

## Part I. Policy for Settlement of Cases for ARP Section 1006, Item #5

### Background

**Section 1006 of the American Rescue Plan (ARP) provided \$1,010,000,000** of support funds for ***Socially Disadvantaged Farmers and Ranchers (SDFR) or forest landowners***. The ARP further directed that the funds be used as follows:

1. Not less than **5 percent (\$50,500,000)** to ***provide outreach, mediation, financial training, capacity building training, cooperative development training and support, and other technical assistance*** on issues concerning food, agriculture, agricultural credit, agricultural extension, rural development, or nutrition to SDFR or forest landowners or other members of socially disadvantaged groups.
2. Not less than **5 percent (\$50,500,000)** to provide ***grants and loans to improve land access for SDFR or forest landowners***, including issues related to ***heirs' property***.
3. Not less than **0.5 percent (\$5,050,000)** to fund the activities of one or more ***equity commissions*** that will address racial equity issues within USDA and its programs.
4. Not less than **5 percent (\$50,500,000)** to support and supplement ***agricultural research, education, and extension***, as well as scholarships and programs that provide internships and pathways to Federal employment by
  - (a) using not less than 1 percent (\$10,100,000) at colleges or universities eligible to receive funds under the Act of August 30, 1890, plus Tuskegee University;
  - (b) using not less than 1 percent (\$10,100,000) at 1994 institutions;
  - (c) using not less than 1 percent (\$10,100,000) at Alaska Native serving institutions and Native Hawaiian serving institutions.;
  - (d) using not less than 1 percent (\$10,100,000) at Hispanic serving institutions; and
  - (e) using not less than 1 percent (\$10,100,000) at the insular area institutions of higher education located in the territories of the USA.
5. Not less than **5 percent (\$50,500,000)** to provide ***financial assistance to SDFR or forest landowners that are former farm loan borrowers that suffered related adverse actions or past discrimination or bias in USDA programs***.

The five items above will use **\$207,050,000 or 20.5 percent** of the total funds provided under Section 1006. The remaining funds of **\$802,950,000 or 79.5 percent** of the funds will be allocated by the Secretary.

### Recommendations for Use of Remaining Funds (\$802,950,000 or 79.5 percent)

1. **Direct payments to SDFR or Forest Landowners under Section 1006, Item #5.** It is recommended that every effort be made to provide as much of Section

1006 funds directly to SDFR or forest landowners as possible. In addition to the \$50,500,000 funds already set aside for Item #5, an additional \$700,000,000 of the \$802,950,000 not set aside by the ARP be allocated to Item #5 of Section 1006 for direct payments to SDFR or forest landowners. This would provide a total of \$750,500,000 as direct payments to SDFR or forest landowners. This will leave \$102,950,000 to be added to the already set-aside funds for the other 4 items. This additional funding for Item #5 should be made for the following reasons:

- a. Whereas the services that will be provided from the other four areas will help SDFR or forest landowners, the best way to help SDFR or forest landowners is to provide as much direct funds to SDFR or forest landowners as possible.
- b. Although the debt relief provided in Section 1005 will be helpful to the SDFR or forest landowners who receive the relief, 8.7 percent of Black farmers will receive debt relief. It is estimated that about 3,100 Black farmers will receive debt relief out of a total of 35,470 Black farmers which is 8.7 percent. Some of the other 91.3 percent of Black farmers might receive payments under Section 1006.
- c. Whereas the long-term documented history of discrimination against Black farmers by USDA which has led to a decline of Black farmers from 925,701 in 1920 to 35,470 Black farms in 2017, and the fact that Black farmers did not receive most of the prior agreed to relief funding is used to support this relief in the ARP, only 3,100 Black farmers of the 17,000 SDFR or forest landowners will receive debt relief in Section 1005 or 18.24 percent of the debt relief will go to Black farmers. Since USDA loans to Black farmers are usually less than the amount of the loans provided to any other group, Black farmers might receive as little as 10 to 12 percent of the dollars provided for debt relief under Section 1005.
- d. Whereas USDA provided funds to support farmers over the past four years, 97 percent of the funds were provided to White farmers. Despite over \$6.7 Billion being distributed through the original Coronavirus Food Assistance Program (CFAP) by October 2020, Black farmers received just \$15 Million, Latino farmers received \$100 Million, Native American farmers received \$76 Million, and Asian American farmers received \$17.6 Million. According to a recent Politico article analyzing USDA data, Black farmers share of direct loans hit a 10-year low in 2020. The total number of direct loans fell from a peak of 945 in 2015 to 460 in 2020. Moreover, the agency granted loans to only 37 percent of Black applicants last year in one program that helps farmers pay for land, equipment and repairs, but accepted 71 percent of applications from White farmers.
- e. Black farmers are the only SDFR or forest landowners that is declining. Black farmers have declined by 96 percent.

**2. Prioritize the restoration of Black farmers through financial compensation, land acquisition, and grantmaking for regenerative food and fiber re-entry and innovation.**

Priority for funds not included in the set-asides for items 1 through 4 of Section 1006 should be given to Item #5 of Section 1006 which will provide financial assistance to former farm loan borrowers that suffered related adverse actions or past discrimination or bias in the Department of Agriculture programs. Over the last two decades, thousands of Black farmers have passed away and robbed of the opportunity to pass generational wealth to their descendants. In compliance with the authorized use of the \$1 Billion fund for related services, USDA should provide financial assistance to Black farmers and other farmers of color who lost their land as a result of USDA discrimination, collusion, and criminality.

With the level of benefits from the debt relief being so low for Black farmers, it is recommended that some effort be made to provide relief under Section 1006, Item #5.

**3. Socially Disadvantaged Farmers and Ranchers (SDFR) or Forest Landowners to receive benefits under ARP Section 1006, Item #5 to include:**

- a. SDFR or forest landowners who had a USDA loan or USDA guaranteed loan at some point in the past but did not have a USDA loan on January 1, 2021.
- b. Family members of SDFR or forest landowners who once had a USDA loan, but no longer have the loan.
- c. SDFR or forest landowners (including young and beginning) who applied for USDA loans, but the loans were not approved.
- d. SDFR or forest landowners who have had offsets taken by USDA.
- e. Black landowners or other SDFR who had operating or other agriculture loans with commercial banks or other entities on January 1, 2021. Many in this group were forced to seek other avenues and often with egregious lending terms due to the exclusionary practice (including threat of foreclosure proceedings) by USDA. As mentioned before, the number of Black landowners has declined significantly in comparison to other groups and this group is so small that all who had farm loans as of January 1, 2021, should be included.

**4. Proposed process:**

**a. Application for Section 1006, Item #5**

The SDFR or forest landowners who meet the guidelines for funds under Section 1006, Item #5 will complete an application. The application will be sent to the Office of Equity Task Force Manager. The application will

provide all of the information outlined in the process guidelines in Part II of this document.

**b. ASCR Provide Lead in Processing Applications**

The Office of Equity Task Force Manager will take the lead in processing applications for funds for Section 1006, Item #5. The Office of Equity Task Force Manager will receive input from ASCR, FSA, OGC and others. USDA will hold regular meetings with Minority Land Grant Universities and Community Based Organizations to inform them of the progress being made in processing applications. The equity commissions will review all applications and settlements.

**c. Outreach**

In addition to the outreach provided by USDA agencies, outreach to SDFR or forest landowners in regard to applications for relief under Section 1006 will be conducted by the Minority Land Grant Universities to include colleges or universities eligible to receive funds under the Act of August 30, 1890, plus Tuskegee University; 1994 institutions; Alaska Native serving institutions and Native Hawaiian serving institutions; Hispanic serving institutions; and the insular area institutions of higher education located in the territories of the USA and the Community Based Organizations. Outreach will be funded by Section 1006. The ARP provides that not less than 5 percent (\$50,500,000) will be used to provide outreach, mediation, financial training, capacity building training, cooperative development training and support, and other technical assistance on issues concerning food, agriculture, agricultural credit, agricultural extension, rural development, or nutrition to SDFR or forest landowners or other members of socially disadvantaged groups.

**d. Timetable for Processing Applications**

Application for relief under Section 1006, Item #5 will be filed prior to January 1, 2022. The USDA Office of Equity Task Force Manager will process and decide on all applications for relief under Section 1006, Item #5, on a rolling basis prior to October 1, 2024.

**e. Additional Funds**

If the \$750,500,000 are not enough funds to settle the claims from SDFR or forest landowners, additional funds from the USDA Commodity Credit Corporation will be requested to provide needed funds.

**f. Research on funds available to Black farmers**

The SDFR Policy Research Center at Alcorn State University will be granted \$4.5 Million to work with the other 1890 Land Grant Universities to conduct research on the source of loans or funds used by Black farmers to operate their farms, why these sources are used, and related facts.

The 2021 ARP debt relief provisions were portrayed to the Black farmers and the public as debt relief programs for Black farmers. However, once an evaluation was made as to which of the Socially Disadvantaged Farmers and Ranchers (SDFR) subgroups would receive funds from Section 1005 of the Act, it became clear that Black farmers would make up only 18 percent of the SDFR with USDA debt on January 1, 2021. The evaluation indicated that 47 percent will go to Native Indians and Alaskan Natives, 26 percent to Hispanic, 18 percent to Blacks, 8 percent to Asian Americans and 1 percent to Native Hawaiian and Pacific Islanders. The 18 percent of loans to Black farmers is due to the low number of Black farmers who were approved for USDA loans.

## **Part II. Information Needed for Application to Process and Settle Cases for ARP Section 1006, Item #5**

### **Background**

Section 1006, Item #5, of the American Rescue Plan (ARP) of 2021 provides that “using not less than 5 percent of the total amount of funding provided under subsection (a) to provide financial assistance to socially disadvantaged farmers, ranchers, or forest landowners that are former farm loan borrowers that suffered related adverse actions or past discrimination or bias in Department of Agriculture (USDA) programs, as determined by the Secretary.”

### **Applications**

Socially Disadvantaged Farmers and Ranchers or forest landowners should apply for relief under ARP Section 1006, Item #5 and provide the following:

### **Criteria**

1. Were the original loans FSA direct or guaranteed loans to SDFR or forest landowners?
2. How exactly did the families assume the indebtedness?
3. Are those original loans still outstanding?
4. Were they refinanced?
5. To whom are the loans currently owed?
6. Is this the estate of a deceased SDFR?

**In addition to the above criteria, the following should be provided:**

#### **The USDA discrimination or bias action.**

- Loan not approved or approved too late.
- Loan did not meet the needs of the request.
- Adverse action by the supervised loan manager.
- Loan repayment conditions and interest rates not workable.

- Loan document altered.
- County committee engaged in “quid pro quo” activities.
- County committee engaged in land steal schemes.

**Damage to SDFR resulting from USDA actions.**

- Not able to get loans to plant crops or buy animals.
- Required to pay higher interest rates.
- Repayment on loan due prior to output on the farm.
- Not able to buy or rent land.
- Loss of the farm or forced to sell land.

**Size of farm operation then as compared to present time.**

- Number of acres.
- Number of livestock.
- Level of production.

**Other information.**

- Amount of money loss.
- Date for all events.
- Location of farm with State and county.
- Farm numbers and land tract numbers.
- The amount of funds being requested from Section 1006.

**Processing Applications for Settlement under ARP Section 1006, Item #5**

The purpose of these Operating Procedures is to promulgate procedures for the resolution of ARP program applications, the negotiation of program settlement agreements, and to delineate the respective roles and responsibilities of the Office of Equity Task Force Manager, Office of the Assistant Secretary for Civil Rights (ASCR), the Office of General Counsel (OGC), and Farm Service Agency (FSA).

In implementing ARP Section 1006, Item #5, **a five-stage process** should be used.

1. An intake process should be designed to evaluate farmer’s application and determine if the guidelines for the ARP funds are met.
2. FSA will provide an Agency Position Statement (APS).
3. The applications should be investigated by the Office of Equity Task Force Manager to determine the facts of the case as outlined in the claims made by the farmer. Additional information from the farmer, the FSA, and others will be compiled into a Report of Investigations (ROI).
4. The case should be adjudicated by the Office of Equity Task Force Manager to determine the extent of damages and level of the settlement.
5. The case should be settled with the farmer by the Office of Equity Task Force Manager with assistance from FSA based on the findings in the case.

Settlement negotiations will be conducted on a case-by-case basis in consultation with the FSA as required.

The Office of Equity Task Force Manager will have a joint agreement between the FSA and the Office of the Assistant Secretary for Civil Rights on settlements. The Office of Equity Task Force Manager will develop settlement packages, and the packages will be offered to the Complainant for settlement.

The amount provided to each applicant will be based on the conditions and history of the complaint; however, the Office of Equity Task Force Manager might create settlement levels and assign a relief settlement amount for each level.

### **List of Agencies who Should be Involved and Their Roles**

#### **Office of Equity Task Force Manager:**

1. Perform an expeditious review of the complaint case files, e.g., the APS, the Fact-finding Inquiry (FFI), the Report of Investigation (ROI), the economic analysis and other information to determine if the complaint should be proposed for settlement, and if so, the settlement level.
2. Discuss the appropriate parameters for settlement negotiations.
3. Prior to the negotiations of settlement, participate in meetings with FSA officials to arrive at an appropriate settlement offer to be presented to the Complainant by the Office of Equity Task Force Manager.
4. Analyze all components of the settlement agreement prior to presentation to the Complainant or representative to assure conformity with applicable statutes, Departmental regulations, and program regulations.
5. Present settlement to the Complainant or representative for negotiation and acceptance.
6. Upon settlement prepare memoranda transmitting the settlement agreement to:
  - a. FSA.
  - b. Applicants or representative.
  - c. Present settlement documents to the Complainant and his/her representative for their review, approval, and signature.
  - d. Issue closure letter to appropriate parties upon implementation of all settlement agreement provisions.
  - e. Review decision and negotiation files compiled by the Office of Equity Task Force Manager staff in preparation for settlement negotiations which shall contain:
    - 1) The APS, ROI, FFI and/or any documents used in determining that discrimination occurred.
    - 2) The write-up of how the Office of Equity Task Force Manager arrived at a decision to settle, including the write-up outlining the level of discrimination.
    - 3) The Complainant's claim for damages or relief.
    - 4) The write up of the attorney's fees if complainant is represented by counsel.

- 5) An economic analysis (cost/yield/production as appropriate) of the total damages including compensatory.
- 6) Prepare a Fees Decision File and make recommendations to OGC on attorney's fees requested by Complainant's counsel.
7. In any matter pending in court, when deemed appropriate, the Office of Equity Task Force Manager may, confer with counsel for USDA regarding the feasibility of initiating proper settlement discussions.
8. In cases where the complaint case file does not contain enough information to support a recommendation for settlement, forward the complaint to FSA to request the APS and on a case-by-case basis, authorize the FSA to meet with the Complainant/representative to conduct the APS and to determine if a settlement should be recommended.

**ASCR:**

1. Provide requested background files on a case-by-case basis.
2. Assist the Office of Equity Task Force Manager with investigations and adjudications on a case-by-case basis.
3. Participate in the settlement agreement negotiations chaired by the Office of Equity Task Force Manager as requested.
4. On a case-by case basis, meet with the applicants/representatives to develop APSs and discuss settlement.
5. On a case-by-case basis, draft proposed settlements, and present to the Office of Equity Task Force Manager for review, concurrence and or modification.

**FSA:**

1. Participate in the settlement agreement negotiations chaired by the Office of Equity Task Force Manager as requested.
2. Implement all requirements of the settlement agreement under their jurisdiction within the time frames stipulated in the agreement.
3. On a case-by case basis, meet with the applicants/representatives to develop APSs and discuss settlement.
4. On a case-by-case basis, draft proposed settlements, and present to the Office of Equity Task Force Manager for review, concurrence and or modification.

**Office of General Counsel:**

1. Where requested, review the settlement agreement for legal sufficiency within 30 days after receipt from the Office of Equity Task Force Manager.
2. If requested by the Office of Equity Task Force Manager, attend settlement negotiations.
3. Review Fees Decision File compiled by the Office of Equity Task Force Manager to determine: (a) if attorney's fees recommended by Office of Equity Task Force Manager are supported by evidence, and (b) that there is legal authority for any proposed payment of monetary damages.