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SOCIALLY DISADVANTAGED FARMERS  
AND RANCHERS POLICY RESEARCH CENTER

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## **SDFR Policy Research Center Recommendations on Section 20007, revision of subsection 1006(e) of Inflation Reduction Act (IRA) of 2022 Implementation**

### **Introduction**

Section 22007 revision of subsection 1006(e) of the Inflation Reduction Act of 2022 (“section 22007”) directs the U.S. Department of Agriculture (USDA) to provide financial assistance to farmers, ranchers and forest landowners determined to have experienced discrimination. Section 22007 provides \$2.2 Billion for financial assistance for farmers, ranchers and forest landowners determined to have experienced discrimination in the Department of Agriculture’s farm lending programs prior to January 1, 2021, and that subsection 1006(e) shall be administrated through one or more qualified nongovernmental entities selected by the Secretary of Agriculture subject to standards set and enforced by the Secretary.

### **Issues for Consideration**

#### **I. Identification of those who are eligible for financial assistance.**

##### **A. How should USDA identify those who have experienced discrimination under the USDA farm loan programs?**

All farmers, ranchers and forest landowners that are present or former farm loan borrowers or former applicants for a farm loan, who have been subjected to discrimination by USDA prior to January 1, 2021, should be eligible for financial assistance. To determine if the applicant is or was a farmer, rancher or forest landowner, the applicant will provide the following: the State and County where the applicant was a farmer, rancher, or forest landowner, as well as the FSA Farm Number and Track Number for the operation.

##### **B. What kind of documentation or evidence should be submitted in support of a determination of discrimination?**

Evidence of discrimination may include lack of services, loan denials, delays such as late approvals or funds provided too late, not refinanced, or unfavorable loan terms such as high interest rates or fees, a requirement for a loan to be supervised

by a loan manager, loan payment made due prior to farm output, severe reduction in requested loan amounts that resulted in adverse circumstances, and previously filed discrimination complaints against USDA.

Determine if the applicant was subject to discrimination.

- 1) To determine if the applicant was subject to discrimination the applicant will provide:
  - a) the basis for the discrimination such as race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity.
  - b) the USDA office(s) responsible for the discrimination.
  - c) the dates or time period the discrimination took place.
  - d) whether you have filed a discrimination complaint. If so, list the complaints and note when and where the complaints were filed, What was the outcome of the complaints or
  - e) any other documented case of discrimination.
  
- 2) Criteria for loans:
  - a) Were the original loans FSA direct or guaranteed loans?
  - b) How exactly did the families assume the indebtedness?
  - c) Are those original loans still outstanding?
  - d) Were they refinanced?
  - e) To whom are the loans currently owed?
  - f) Is this the estate of a deceased farmer, rancher, or forest landowner?
  
- 3) In addition to the above criteria, the following should be provided to support that the applicant was subject to USDA discrimination actions:
  - a) Loan not approved or approved too late.
  - b) Loan did not meet the needs of the request.
  - c) Adverse action by the supervised loan manager.
  - d) Loan repayment conditions and interest rates not workable.
  - e) Loan document altered.
  - f) Farm located in a county with a history of USDA discrimination and land loss.

## **II. The amount and type of financial assistance provided not to exceed \$500,000.**

- A. 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 financial assistance**

**provided? Alternatively, should USDA apply a fixed, uniform formula for calculating the amount of financial assistance provided?**

Determine the settlement level for applicants who were determined to be a farmer, rancher or a forest landowner and found to have been subject to discrimination. The entities will consider the impact of delayed relief in determining the payment to applicants who did not get full debt relief or other agreed to benefits from a finding of discrimination.

- 1) Damage to applicant resulting from USDA actions:
  - a) Not able to get loans to plant crops or buy animals.
  - b) Required to pay higher interest rates.
  - c) Repayment on loan due prior to output on the farm.
  - d) Not able to buy or rent land.
  - e) Loss of the farm or forced to sell land.
  - f) Did not receive some of the agreed to benefits from discrimination complaints against USDA.
  
- 2) Size of farm operation loss:
  - a) Number of acres loss.
  - b) Number of livestock loss.
  - c) Amount of money loss.
  - d) Level of production loss.

USDA should not apply a fixed, uniform formula for calculating the amount of financial assistance provided. USDA should provide guidelines to be used by the economist in each of the entities so as to produce uniform settlements in all regions.

**B. In any case, how should that calculation be done?**

The economist in the entities should use the information provided by the applicant and USDA to determine the financial damages suffered by the applicant during the period of discrimination. The calculation should be based on the guidelines provided by USDA.

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

Previous direct payments received for past claims of discrimination should be considered in determining financial assistance available under section 22007 to the extent to which the previous payments did not make the applicant whole. Previous debt relief should not be considered in determining the financial assistance under section 22007.

**D. 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?**

There are 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. Non-monetary equitable relief used in conjunction with the financial assistance provided under section 22007 should be considered as additional assistance and not used in lieu of direct cash payments.

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

The recency of the discrimination event should be considered in determining the level of financial assistance, in that the shorter the applicant has farmed after the discrimination event, the lower the level of financial assistance. If the discrimination event took place in the last year or less, it might be possible to make the applicant whole prior to major financial or land loss. The highest level of financial payments should be made to the applicants who have the documented highest level of discrimination for the longest period of time. The level of payments should increase as the level of documented discrimination increases and the period of time increases.

**III. The administration of the financial assistance program, and role of the third-party entity (or entities) versus the role of USDA.**

**A. 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?**

The Secretary should select four qualified nongovernmental entities to administer Section 1006(e). The Secretary should select entities for regions of the USA. The Secretary should consider entities for the **South**, the **North**, the **Plains**, and the **West**.

- The **South Region** would include *Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, East Oklahoma, Tennessee, East Texas, Virginia, and West Virginia.*
- The **North Region** would include Connecticut, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Vermont, and Wisconsin.

- The **Plains Region** will include Colorado, Kansas, Nebraska, New Mexico, North Dakota, Utah, Wyoming, West Texas, and West Oklahoma.
- The **West Region** would include Alaska, Arizona, California, Guam, Micronesia, Hawaii, Idaho, Nevada, Oregon, Washington, and Puerto Rico.

**The specific functions of the third-party Entities:**

1. Set up an intake process to enable the Entities to process and track the applications.
2. Work with USDA to determine process and settlement standards and draft agreement statement for settlement.
3. Employ the staff needed to process the applications to include the creation of local settlement teams. The small field work teams will be made up of a person with agriculture experience, an economist, and an attorney to process claims.
4. Perform an expeditious review of the applicant case files to determine if the complainant is or was a farmer, rancher or forest landowner and should be processed.
5. Have the applicant sign a release agreement that will permit USDA to provide to the Entities the files held by USDA agencies for the applicant.
6. Provide the signed release agreement to FSA and request the USDA files for the applicant.
7. Determine if the applicant was subject to discrimination.
8. Analyze all components of the case and determine the settlement level.
9. Review the appropriate parameters for settlement.
10. Analyze all components of the settlement agreement prior to presentation to the Complainant or Representative to assure conformity with applicable standards and program regulations.
11. Present settlement to the Complainant or representative for approval and signature.
12. Document that the applicant is or was a farmer, the basis of discrimination and the justification for the settlement level to include an economic analysis as appropriate.
13. Upon settlement prepare memorandum transmitting the settlement agreement and other documents to FSA for review and payment. Other documents will include a write-up of how the Entities arrived at a decision to settle, including the write-up outlining the level of discrimination.

**The USDA Role in Implementing this program:**

1. Provide standards to the Entities on processing and settlement of claims.
2. Work with the Entities and develop an agreement statement that will be signed by the applicant and the Entities.
3. Draft a letter to be signed by applicants to approve/release USDA to provide their files to the Entities. With signed approval from the applicant, provide a copy of the files held by USDA agencies.

4. Implement the settlement agreements developed by the Entities. The FSA review of the signed agreement will be made and will be considered as a final agreement if FSA does not object in 15 days. Payment on final agreements will be made within 30 days.
5. Review cases where the applicant did not agree with the Entities' settlement and work with the applicant in an effort to reach an agreement.

**B. What criteria should USDA use in the selection of the third-party entity (entities)?**

The selection of the entities should be based on the entities proposal to process the applications within 2 years from the start date and prior to October 31, 2024. The entities should be located within the region where applications are being processed. The entities need to develop agreements with other organizations and universities that will supply the needed economists, lawyers, agriculture experts, information technology (IT) experts, and others as needed.

**C. What guidance should USDA provide?**

USDA should outline standards to be used by the entities in processing applications and requirements for information to be included on each case to be paid.

**IV. The linkage or leveraging, between the financial assistance provided in this program and other USDA programs.**

**A. 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?**

USDA should put in place oversight measures the will ensure that field employees will not discriminate against persons who apply for USDA assistance. All USDA programs should be made available to farmers who want to farm.