

June 15, 2023

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

RE: Implementation of Inflation Reduction Act Sec. 22006

Dear Secretary Vilsack:

We are writing to you to express our concerns about the implementation of Section 22006 of the Inflation Reduction Act of 2022, and to offer suggestions for additional steps the U.S. Department of Agriculture (USDA) should take to ensure that the debt relief provided by that Act reaches the farmers most in need, including Black farmers. While we appreciate the efforts the USDA has made to get relief to distressed farmers, we are concerned about how the remaining Section 22006 funds will be allocated. We urge the USDA to adopt the recommendations put forward in this letter so that distressed Black farmers reap the benefits of this historic financial assistance program, which is the result of their steadfast organizing efforts for over two decades.

Unfortunately, Black agrarian communities have struggled for decades. Due to the lack of financial resources caused by USDA discrimination,¹ Black farmers have suffered devastating land loss and economic distress. Between 1910 and 1997, Black farmers lost 90 percent of their property.² White farmers lost only two percent in the same period.³ A 2022 study published in *American Economic Association's Papers and Proceedings* found that Black farmers lost about \$326 billion worth of land and generative wealth in the United States due to discrimination during the 20th century.⁴ Because Black farmers were fighting to keep their land, they often could not make other investments in wealth-building assets.⁵ Moreover, Black farmers still struggle to access USDA programs. Direct loans are supposed to be among the easiest to get at USDA.⁶ Yet, in 2022, the USDA granted direct loans to only 36 percent of applicant farmers who identified as Black,

¹ 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> (“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,” [Sec. Vilsack] said. “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.”).

² 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/>.

³ *Id.*

⁴ 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>.

⁵ Chandelis Duster & Janie Boschma, *Many Black Farmers Nationwide Struggling to Keep Their Farms Afloat as they Face Disparities Across the Board*, CNN (Dec. 15, 2021), <https://www.cnn.com/2021/12/15/politics/black-farmers-debt-relief-disparities/index.html>.

according to an NPR analysis of USDA data. Sixteen percent of Black farmers were rejected—the highest amount for all demographic groups.⁷ In contrast, 72 percent of white farmers who applied were approved and only 4 percent of white farmers were denied. As a result of past discrimination and ongoing disparities, according to the Center for American Progress, full-time Black farmers today earn one-seventh of the farm income that white farmers earn.⁸ A study by McKinsey similarly found that Black farmers are also more likely to generate a net loss, be given a long-term production contract, and operate on less land than white farmers.⁹

Section 22006 authorizes the USDA to provide \$3.1 billion to provide payments to and for the cost of loans or loan modifications for economically distressed borrowers of direct or guaranteed loans administered by the Farm Service Agency (FSA).¹⁰ We are pleased that approximately 19,000 distressed farmers have received relief under Section 22006 totaling over \$1 billion. This relief includes assistance to several Black farmers who had suffered crushing debts, farm foreclosures, and financial ruin due to the disastrous implementation of the 1999 *Pigford v. Glickman* class action racial discrimination lawsuit. However, many distressed Black farmers are still awaiting relief. According to USDA data, the combined debt of Black farmers is less than \$210 million.¹¹

On May 19, 2023, the USDA released new criteria that makes farmers and ranchers who took “extraordinary measures” to pay their FSA loans eligible for Section 22006 funds, and explains how the agency will distribute the remaining relief.¹² Under these criteria, borrowers who made early withdrawals of retirement funds, college funds or long-term investments, as well as borrowers who made the sale of “essential assets” that were required to maintain the current operation level of the borrowers farm and household, would be eligible for relief.¹³ In addition, the USDA announced that the FSA will begin accepting and reviewing individual requests for assistance from direct loan borrowers who missed a recent installment or are unable to make their next scheduled installment.

While we applaud the USDA for creating an individualized review process for distressed borrowers, we are concerned that aspects of the new criteria will not accurately identify distressed Black farmers. For example, Black farmers may not have retirement funds, college funds, or other

⁸ 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>.

⁸ 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>.

⁹ Daniel Aminetzah, et al., *Black farmers in the US: The opportunity for addressing racial disparities in farming*, MCKINSEY & CO. (Nov. 10, 2021), <https://www.mckinsey.com/industries/agriculture/our-insights/black-farmers-in-the-us-the-opportunity-for-addressing-racial-disparities-in-farming>.

¹⁰ Inflation Reduction Act of 2022 § 22006, Pub. L. 117-169, <https://www.congress.gov/117/bills/hr5376/BILLS-117hr5376enr.pdf>

¹¹ Letter from Rep. Alma Adams to U.S. Dep’t of Agric. Sec. Thomas Vilsack (July 29, 2022) (on file with LDF).

¹² U.S. Dep’t of Ag., Farm Service Agency, *Inflation Reduction Act Section 22006 Extraordinary Measures Assistance* (May 19, 2023), <https://www.farmers.gov/sites/default/files/documents/farmersgov-letter-extraordinary-measures.pdf>.

¹³ *Id.*

long-term investments. Due to past discrimination by the USDA and poor implementation of the *Pigford* consent decree, many Black farmers did not have the funds to save for retirement or their children's higher education.

By contrast, the new criteria leave out several categories that would identify many distressed Black farmers. For example, many young and beginning Black farmers have microloans. In our discussions with several farmer-led community-based organizations, if a farmer qualified only for a microloan from the USDA, they were already distressed because they did not qualify for a full loan they needed to maintain current operations levels. Also, as you are aware, until the passage of the American Rescue Plan Act of 2021, Black farmers had their tax refunds, social security, disability, and subsidy payments garnished through debt offsets. This policy led many farmers to suffer substantial financial distress. For example, for nine years, the USDA took over \$41,000 in debt offsets from Eddie Slaughter, a *Pigford* farmer from Buena Vista, GA who is a double amputee, through tax refunds, social security payments, disability payments, and peanut subsidies. Similarly, the USDA took over \$186,000 in debt offsets from Rob Bradshaw since the *Pigford* settlement. Farmers who have lost government benefits due to debt offsets should also be considered as potential distressed borrowers.

We urge the USDA to make farmers with the following indicators of financial distress eligible for individualized assessment for relief under Section 22006:

1. **Borrowers who were eligible only for a micro loan as of August 16, 2022.**
2. **Borrowers who still have direct or guaranteed loans with the USDA and who are subject to debt offsets.** This category should include both borrowers who are now current as well as those who are delinquent.
3. **Borrowers who did not have funds available to plant crops in 2023 and were not able to borrow money to plant crops.**
4. **Borrowers who have received debt relief for part of their loans but cannot make payments on the remaining loans.**
5. **Borrowers who have base acres and yields below the county average.** If farmers have base acres and yields below the county average, that is evidence that the farmer is struggling to produce crops.
6. **Prior borrowers who were subject to discrimination and received some settlement funds, but were forced to sign agreements that prohibit the farmers from getting additional USDA loans.** Farmers who signed these agreements may have had to take extraordinary measures and go outside the USDA/FSA loan system to obtain financial assistance—often at substantially worse terms—to maintain their current farming levels.
7. **Borrowers who do not have funds to pay taxes due on prior Sec. 22006 debt relief.** If a farmer is having trouble paying their federal taxes, this should be evidence that the farmer is financially distressed.

Expanding the criteria to include the following categories of farmers will help distressed Black farmers obtain the relief they are entitled to under Section 22006.

The USDA should also consider the unique experiences of Black farmers as it decides what are “essential assets” under the new criteria. Due to the discrimination many Black farmers had to sell of personal items, livestock, and additional land to maintain current operation levels.¹⁴ We hope that the USDA will consult advocacy groups with strong ties to Black farming communities to decide what are “essential assets” under the new criteria.

Section 22006 provides the USDA with the opportunity to help thousands of distressed farmers, including Black farmers who continue to suffer economically due to decades of discrimination by the USDA. The proposed additional criteria listed above represent experiences that Black farmers have had to endure for decades due to institutional racial discrimination, including not having enough funds to timely plant crops and having their social security benefits garnished due to USDA debt offsets. We believe that the USDA should utilize these additional criteria in order to fully realize the congressional intent of Section 22006 and help all distressed farmers, including Black farmers. We urge the USDA to adopt these recommendations and to move forward with canceling all debt of distressed Black farmers as quickly as possible including the return of debt offsets.

Thank you for your time and attention to these matters. If you have any questions or would like to discuss further, please contact Amalea Smirniotopoulos, Senior Policy Counsel, at asmirniotopoulos@naacpldf.org, or David Wheaton, Economic Justice Policy Fellow, at dwheaton@naacpldf.org.

Signed,

NAACP Legal Defense & Educational Fund, Inc. (LDF)

Organization Sign-Ons

African American Agriculturalist Association
Arkansas Land and Farm Development Corporation
Black Belt Justice Center
Black Family Land Trust
Black Farmers and Agriculturalists Association (BFAA)
Center for Community Based Enterprise (C2BE)
Center for Community Progress (National)
Center for Community Progress (Georgia)
Community Services Unlimited Inc.
EcoWomanist Institute
Environmental Working Group
Farm Research Cooperative
Farms to Grow, Inc.

¹⁴ Chandelis Duster & Janie Boschma, *Many Black Farmers Nationwide Struggling to Keep Their Farms Afloat as they Face Disparities Across the Board*, CNN, December 15, 2021, <https://www.cnn.com/2021/12/15/politics/black-farmers-debt-relief-disparities/index.html>.

Georgia STAND-UP
Hill Eco Inc.
Mississippi Minority Farmers Alliance
National Black Growers Council
Northeast Louisiana Black Farmers and Landowners Association
Oklahoma Black Historical Research Project, Inc
Reed-Wright Black Farmer Coalition
SJT Partners Law and Consulting
Socially Disadvantaged Farmers and Ranchers Policy Research Center at Alcorn State
University
Southern Vision Alliance
Sustaining Environments Through Education and Economic Development, Inc. (SEED)
Taproot Earth
The KKAC Organization
Unitarian Universalist Service Committee (UUSC)
Winston County Self-Help Cooperative

Farm and Individual Sign-Ons

Barbara's Blueberry Batch
Bernard Bates Family, *Pigford* Legacy Farmer
Black Farmers of Chilton County
Bradshaw Farms
Brown Family Farms
Carpenter Farms
Carter Farms
Concerned Citizens of Tillery
Dr. Emily Burchfield, Emory University
Dr. Kimberly Ruffin, Roosevelt University
Everlyn Bryant, *Pigford* Legacy Farmer
Greer Farms
Lewis Farms
Outlaw Farms
Pigford v. Glickman Lead Plaintiffs (Timothy Pigford, Cecil Brewington, Lucious Abrams,
George Hall, and Eddie Ross)
Provost Farm LLC
Soul Fire Farm
Steward of South of the Ferry Farm
Two G Ranch LLC