

New York Office  
40 Rector Street, 5<sup>th</sup> Floor  
New York, NY 10006  
T 212.965.2200  
F 212.226.7592



Washington, D.C. Office  
700 14th Street, NW, Suite 600  
Washington, D.C. 20005  
T 202.682.1300  
F 202.682.1312

[www.naacpldf.org](http://www.naacpldf.org)

September 12, 2022

The Honorable Thomas J. Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Washington, DC 20250

RE: Implementation of the Inflation Reduction Act and Other USDA Programs

Dear Secretary Vilsack:

In August 1997, Timothy Pigford (and later Cecil Brewington) filed a class action lawsuit against the U.S. Department of Agriculture (USDA) alleging that the agency discriminated against Black farmers when they applied for federal loans and failed to investigate their discrimination claims. Despite the historic settlement obtained in that litigation, 25 years later, Black farmers still struggle to access USDA programs and raise discrimination claims.

The undersigned organizations were pleased to see that the Inflation Reduction Act of 2022 (IRA) includes several measures that could help Black farmers, including financial assistance for farmers who experienced discrimination and debt relief for “distressed” borrowers.<sup>1</sup> The USDA should swiftly implement these measures and take affirmative steps to ensure that Black and other farmers of color benefit from these programs. The USDA must also do more to serve Black farmers’ needs. The undersigned organizations urge you to take action to ensure that Black farmers have equal access to USDA loans and other services, and a fair and effective process to raise discrimination claims. The NAACP Legal Defense and Educational Fund, Inc. (LDF) asks for a meeting with you to discuss ways the USDA can address these challenges.

LDF is the country’s first and foremost civil rights legal organization. LDF was founded in 1940 under the leadership of Thurgood Marshall, the first Black justice of the U.S. Supreme Court.<sup>2</sup> Our mission includes a commitment to ensuring that Black people have equitable access to land, housing, financial services, and other necessities, as well as fair and effective means to raise claims of discrimination. Throughout its history, LDF has challenged discriminatory lending practices

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<sup>1</sup> Inflation Reduction Act of 2022 §§ 22006-08, Amendment in the nature of a subst. to H.R. 5376, 117th Cong. (2022), *available at* [https://www.democrats.senate.gov/imo/media/doc/inflation\\_reduction\\_act\\_of\\_2022.pdf](https://www.democrats.senate.gov/imo/media/doc/inflation_reduction_act_of_2022.pdf).

<sup>2</sup> LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

and other policies and systems that deprive Black communities of economic opportunities and exacerbate racial disparities in homeownership and landownership.<sup>3</sup>

As you know, the USDA plays an essential role in supporting America's farmers. Modern farming requires ready access to capital, both to weather the inherent risks of market fluctuations and crop failures (now exacerbated by climate change) and to compete in an increasingly corporatized, consolidated industry. Farm loans are "an integral part of the [modern] agricultural production process," and up-front funding for crop production is essential for many farmers.<sup>4</sup>

The USDA has long denied Black farmers equal access to these critical programs.<sup>5</sup> During the Great Depression, the USDA allowed white landowners to keep government benefit payments from the Agricultural Adjustment Act of 1933 rather than passing them on to their Black tenants.<sup>6</sup> Furthermore, the Federal Emergency Relief Administration granted a disproportionate amount of funds to white farmers, leaving Black farmers vulnerable.<sup>7</sup> Black farmers also received disproportionately fewer rehabilitation and tenant-purchase loans through the Farm Security Administration.<sup>8</sup> Similarly, discriminatory county supervisors consistently excluded Black farmers from many USDA programs.<sup>9</sup> In the 1980s and 1990s, the federal government acknowledged the USDA's discriminatory practices in a number of reports.<sup>10</sup> Yet the USDA frequently failed to investigate individual discrimination claims.

Black farmers, including Timothy Pigford, filed class action lawsuits in response to this persistent discrimination. A \$1 billion settlement was negotiated in 1999, which was expanded in

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<sup>3</sup> See, e.g., *McGhee v. Sipes*, 334 U.S. 1 (1948) (companion case to *Shelley v. Kraemer*, 334 U.S. 1 (1948)) (racially restrictive covenants); *Cent. Ala. Fair Hous. Ctr. v. Lowder Realty Co.*, 236 F.3d 629 (11th Cir. 2000) (racial steering); *Comer v. Cisneros*, 37 F.3d 775 (2d Cir. 1994) (racial discrimination in public housing and assistance programs); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287 (7th Cir. 1992) (redlining); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970) (exclusionary zoning); *Davis v. City of New York*, 902 F. Supp. 2d 405 (S.D.N.Y. 2012) (racial discrimination in policing public housing residences); *Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, No. 95-309, 2006 WL 581260 (D. Md. Jan. 10, 2006) (federal government's obligation to further fair housing affirmatively); *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106 (D.D.C. 1987) (redevelopment plans that unfairly eliminate affordable housing); see also *Novick v. Levitt*, 108 N.Y.S. 2d 615 (1951) (challenging eviction motivated by tenants entertaining Black guests in their Levittown, New York home); *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512 (1949) (challenging Stuyvesant Town's racial exclusion policy). LDF has also challenged tax foreclosure and water lien policies that disparately impact Black communities. See *Pickett v. City of Cleveland*, No. 19-2911 (N.D. Ohio filed Dec. 18, 2019); *MorningSide Cmty. Org. v. Sabree*, No. 16-008807 (Mich. Cir. Ct. filed July 13, 2016).

<sup>4</sup> NAT'L AGRIC. L. CTR., SHOW ME THE MONEY: A PRIMER ON AGRICULTURAL LENDING (2020), <https://nationalaglawcenter.org/show-me-the-money-a-primer-on-agricultural-lending>.

<sup>5</sup> C.R. ACTION TEAM, CIVIL RIGHTS AT THE U.S. DEP'T OF AGRICULTURE (1997), <https://acresofancestry.org/wp-content/uploads/2021/01/CRAT-Report-.pdf>.

<sup>6</sup> ABRIL CASTRO & CAIUS Z. WILLINGHAM, CTR. FOR AM. PROGRESS, PROGRESSIVE GOVERNANCE CAN TURN THE TIDE FOR BLACK FARMERS 4 (2019), <https://www.americanprogress.org/wp-content/uploads/2021/08/Black-Farmers-report1.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.*

<sup>10</sup> Maia Foster & P.J. Austin, *Rattlesnakes, Debt, and ARPA § 1005: The Existential Crisis of American Black Farmers*, 71 Duke L.J. Online 159, 164-65 (2022), <https://dlj.law.duke.edu/wp-content/uploads/sites/2/2022/06/Foster-Austin-FINAL.pdf>.

2011.<sup>11</sup> Yet many class members encountered significant obstacles in obtaining relief.<sup>12</sup> Most of the claimants received payouts of \$50,000 or less, just 10% of what the average mid-sized farm spends in a year.<sup>13</sup>

The problematic practices of the USDA continued even after the *Pigford* settlement, with the USDA failing to process discrimination claims in a timely manner and foreclosing on farmers with pending complaints.<sup>14</sup> USDA employees who raised concerns about sexual harassment and discrimination encountered similar obstacles.<sup>15</sup> Black farmers also continued to receive disproportionately less USDA aid.<sup>16</sup>

The persistent problems at the USDA prevent Black farmers from accessing the credit and crop insurance needed to effectively run their farms. As you have acknowledged:

When people do not have access to the broad array of services and benefits at the Department of Agriculture, they have been at a severe disadvantage. White farmers obviously had the full advantage. They had all the programs. And so they had a chance to grow, to expand. To buy the best equipment, to plant their crop in a timely way. Their yields were good. And so they got larger and larger.<sup>17</sup>

Without these benefits, Black farmers struggle economically. In 2017, the average full-time white farmer brought in \$17,190 in farm income, while the average full-time Black farmer made just \$2,408.<sup>18</sup> Inflation has exacerbated these difficulties, raising fuel, fertilizer, and other costs.<sup>19</sup>

The Biden Administration's initial attempts to address the needs of Black farmers were stymied by litigation. ARPA, which became law in March 2021, included targeted debt relief payments to socially disadvantaged farmers aimed at remedying USDA's well-documented history of racial

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<sup>11</sup> Settlement Agreement, *Pigford v. Glickman*, No. 97-cv-1978 (D.D.C. Dec. 20, 1999); Settlement Agreement, In re Black Farmers Discrimination Litigation, No. 08-mc-0511 (D.D.C. Feb. 18, 2010, revised and executed May 13, 2011), <https://www.blackfarmerscase.com/Documents/SettlementAgreement.pdf>.

<sup>12</sup> Emma Hurt, *The USDA is Set to Give Black Farmers Debt Relief. They've Heard That One Before*, NPR (June 4, 2021, 4:48 PM ET), <https://www.npr.org/2021/06/04/1003313657/the-usda-is-set-to-give-black-farmers-debt-relief-theyve-heard-that-one-before>.

<sup>13</sup> Elisha Brown, *Stalled U.S. debt relief is the latest broken promise to Black farmers*, FACING SOUTH (Aug. 12, 2021), <https://www.facingsouth.org/2021/08/stalled-us-debt-relief-latest-broken-promise-black-farmers>.

<sup>14</sup> Nathan Rosenberg & Bryce Wilson Stucki, *How USDA distorted data to conceal decades of discrimination against black farmers*, COUNTER (June 26, 2019), <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>; Kathryn Joyce, Nathan Rosenberg & Bryce Stucki, *The "Machine That Eats Up Black Farmland,"* MOTHER JONES (May-June 2021), <https://www.motherjones.com/food/2021/04/the-machine-that-eats-up-black-farmland/>.

<sup>15</sup> Joyce, Rosenberg & Stucki, *supra* note 13; Letter from Carolyn N. Lerner, Special Couns., to President Barack Obama (May 18, 2015), <https://www.documentcloud.org/documents/20617993-di-14-2556-di-14-4627-and-di-15-0001-letter-to-president>.

<sup>16</sup> A Politico analysis found that, in 2020, the USDA provided assistance to 71% of white applicants applying for loans helping farmers pay for land but just 37% of Black applicants. Ximena Bustillo, *'Rampant issues': Black farmers are still left out at USDA*, POLITICO (July 5, 2021, 7:00 AM ET), <https://www.politico.com/news/2021/07/05/black-farmers-left-out-usda-497876>. That same year, the number of direct federal loans to Black farmers fell from a peak of 945 in 2015 to 460. Brown, *supra* note 13. Farmers of color received less than 1% of the 2020 COVID-19 relief for farmers even though they make up 5% of all farmers nationwide. Bustillo, *supra* note 15.

<sup>17</sup> Hurt, *supra* note 12.

<sup>18</sup> CASTRO & WILLINGHAM, *supra* note 6.

<sup>19</sup> Hurt, *supra* note 12.

discrimination. Unfortunately, several courts issued preliminary injunctions against the initiative, blocking this relief.<sup>20</sup> While these cases have been in litigation, Black farmers continued to struggle financially, unsure of whether or when they will get relief, afraid the USDA will foreclose on their farms.<sup>21</sup>

While we were pleased to see that the IRA includes several measures that could assist Black farmers, we are concerned that this relief may not reach them.<sup>22</sup> Among other measures, the IRA appropriates \$2.2 billion to provide financial assistance to farmers who experienced discrimination, and an additional \$3.1 billion to cover loans or loan modifications for “distressed borrowers.”<sup>23</sup> It also repeals ARPA’s debt cancellation program.<sup>24</sup> As the combined eligible debt of Black farmers appears to be less than \$300 million, the IRA funding should be more than sufficient to cancel all their debt.<sup>25</sup> Unlike the relief included in ARPA, however, the funding and assistance available under the IRA is not limited to socially disadvantaged farmers. As such, we are concerned that a disproportionate amount of this relief will go to other farmers, and Black farmers will again be denied equal access to USDA assistance.

Beyond ensuring that Black farmers benefit from the IRA, the USDA can and should do more to provide long overdue assistance to Black farmers. Without access to the benefits and services available to white farmers, the number of Black farmers has plummeted: In 1920, Black farmers operated about one-seventh of all farm operations in the United States; today, Black farmers make up less than two percent of all farmers.<sup>26</sup> Between 1920 and 1997, Black farmers gave up farmland, along with income from that land, that would be worth approximately \$326 billion today.<sup>27</sup> Absent further efforts to ensure equitable access to USDA services, the number of Black farmers will continue to fall. The USDA must also ensure that Black farmers have a fair and effective means of raising discrimination claims, so that the agency can identify, resolve, and redress ongoing issues.

The undersigned organizations urge you to take the following steps:

- Ensure that farmers of color who were eligible for relief under ARPA qualify as “distressed borrowers” under the IRA;
- To the extent possible, use existing USDA data to identify farmers who qualify for debt relief as “distressed borrowers” in order to implement this program “as expeditiously as possible,” as required by the IRA;<sup>28</sup>

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<sup>20</sup> *Miller v. Vilsack*, No. 4:21-cv-00595 (N.D. Tex. 2021); *Faust v. Vilsack*, 519 F. Supp. 3d 470 (E.D. Wis. 2021); *Wynn v. Vilsack*, 545 F. Supp. 3d 1271 (M.D. Fla. 2021).

<sup>21</sup> Alan Rappoport, Black Farmers Fear Foreclosure as Debt Relief Remains Frozen, N.Y. Times (Feb. 21, 2022), <https://www.nytimes.com/2022/02/21/us/politics/black-farmers-debt-relief.html>.

<sup>22</sup> Inflation Reduction Act of 2022 §§ 22006-08, Amendment in the nature of a subst. to H.R. 5376, 117th Cong. (2022), available at [https://www.democrats.senate.gov/imo/media/doc/inflation\\_reduction\\_act\\_of\\_2022.pdf](https://www.democrats.senate.gov/imo/media/doc/inflation_reduction_act_of_2022.pdf).

<sup>23</sup> *Id.* at §§ 22006-07.

<sup>24</sup> *Id.*

<sup>25</sup> Letter from Rep. Alma Adams to U.S. Dep’t of Agric. Sec. Thomas Vilsack (July 29, 2022) (on file with LDF).

<sup>26</sup> CASTRO & WILLINGHAM, *supra* note 6.

<sup>27</sup> Dania Francis, et al., *How the Government Helped White Americans Steal Black Farmland*, NEW REPUB. (May 5, 2022), <https://newrepublic.com/article/166276/black-farm-land-lost-20th-century-billions>.

<sup>28</sup> Inflation Reduction Act of 2022 § 22006.

- Affirmatively reach out to farmers who were eligible for debt relief under ARPA to inform them of the new IRA programs, prioritize their applications for these programs, dedicate staff to providing these farmers with technical assistance on their applications, and protect them from adverse actions until the USDA makes a final determination on their applications;
- Affirmatively reach out to farmers who filed discrimination claims to advise them that they may be eligible for relief under the IRA, and dedicate staff to providing these farmers with technical assistance on their applications;
- Ensure that the process to determine which farmers are eligible for financial assistance under the IRA due to past discrimination is fair, independent, and separate from any involvement by the USDA Office of the General Counsel, and select a nongovernmental entity to administer this program that has ties to the Black community and experience working on discrimination claims;
- Strengthen the USDA Office of Civil Rights' capacity to conduct fair and effective investigations of civil rights complaints, including by employees, by disentangling the USDA Office of the General Counsel from any involvement in those investigations and providing timely assistance to farmers seeking to file claims;
- Improve data collection and integrity regarding civil rights complaints and publish that data publicly, including statistics about the speed at which the USDA processes civil rights complaints, the number of complaints found to have merit, and the number of pending complaints;
- Expand technical assistance and proactive outreach to farmers of color to ensure that they can take advantage of all available USDA programs, including land grants;
- Conduct research on the status of Black farmers and other farmers of color, including: 1) assessing their ability to access USDA programs and Farm Credit Systems loans compared to other farmers and ranchers; 2) identifying reasons for any disparities; 3) identifying any other challenges unique to farmers of color; and 4) proposing possible policy solutions;
- Increase oversight of Farm Service Agency county offices, which are the first point of contact for farmers seeking access to government assistance programs; and
- Conduct regular audits to ensure that the USDA is approving loans to Black farmers at the same rate and speed as loans to white farmers.

We know that you are well-aware of the issues within the USDA and the challenges facing Black farmers. A coalition of groups representing Black farmers—including the USDA Coalition of Minority Employees, the Justice for Black Farmers Group, and the Black Belt Justice Center—began corresponding with the Biden/Harris campaign and meeting with President Biden's transition team in early 2020.<sup>29</sup> Following your confirmation, these groups raised similar

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<sup>29</sup> See Letter from Lawrence Lucas, President Emeritus, USDA Coal. of Minority Emps., to Former Vice President Joseph R. Biden (May 11, 2020) (on file with author).



concerns with you directly but have yet to see any evidence of meaningful change.<sup>30</sup> The current economic crisis and the failure of legislative action add additional urgency to these issues.

LDF would like to meet with you to discuss these issues as soon as possible. Please contact Amalea Smirniotopoulos, Senior Policy Counsel ([asmirniotopoulos@naacpldf.org](mailto:asmirniotopoulos@naacpldf.org)) and David Wheaton, Economic Justice Policy Fellow ([dwheaton@naacpldf.org](mailto:dwheaton@naacpldf.org)) to schedule this meeting.

Thank you for your time and attention to these important matters.

Sincerely,

NAACP Legal Defense and Education Fund, Inc.

The following organizations support the contents of this letter and LDF's request for a meeting:

USDA Coalition of Minority Employees  
Justice for Black Farmers Group  
Black Belt Justice Center  
Bowens & Averhart, PLLC  
Arkansas Land and Farm Development Corporation  
Black Farmers of Chilton County  
Black Farmers and Agriculturalists Association  
National Black Growers Council, Inc.  
Mississippi Minority Farmers Alliance  
Reed-Wright Black Farmers Coalition  
African American Agriculturalist Association  
Independent Black Farmers  
African American Agriculture Association  
Black Men In America  
Cowtown Foundation  
No Fear Coalition  
Acorn8  
Coalition for Change, Inc.  
Talk Show Host, Harold K. Bell, "Speak The Truth"  
Brown Family Farm  
Provost Farm  
Lewis Farms  
Oklahoma Black Historical Research Project, Inc.  
Sustaining Environments Through Education and Economic Development, Inc. (SEED)

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<sup>30</sup> Letter from Tracy Lloyd McCurdy, Esq., Exec. Dir., Black Belt Just. Ctr., and Lawrence Lucas, President Emeritus, USDA Coal. of Minority Emps., to Hon. Thomas Vilsack, Sec., U.S. Dep't of Agric. (Apr. 8, 2021) (on file with author); Letter from Lawrence Lucas, President Emeritus, USDA Coal. of Minority Emps., to Hon. Thomas Vilsack, Sec., U.S. Dep't of Agric. (July 23, 2021) (on file with author).



Environmental Working Group  
Winston County Self Help Cooperative  
Gray Group  
Government Accountability Project  
Center for Community Progress  
Six State Farm to Table Program  
EcoWomanist Institute  
SJT Partners, LLC  
Berkeley Food Institute

CC: Monica Armster Rainge  
Deputy Assistant Secretary for Civil Rights  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Mail Stop 0115  
Washington, DC 20250