that they experienced discrimination. In addition to rendering a decision as to whether discrimination occurred, the adjudicator should have broad discretion to evaluate the amount of the actual, general and/or punitive damages.

In addition, based on land currently in USDA inventory, successful claimants should be eligible for access to land currently held by USDA in similar size, location, and farm feasibility as the farmer’s previously owned land. Similarly, based on current USDA inventory, successful claimants should be eligible for access to any equipment held by USDA in similar value and condition to the farmer’s previously owned equipment. Finally, in addition to the \$500,000 limit, successful claimants should receive equitable debt relief on any current or pending farm loan debt.

- Should previous payments received for past claims of discrimination be considered in determining financial assistance available under section 22007?

Yes.

- Are there forms of non-monetary equitable relief that can be used in conjunction with the financial assistance provided under section 22007 for those who have experienced discrimination and who continue to farm or continue to participate in USDA farm loan programs?

Not included in the \$500,000 limit, successful claimants should receive a supplementary tax benefit to off-set the tax burden of the claim settlement financial compensation. In addition, USDA could adopt some policies and advocate to other instances to improve Racial Equity. For example, dedicated fixed financial levels at their programs and implemented a student loan forgiveness for disadvantaged farmers, similar to the Public Service Loan Forgiveness Program.

- How, if at all, should USDA consider the recency of the discrimination as determined by the Secretary when determining appropriate level of financial assistance?

At the suggestion of FSC, FSA handbook must be revised to reflect guaranteed FSA loan application consideration for successful discrimination claimants. Egregious successful discrimination claims should have accountability mechanism to include public reprimand of responsible loan office/officer. We support USDA accountability and transparency.

Administration



- What specific functions should the third-party entity (or entities) perform in assisting USDA in delivering financial assistance provided for under section 22007 to those who suffered discrimination under the USDA farm loan programs?

Our initial concern here is directed at the implementation cost of the program. We urge transparency and equitable distribution of funds to help mitigate and redress bias or wasteful resource allocation. At the same time, USDA should not take advantage of third-party entities with limited resources.

Once the entity (or entities) are determined on an open and public basis, clear processes should be developed and implemented. As stated, it is urgent that USDA define discrimination and financial assistance. Second, is the proper, but flexible documentation of discrimination and a transparent review process. USDA should implement an aggressive and comprehensive outreach effort with documented metrics and reporting. Finally, the implementation must consider a discrimination claim arbitration. Few legal organizations appear poised to assume this responsibility, but the critical credentials to serve as the discrimination claims arbitrator include expertise and commitment to Civil Rights and agriculture, such as Lawyers Committee for Civil Rights Under Law and Farmers Legal Action Group.

- What criteria should USDA use in the selection of the third-party entity (or entities)? And What guidance should USDA provide to the selected entity (or entities)?

Our only suggestion here is to make a public request for interested parties and have the Equity Commission to review the process and potential candidates.

Linkage

- How should USDA use programs, funding, financial support, and other authorities, in conjunction with section 22007 financial assistance, to provide support for those who have experienced discrimination under the USDA farm loan programs?

As previously suggested, if USDA programs allocated fixed financial levels, and thus defined targeted recruitment, retention, and evaluation among disadvantaged farmers the route to a more equitable agricultural system is possible. Moreover, we urge both the USDA and Congress to recognize the damage done to US farmers over the last decades and change course on policies and programs that disproportionately favor large farmers and non-farmer industries.

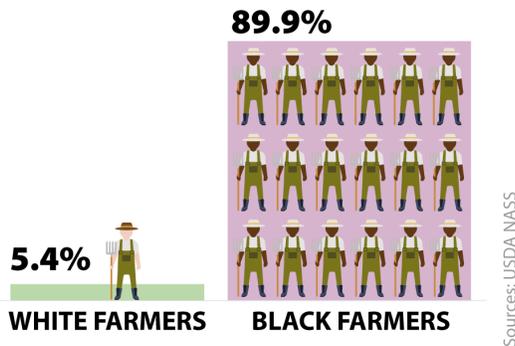
Ben Barkett, former President of NFFC, mentioned one such problem, when reflecting on the need of farmers to buy crop insurance: “[T]he government could just keep that money and pay the farmer a fair price—what it costs to grow a bushel of corn. But then insurance companies and the lawyers, brokers and all the middlemen can’t make money. So the farmer has to take out federal crop insurance, and the federal government is going to pay 50-65% of the premium. But, it’s the same system that has been benefitting



the largest landowners and operators. If a producer with a huge operation with 5-6,000 acres files a claim, he's going to get a bunch of money. And he can afford to take out 85% insurance on his crops.”⁸

In closing, we echo the words of NFFC Board President and Wisconsin dairy farmer Jim Goodman said, “The US farm system is rigged against independent family farmers, with Black farmers shouldering the added burden of systemic racism. We need policy solutions that recognize the hard work of family farmers and provide tools that help them succeed amid multiple crises. As we look towards a new US Farm Bill, we must work intently with community stakeholders to do better for our nation’s farmers, especially those most vulnerable.”⁹

Asymmetrical Land Loss



A better society is possible only if it is able to correct its mistakes of the past. We thank you one more time for the opportunity to offer these comments. If you have any additional question, please feel free to reach out to me at antonio@nffc.net

Sincerely

A handwritten signature in black ink, appearing to read 'Antonio Tovar'.

Antonio Tovar PhD
Senior Policy Associate
National Family Farm Coalition

⁸ Ben Burkett. (2021). Parity and Supply Management through a Racial Equity Lens. <https://disparitytoparity.org/parity-and-supply-management-through-a-racial-equity-lens/>

⁹ NFFC. (2022). Farm Debt Changes in Inflation Reduction Act Risk Undermining Racial Equity. <https://nffc.net/ira-risks-undermining-racial-equity/>