

November 14, 2022

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U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

RE: Notice of Request for Public Comment on Providing Financial Assistance for Producers and Landowners Determined To Have Experienced Discrimination, Docket No. USDA-2022-0015

To Whom it May Concern:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF) we submit the following comments in response to the U.S. Department of Agriculture's (USDA) Notice of Request for Public Comment on Section 22007 of the Inflation Reduction Act of 2022 (IRA), which directs the USDA to provide financial assistance to producers and landowners who have experienced discrimination in the USDA's farm lending programs.¹ Black farmers have long experienced discrimination in USDA programs, yet prior attempts to remedy this discrimination have failed to provide adequate relief. Section 22007 provides the USDA with the opportunity to redress past harms and provide transformative assistance to Black farmers and other farmers who have experienced discrimination. We urge the USDA to create a swift, fair, and accessible process for farmers to seek relief under Section 22007.

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.² 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 and other policies and systems that deprive Black communities of economic opportunities and exacerbate racial disparities in homeownership and landownership.³

¹ Inflation Reduction Act of 2022 § 22007, Pub. L. 117-169, <https://www.congress.gov/117/bills/hr5376/BILLS-117hr5376enr.pdf>.

² 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.

³ 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

I. Black Farmers Have Experienced Decades of Discrimination in USDA Programs.

The USDA has long denied Black farmers equal access to critical programs.⁴ As a result of discrimination in USDA programs, Black farmers have lost approximately \$326 billion worth of land, according to a 2022 study published in *American Economic Association's Papers and Proceedings*.⁵

During the Great Depression, the USDA allowed white landowners to keep government benefit payments from the Agricultural Adjustment Act (AAA) of 1933 rather than passing them on to Black tenants who sharecropped on their land.⁶ The AAA incentivized farmers to produce less by providing rental and other benefit payments to those who withdrew acreage from cultivation.⁷ White landowners often pocketed the benefit payments instead of distributing that money to their sharecropping tenants.⁸

The USDA excluded Black farmers from other relief programs as well. The Federal Emergency Relief Administration, which was established to alleviate household unemployment during the Great Depression, granted a disproportionate amount of funds to white farmers, leaving Black farmers vulnerable.⁹ For example, in Greene County, Georgia in 1934, Black farmers received 20 percent less direct relief than white farmers, even though the average rural white family at the time earned twice as much as a Black family.¹⁰ Similarly, in Macon County, Georgia, Black farmers received half the amount of direct relief as white farmers, even though the average income of a white family was almost triple that of a Black family.¹¹ Black farmers also received disproportionately fewer rehabilitation and tenant-purchase loans through the Farm Security

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).

⁴ 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>.

⁵ Leah Douglas, *U.S. Black farmers lost \$326 bln worth of land in 20th century –study*, Reuters (May 2, 2022 1:14 PM ET), <https://www.reuters.com/world/us/us-black-farmers-lost-326-bln-worth-land-20th-century-study-2022-05-02/>.

⁶ 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>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Administration.¹² Discriminatory county supervisors consistently excluded Black farmers from many USDA programs as well.¹³

In the 1980s and 1990s, the federal government acknowledged the USDA's discriminatory practices in a number of reports.¹⁴ Specifically, in 1982, the U.S. Commission on Civil Rights issued a report that found, among other things, that the USDA failed to ensure that Black farmers had equal access to farm credit programs.¹⁵ Similarly, in 1994, the USDA commissioned a study to analyze the treatment of minorities and women in Farm Service Agency programs and payments. The study examined conditions from 1990 to 1995 and looked primarily at crop payments and disaster payment programs and Commodity Credit Corporation loans. The final report found that Black farmers received \$4,000 (or 25 percent) less in loans than white male farmers. The study also found that 97 percent of disaster payments went to white farmers, while less than 1 percent went to Black farmers.¹⁶

In 1997, Black farmers, including Timothy Pigford, filed class action lawsuits seeking accountability as a result of this persistent discrimination. In 1999, a settlement in the amount of \$1 billion was negotiated. This settlement was expanded in 2011 to include Black farmers who were denied the opportunity to participate in the settlement of the original *Pigford* case because they filed their petition after the claim deadline due to inadequate or defective notice by class counsel.¹⁷ Despite these settlements, Black farmers continued to experience hardship in securing relief from the USDA, as many class members encountered significant barriers to obtaining relief.¹⁸ For example, Black farmers were required to find similarly-situated white farmers who were treated differently in order to prove discrimination--yet farmers were not given access to USDA information they could use to do so, and their attempts to access it through Freedom of Information Act requests were denied.¹⁹ The USDA also vigorously litigated discrimination claims, filing numerous motions that farmers' *pro bono* counsel were ill-equipped to respond to.²⁰ As a result, nearly 9 in 10 Black farmers who applied for compensation from the original *Pigford*

¹² *Id.*

¹³ *Id.*

¹⁴ 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>.

¹⁵ U.S. Commission on Civil Rights, *The Decline of Black Farmers in America* iv (1982).

¹⁶ Tadlock Cowen & Jody Feder, Congressional Research Service, *The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers* (2013), <https://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS20430.pdf>

¹⁷ 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>.

¹⁸ 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>.

¹⁹ Waymon R. Hinson & Edward Robinson, "We Didn't Get Nothing:" *The Plight of Black Farmers*, J. of African American Studies, vol. 12, no. 3, at 283, 298 (2008).

²⁰ *Id.*

settlement were denied.²¹ Most of the claimants received payouts of \$50,000 or less, just 10 percent of what the average mid-sized farm spends in a year.²²

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 of discrimination.²³ Furthermore, USDA employees who raised concerns about sexual harassment and discrimination encountered similar obstacles.²⁴ Black farmers also continued to receive disproportionately less USDA aid.²⁵ A Politico analysis found that, in 2020, the USDA provided assistance to 71% of white applicants applying for loans to help farmers pay for land however only 37% of Black applicants received assistance.²⁶ That same year, the number of direct federal loans to Black farmers fell from a peak of 945 in 2015 to 460.²⁷

The entrenched and ongoing discrimination at the USDA prevents Black farmers from accessing the resources, including credit and crop insurance, needed to effectively operate their farms. As current USDA Secretary Thomas Vilsack has 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.²⁸

²¹ 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>.

²² 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>.

²³ Nathan Rosenberg & Bryce Wilson Stucki, *How USDA distorted data to conceal decades of discrimination against black farmers*, Counter (Jun.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/>.

²⁴ 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>.

²⁵²⁵ 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>; 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.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Hurt, *supra* note 12.

Without these benefits, Black farmers struggle economically. In 2017, the average full-time white farmer realized an income of \$17,190, while the average full-time Black farmer realized only \$2,408.²⁹ Inflation has exacerbated these difficulties, raising fuel, fertilizer, and other costs.³⁰

We were pleased to see that the IRA includes several provisions that could assist Black farmers.³¹ 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.”³² Swift and effective implementation of these programs could help redress the harms suffered by Black farmers. These programs can also help stave off future land loss and rebuild trust with the USDA.

II. **The USDA Should Create a Swift, Fair, and Accessible Relief Program Under Section 22007.**

Black farmers have been severely negatively impacted by discrimination from the USDA.³³ Specifically, Section 22007 provides the USDA with the opportunity to provide farmers, ranchers, and forest landowners impacted by discrimination in USDA farm lending programs with funds to remedy past discrimination. The USDA should utilize the techniques discussed below to ensure that Section 22007 is implemented in a manner that is swift, fair and accessible so that it benefits those who have been discriminated against in the past, including in its selection of third-party entities to administer the relief program.

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

The USDA should take affirmative steps to identify those who have been discriminated against in USDA programs and notify them that they are eligible for relief. For example, the USDA should affirmatively reach out to farmers who filed discrimination claims with the agency to advise them that they may be eligible for relief under Section 22007, and dedicate staff to providing these farmers with technical assistance on their applications. The information that farmers who have previously filed discrimination claims with the USDA should also be shared with community-based organizations and third-party entities that will be engaging in outreach under Section 22007.

The USDA and local Farm Service Agencies (FSAs) also have data on loan rates, loan rejections, prior complaints, and other documents that can be crucial to determining who

²⁹ Castro & Willingham, *supra* note 6.

³⁰ Hurt, *supra* note 12.

³¹ Inflation Reduction Act of 2022 § 22007, Pub. L. 117-169, <https://www.congress.gov/117/bills/hr5376/BILLS-117hr5376enr.pdf>.

³² *Id.* §§ 22006-07.

³³ Abril Castro & Caius Z. Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, Center for American Progress, Apr. 2019, <https://www.americanprogress.org/wp-content/uploads/2021/08/Black-Farmers-report1.pdf>

has been discriminated against. The USDA should use this data to identify and affirmatively reach out to socially-disadvantaged farmers and ranchers who were given less funds than the loan amount they applied for or other indicators of discrimination, as discussed below. The USDA should also identify sections and areas of the country down to the census tracts where there is prior evidence of discrimination in USDA programs. This analysis would identify areas of the country that have a high number of discrimination complaints and other evidence of discrimination. The USDA should compile this evidence and provide it to the third-party entities implementing Section 22007. This data will help third-party entities with the data they need to identify farmers, ranchers, or forest landowners who have been discriminated against in the past.

The USDA should also use community-based organizations for outreach as much as possible. This outreach should include multiple forms of communication, including: town hall meetings, social media advertising, canvassing, phone banking, and mailers. Many farmers, ranchers, and forest owners who have faced discrimination do not have a favorable view of the USDA because of the agency's past handling of discrimination complaints. The USDA can address that by enlisting community-based organizations to help reach out to farmers who have experienced discrimination but may be less likely to respond directly from the USDA.

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

In order to ensure that Section 22007's relief can reach as many eligible farmers as possible, the USDA should develop processes and procedures to reduce the initial burden on farmers.

First, the USDA should develop an easily accessible process for farmers, ranchers, and forest landowners to submit documentation for relief under Section 22007. The USDA should allow farmers to provide documentation electronically, in person, or by certified mail.

Second, as the USDA develops its documentation requirements, it must account for the ways in which discrimination has limited farmers' access to USDA programs and services. For example, the USDA should not rely solely on whether someone has a Farm ID number to determine whether they are a farmer. Forty percent of land owned by Black farmers is heirs' property, which is defined as land passed down between generations without a formal will or title.³⁴ Until 2018, however, in order to get a Farm ID, the USDA required farmers to show proof of ownership or control of land without alternative methods other

³⁴ Leah Douglas, "Deep in the Farm Bills, a Step Forward for Black Farmers on Heirs' Property," Food and Environment Reporting Network, July 24, 2018, https://thefern.org/ag_insider/deep-in-the-farm-bill-a-step-forward-for-black-farmers-on-heirs-property/

than a title.³⁵ Farm IDs were thus extremely difficult for farmers with heirs property to obtain because they often did not have a formal will or title to prove ownership.³⁶ As a result, some Black farmers will not have Farm ID numbers to prove that they were farming during the period in which they state they experienced prior discrimination. For farmers, ranchers, and forest landowners that have heirs' property, the USDA should develop alternative methods to demonstrate that they were farming, ranching, or were a forest landowner during a particular period.

Third, the USDA should permit farmers to show that they were discriminated against using a wide range of evidence. Evidence of discrimination may include:

- Lack of access to USDA farm loan programs or products;
- Loan denials;
- Delays in getting loans;
- Late loan approvals or funds provided too late;
- Refinancing denials;
- Unfavorable loan terms, such as high interest rates or fees;
- A requirement for a loan to be supervised by a loan manager;
- A requirement that a loan payment is due prior to farm output;
- Severe reduction in requested loan amounts that resulted in adverse circumstances; and
- Previously filed discrimination complaints against USDA.

While it is relevant that a farmer, rancher, or forest landowner filed a previous complaint of discrimination, because the USDA complaint process has been proven to be extremely flawed, farmers who have not previously filed a complaint should not be excluded from obtaining relief under Section 22007. First, farmers going back decades have not filed discrimination complaints or lawsuits due to fear of retaliation.³⁷ For example, the Provost family, who are Black cane farmers based in Louisiana, said they faced retaliation after they filed a lawsuit against the USDA.³⁸ The Provosts alleged that the USDA denied them necessary crop loans to maintain their sugarcane farm and as a result, they were forced into foreclosure.³⁹ Second, the USDA's Office of Civil Rights has failed to adequately address civil rights complaints for decades.⁴⁰ As Secretary Vilsack has acknowledged, complaints based on discrimination were not handled properly at the USDA: "Thousands of claims

³⁵ Jennifer Fahy, *How Heirs' Property Fueled the 90 Percent Decline in Black-Owned Farmland*, Farm Aid, Feb. 28, 2022, <https://www.farmaid.org/blog/heirs-property-90-percent-decline-black-owned-farmland/>

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Gary R. Grant, Spencer D. Wood, & Willie J. Wright, *Black Farmers United: The Struggle Against Power and Principalities*, *The Journal of Pan African Studies*, Vol.5, No.1, March 2012, <https://www.jpanafrican.org/docs/vol5no1/5.1BlackFarmers.pdf>

⁴⁰ Id.

had been filed against the Department for denial of equal service, many based on race. Many of these claims languished for decades, unresolved.”⁴¹ Consequently, because many complaints were not officially investigated nor addressed,⁴² other farmers, ranchers, and forest landowners may not have filed complaints at all. Due to these past flaws in the complaint process with the USDA, the Department should not use discrimination complaints as the only evidence to show that a farmer, rancher, or forest landowner experienced prior discrimination.

Moreover, farmers, ranchers, or forest landowners whose discrimination claims were denied by the USDA should also be eligible under Section 22007, due to prior administrations’ failure to properly handle discrimination complaints.

Finally, land loss should be considered evidence of past discrimination. Many Black farmers and ranchers lost their land because of discriminatory practices of the USDA and its entities.⁴³ For example, Alvin E. Steppes, a Black farmer from Lee County, Arkansas, applied for a USDA operating loan in 1986.⁴⁴ Steppes fully complied with the application process and met the stated loan requirements; however, the USDA denied his application and Steppes lost his farm because he did not have the resources to plant new crops or treat his existing crops.⁴⁵ Farmers, ranchers, and forest landowners who have incurred land loss due to discrimination should be eligible to receive benefits under Section 22007.

Should the 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?

The USDA should estimate both economic and non-economic losses of those who have suffered discrimination in USDA loan programs. Racial discrimination, such the discrimination that has pervaded USDA programs, has long been recognized as one of the gravest harms in our society, and is “[o]dious in all aspects” according to the Supreme Court.⁴⁶ In addition to causing economic harm, such as lost income, race discrimination also relegates Black people and other people of color to second-class citizenship and often

⁴¹ Nathan Rosenberg & Bryce W. Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, The Counter, Jun. 26, 2019, <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>

⁴² Id.

⁴³ Jordan A. Patterson, *Ending a War Waged by Deed of Title: How to Achieve Distributive Justice for Black Farmers*, Ohio State Law Journal, Vol. 82, May 2021, https://moritzlaw.osu.edu/sites/default/files/2021-06/12.Patterson_Paginated.pdf

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ *Rose v. Mitchell*, 443 U.S. 545, 555 (1979).

inflicts extreme emotional and stigmatic injury.⁴⁷ The USDA should use Section 22007 to address the humiliation and emotional distress caused by decades of racial discrimination in USDA programs.⁴⁸

The USDA should not apply a uniform formula for calculating the amount of financial assistance provided. As discussed below, the USDA should contract with third-party entities to implement Section 22007. Those entities should be charged with developing criteria for calculating the amount of financial assistance to be provided to applicants who have experienced prior discrimination by the USDA. Black farmers and other farmers of color have suffered a range of discriminatory conduct in the past. Their claims should be evaluated on a case-by-case basis to ensure that the remedy they receive will align with the harm suffered.

Finally, the USDA should include full debt relief as an option for farmers, ranchers, and forest landowners who experienced prior discrimination, up to the \$500,000 cap set by Congress. In determining the amount of relief to provide to eligible farmers, the USDA should not only calculate the amount of economic loss for a farmer because of discrimination, but it should also take a holistic view about the harms caused by discrimination, including emotional and other non-monetary harms. Because discrimination against Black farmers is longstanding, persistent, and pervasive, a narrow focus on, for example, income lost due to loan denials may not reflect the full extent of the harm. As such, relief awarded under Section 22007 should include the options for full debt relief for farmers, ranchers, and forest landowners. Full debt relief, particularly for Black farmers, will help make Black farmers whole, which was not accomplished when the *Pigford* settlement was implemented.

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 USDA should ensure that the process to determine which farmers are eligible for financial assistance under Section 22007 is fair, independent, and separate from any involvement by the USDA Office of the General Counsel, which has historically limited relief on discrimination claims.⁴⁹ To do so, the USDA should determine the overall criteria

⁴⁷ *Cummings v. Premier Rehab Keller, PLLC*, 142 S.Ct. 1562, 1579 (2022) (Breyer, J., dissenting), 20-219 *Cummings v. Premier Rehab Keller* (04/28/2022) (supremecourt.gov).

⁴⁸ Abril Castro & Caius Z. Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, Center for American Progress, Apr. 2019, <https://www.americanprogress.org/wp-content/uploads/2021/08/Black-Farmers-report1.pdf>; 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>

⁴⁹ Nathan Rosenberg & Bryce W. Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, The Counter, Jun. 26, 2019, <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>

for evaluating discrimination claims, but engage third-party entities to administer the program. The third-party entities' duties should include:

- Identifying farmers who may have experienced discrimination based on the criteria outlined above, and reaching out to them to inform them of the program;
- Conducting broad and proactive outreach to farmers generally;
- Providing farmers with technical assistance in filing claims;
- Evaluating whether farmers have met their initial burden of demonstrating prior discrimination;
- Examining USDA records to determine if the farmer received a smaller loan or other adverse action for reasons other than discrimination, and soliciting additional documents or other evidence from the farmer if necessary;
- Making a final determination regarding whether discrimination occurred; and
- Determining compensation for the farmer.

Providing the third-party entities the autonomy to administer the Section 22007 process will help farmers—particularly those who have encountered barriers to prior discrimination claims—have faith that the process will be fair and equitable. However, farmers should also be able to request that the USDA's Civil Rights Division evaluate their discrimination claim if they believe they received an adverse result. The USDA should commit to providing the third-party entities with full access to USDA records in order to perform their work.

The Secretary should select four qualified nongovernmental entities to administer Section 22007, one to cover each of four regions in the country: 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.

This structure would allow for more localized communication between applicants and the third-party entity, as well as a better geographical knowledge of the areas the third-party entity will serve. Having a third-party entity that is located in the region also means that the entity could do extensive outreach including community gatherings and informal listening sessions where they can detail the plans for the implementation of Section 22007.

Furthermore, different regions will have different needs and require different resources. The third-party entity should have knowledge of the specific needs of farmers and ranchers of the region.

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

The nongovernmental entities selected to administer Section 22007 should have sufficient institutional capacity to perform the work; ties to the Black community; knowledge of farming; and experience working on discrimination claims. The criteria that the USDA should consider in the selection of third-party entities are:

- 1. Ability to provide easy access to farmers, ranchers, and forest landowners to prove prior discrimination.** The entity should be equipped to make the application and evidence collection process easy for farmers, ranchers, forest landowners to navigate. The entity should ensure that those applying for relief under Section 22007 can submit documentation through various methods, including electronically, in person, and by certified mail.
- 2. Ability to quickly assess and award funds to farmers, ranchers, and forest landowners who have experienced prior discrimination.** The entity should have a timeline of no more than two years to fully implement Section 22007. It is crucial for farmers who have experienced discrimination to get the promised relief as quickly as possible. Black farmers in particular have suffered devastating land loss. Between 1910 and 1997, Black farmers lost 90 percent of their property.⁵⁰ White farmers lost only two percent in the same period.⁵¹ As of 2017, there were just 35,470 Black-owned farms, representing 1.7 percent of all farms.⁵² As noted above, a 2022 study published in *American Economic Association's Papers and Proceedings*, found that Black farmers lost about \$326 billion worth of land in the United States due to discrimination during the 20th century.⁵³ Delays in the implementation of Section 22007 could result in more land loss for Black farmers.⁵⁴ Accordingly, it is imperative that the entities implementing Section 22007 have the capacity to evaluate and process the expected the claims in a timely manner.
- 3. Ability to fairly and transparently implement Section 22007.** Farmers who experienced discrimination and the public as a whole should have faith that the

⁵⁰ Nathan Rosenberg & Bryce W. Stucki, *How USDA Distorted Data to Conceal Decades of Discrimination Against Black Farmers*, The Counter, Jun. 26, 2019, <https://thecounter.org/usda-black-farmers-discrimination-tom-vilsack-reparations-civil-rights/>

⁵¹ Id.

⁵² Id.

⁵³ Dana Francis, et al, *How the Government Helped White Americans Steal Black Farmland*, The New Republic, May 5, 2022, <https://newrepublic.com/article/166276/black-farm-land-lost-20th-century-billions>

⁵⁴ 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>

entity is evaluating Section 22007 claims on their merits, that people with similar claims are being treated similarly, and that people who have been discriminated against receive adequate compensation. In order to do so, the USDA should require that entities have developed internal checks and processes to ensure that similar claims are treated similarly throughout the region they serve. For example, an entity could create a separate team to review all findings and funding awards and denials to ensure that the decisions are consistent and equitable, and that meritorious claims are not unfairly denied. The USDA should also require the entities to publicly share depersonalized data about the number of claims it has received; the types of discrimination claimed; whether the claim was approved or denied; the amount of the award; and the demographic and regional information of recipients of funds.

4. Ties to the communities it will serve. It is crucial that the third-party entities have ties to the communities that they will serve. The third-party entity should have an understanding of the history of Black farmers and have experience supporting Black farmers. The entities should be located within the region where applications will be processed. This is especially important in the Southern region, which has a large number of previous discrimination claims.⁵⁵ For example, there is extensive evidence that in the 1990s, the local FSA in Alabama would rip up loan applications for Black farmers and then throw the application in the trash can.⁵⁶

Previous attempts to alleviate debts for Black farmers have failed and given Black farmers reason not to trust the USDA in its implementation plans. As such, it is extremely important to have an entity that will work with the community and have trust within the Black farming community. The USDA must have an entity that has positive connections with the Black farming community to implement Section 22007, particularly in the South.

5. Staff with experience in farming, crop maturation, etc., as well as discrimination claims. This practical knowledge will help the staff understand the value and effect that previous discrimination had on farmers, ranchers, and forest landowners. The entities may need to develop agreements with other organizations and research institutions that will supply economists, lawyers, agriculture experts, information technology experts, and others as needed. The entities should also have experience with evaluating discrimination claims.

⁵⁵ Kali Holloway, *How Thousands of Black Farmers Were Forced Off Their Land*, *The Nation*, Nov. 1, 2021, <https://www.thenation.com/article/society/black-farmers-pigford-debt/>

⁵⁶ *Id.*

III. Conclusion

Section 22007 provides the USDA with the opportunity to redress the longstanding discrimination endured by Black farmers as they tried to access the resources and programs at USDA. We urge the USDA to adopt these recommendations and to move forward with program implementation as quickly as possible.

Thank you for the opportunity to submit our responses. If you have any questions, please contact David Wheaton, Economic Justice Policy Fellow, at dwheaton@naacpldf.org, or Amalea Smirniotopoulos, Senior Policy Counsel, at asmirniotopoulos@naacpldf.org.

Sincerely,

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