A HEARING TO REVIEW THE STATE OF BLACK FARMERS IN THE U.S.

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

MARCH 25, 2021

Serial No. 117–3



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A HEARING TO REVIEW THE STATE OF BLACK FARMERS IN THE U.S.

THURSDAY, MARCH 25, 2021

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Committee met, pursuant to call, at 12:00 p.m., via Webex, Hon. David Scott of Georgia [Chairman of the Committee] presiding.

Members present: Representatives David Scott of Georgia, Costa, McGovern, Adams, Spanberger, Hayes, Delgado, Rush, Pingree, Sablan, Kuster, Bustos, Maloney, Plaskett, O'Halleran, Carbajal, Khanna, Lawson, Correa, Craig, Harder, Axne, Schrier, Panetta, Kirkpatrick, Bishop, Thompson, Austin Scott of Georgia, DesJarlais, Hartzler, LaMalfa, Davis, Allen, Rouzer, Bacon, Johnson, Baird, Hagedorn, Balderson, Cloud, Mann, Feenstra, Miller, Moore, and Fischbach.

Staff present: Lyron Blum-Evitts, Carlton Bridgeforth, Ross Hettervig, Chu-Yuan Hwang, Anne Simmons, Ashley Smith, Parish Braden, Caleb Crosswhite, Josh Maxwell, Jennifer Tiller, Erin Wilson, John Konya, and Dana Sandman.

OPENING STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

The CHAIRMAN. This hearing of the Committee on Agriculture entitled, *A Hearing to Review the State of Black Farmers in the U.S.,* will now come to order.

Welcome, and I want to thank everyone for joining us for today's hearing. After brief opening remarks, Members will receive testimony from the witnesses today, and then the hearing will be open to our Members' questions. Members will be recognized in the order of seniority, alternating between Majority and Minority Members, and in the order of arrival for those Members who have joined us after the hearing was called to order. When you are recognized, you will be asked to please unmute your microphone, and you will have 5 minutes to ask your questions and make your statements. If you are not speaking, please, I ask that you remain muted in order to minimize the background noise so we can hear what our witnesses and our Members are saying. In order to get to all of your questions, the timer will stay consistently visible on your screen, and your Chairman is going to be very strict. Five minutes, the hammer is coming down. We want everybody to participate in this extraordinary event.

And ladies and gentlemen, my opening statement.

This is a historic hearing, and I want to begin this hearing with these words. We all know that all things work together for good. To them, who love God, and to them, who are called according to God's purpose, there could be no more glorious words to use to set off this historic hearing that we are having today. And we all are very pleased to have the opportunity today to examine this topic which is deeply embedded in each of our hearts, both Democrats and Republicans hear about the plight of our Black farmers. And when our minds and our hearts are together, we are truly doing God's will.

And so, as always, I certainly appreciate the opportunity to work on this issue alongside my colleague, the Republican Ranking Member of this Committee and my friend, Congressman Thompson of Pennsylvania. And I want to thank our Secretary of Agriculture, Tom Vilsack, for appearing before our Committee today. And this is our first Committee conversation with your second tenure at the USDA, Mr. Secretary, and we are so delighted and glad that you are before us today. I want you to know, from the bottom of my heart, I thank you for joining us today.

I have heard that you are extremely busy, and I want to just doubly appreciate your time that you are taking to speak with us on this important and historic issue, an issue that I know that you have been working on. I thank you for the work that we have done together in putting forward a helping hand in the rescue package to bring $4 million to help our farmers pay their loans, and the $1 million that will help provide technical support. We appreciate your working with us on that.

For decades, the discrimination against Black farmers by the United States Department of Agriculture has been well-documented. Reports by the United States Commission on Civil Rights, the Government Accountability Office, and even the United States Department of Agriculture itself describes the discriminatory practices that were enabled by laws dating back all the way to the 1930s. That is why I am saying this is historic and hallowed ground that we are working on this day.

In fact, in 1997, a group of Black farmers, including Mr. Timothy Pigford, filed a class action lawsuit against the United States Department of Agriculture over the agency's discrimination against Black farmers in farm loan programs and other benefit programs, as well as over the agency's failure to investigate racial discrimination complaints. The evidence is in. It is before us today, and this is why this is so meaningful for us, and why I prefaced it with that message from the Lord that He has given to us this day to serve His purpose that He has brought us together today, and that is to bring justice to our Black farmers.

Well, the United States Department of Agriculture settled this class action lawsuit, and as a part of that settlement, some Black farmers—just some—received $50,000. Now many of my House colleagues may think that $50,000 is indeed a lot of money, but when a new tractor costs as much as $½ million, $50,000 is barely enough for a down payment on a reasonably good used tractor.

It isn't enough to make improvements to the land. It may not even be enough to finance next year's purchases of seed and fertilizer. And in my frank opinion, $50,000 is not enough to make up

for the decades of discrimination and generational wealth that has been lost among Black farming families, losing the land and the livelihood of our Black families. Black farms are, by and large, Black family farms.

And further, adding insult to injury, Black farmers were saddled with IRS tax bills from that *Pigford* settlement, leaving many of them worse off than before they even got the $50,000. And that is why what we did together in the bill we just passed—when people say what is this in here talking about paying the tax bill, it is because we learned the *Pigford* bill. So, there is money here that takes into consideration of the 20 percent over what we are getting so that those taxes are paid for, because the IRS uses that money as income, and they tax that loan forgiveness. I want to thank Secretary Vilsack for helping us put that package together.

In short, the *Pigford* settlement was too little, it was too late for our Black farmers who lost their farms and livelihoods due to longstanding, systemic discrimination. And this systemic discrimination continues to be felt by Black farmers right today, who are still disadvantaged in our United States Department of Agriculture programs.

This festering wound on the soul of American agriculture must be healed. This isn't just a festering wound in the Black farming area. It is a festering wound on all of agriculture, because we have to excise and heal this wound so that once and for all, my fellow Members, we will be able to make the statement that we no longer have racial discrimination in our United States Department of Agriculture, and that we want our glorious and wonderful world of agriculture to be open, to have opportunities for everybody regardless of race, creed, or color.

That is why I have repeatedly called for a new conversation between Black farmers and the United States Department of Agriculture. This hearing is an opportunity for us, together with Secretary Vilsack here joining us, to begin that conversation, examine the Secretary of Agriculture's ideas and reforms that I understand he is already working on. And we have this opportunity to hear firsthand from our Secretary, and I thank God for that.

This hearing, today, is very public, and it is a public way to address the deep mistrust that many of our farmers of color feel towards the United States Department of Agriculture. We are not hiding anything here, because when you hide it, you can't solve it. This is why this hearing is historic. And to make sure that in an increasingly competitive agriculture economy, no talent or ability is ignored or left behind. We no longer can afford that approach.

The Black farmer representatives who are with us today, they will discuss this longstanding, systemic discrimination against our Black farmers. Who better to do that than our Black farmers themselves? And that is why I am so glad that they are here along with Secretary Vilsack.

In 1920, Black farm operators were 14 percent of all the United States farmers, and in the South, over 20 percent of all the farms were owned by African Americans. You know what it is now? It is less than two percent, 1.8 percent to be exact.

Lack of equal access to our Federal farm loan programs is a large reason Black farms have lost 90 percent of their land. In 1937,

Congress required that locally elected county commissioners and committees certify the eligibility of farmers for the farm loan program. And when a farmer applied for a farm program, the county committees received sensitive information about the applicants. This left creditworthiness up to the elected officials, county officials on the committee, many of whom were landlords on this land. Talk about a conflict of interest in addition to the racism. So, there was built-in bias against our Black farmers for decades. And I am not speaking to you as one that doesn't know. You are looking at your Chairman who was born on a Black farm, my grandparents' farm, in Aynor, South Carolina. And you talk about farming, that was the heart of it in Aynor. I know what it was there.

For those of you who feel the number of loans is fairly representative of the number of Black farmers today, I say they totally miss the point. Most farmers who can't get a loan are simply not farming. But we are here to find out why they aren't farming, to examine the built-in barriers to the loan system and to see how to remove them.

We have six farmers and farmer advocates here on the panel with us today who will share their experience and solutions to address the effects of discrimination and improve the profitability and sustainability of our Black farmers. That is the bottom line. We have to increase the market share of our Black farmers. If we do that and our Black farmers are making money, we will never have to be in the position of having to pay lending bills if they get the proper amount of market share to sell their products on the market.

Folks, I am noticing our good work here in Congress as well, and I have a letter of support for policies, including the American Rescue Plan of 2021 for relief for farmers of color. If there is no objection, I will enter this letter of support from a major agricultural industry giant, Bayer, for the record.

[The letter referred to is located on p. 164.]

[The prepared statement of Mr. David Scott follows:]

PREPARED STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

Good afternoon, I'm pleased to have the opportunity today to examine a topic which is deeply embedded in my heart—the status of Black farmers in the United States. And as always, I appreciate the opportunity to work on this matter alongside my colleague, Ranking Member Thompson of Pennsylvania.

I want to thank our newly appointed Secretary of Agriculture Tom Vilsack for appearing before the Committee today. This is our first conversation of your second tenure at USDA, Mr. Secretary, and we are glad you are before us today.

I know that you are extremely busy, and I appreciate your time today to speak on this essential issue. An issue that I know you too have wrestled with.

For decades the discrimination against Black farmers by USDA has been well-documented. Reports by the U.S. Commission on Civil Rights, the Government Accountability Office, and even the USDA itself describe the discriminatory practices enabled by laws dating back to the 1930s.

In fact, in 1997, a group of Black farmers, including Mr. Timothy Pigford, filed a class action lawsuit against USDA over the agency's discrimination against Black farmers in farm loan programs and other benefit programs, as well as over the agency's failure to investigate race discrimination complaints.

USDA settled this class action lawsuit, and as a part of that settlement, some Black farmers received $50,000. Now many of my House colleagues may think that $50,000 is a lot of money, but when a new tractor costs as much as $½ million, $50,000 is barely enough to buy even a reasonably good used one.

It isn't enough to make improvements to the land. It may not even be enough to finance next year's purchases of seed and fertilizer. And in my frank opinion, $50,000 is not enough to make up for decades of discrimination and generational wealth lost from the losing of land and livelihood among Black farmers.

Further, adding insult to injury, Black farmers were saddled with IRS tax bills from the *Pigford* settlements, leaving many of them worse off than before.

In short, the *Pigford* settlements were too little, too late for the Black farmers who lost their farms and livelihoods due to longstanding, systemic discrimination. And this systemic discrimination continues to be felt by Black farmers today, who are still disadvantaged in USDA programs.

This festering wound on the soul of American agriculture must be healed. That is why I have repeatedly called for a new conversation between Black farmers and USDA. This hearing is an opportunity for us, together, with Secretary Vilsack, to begin that conversation and examine the Secretary's ideas and reforms that I understand are being contemplated at USDA.

This hearing today is a very public way to address the deep mistrust that many farmers of color feel towards USDA, and to make sure that in an increasingly competitive agriculture economy no talent or ability is ignored or left behind. We no longer can afford that approach.

The Black farmer representatives who are here with us today will discuss the longstanding, systemic discrimination against Black farmers and its cumulative impact on Black farming in the United States. In 1920 Black farm operators were 14 percent of all U.S. farmers.

Today, Black farmers make up less than two percent of all farmers in the United States. Lack of equal access to Federal farm loan programs is a large reason Black farmers have lost 90% of their land.

In 1937, Congress required that locally elected county committees certify the eligibility of farmers for the farm loan program.

When a farmer applied for a farm program, the county committees received sensitive information about the applicant; this left credit-worthiness up to an elected county committee, many of whom were landlords. So, there was a built-in bias against Black farmers for decades. And subsequent laws and their regulations are built on that same foundation of inequity.

For those who feel that the number of loans is fairly representative of the number of Black farmers today, I say they totally miss the point. Most farmers who can't get a loan are simply not farming.

But, we are here to find out why they aren't farming, to examine the built in barriers to the loan system and see how to remove them.

We have six farmers and farmer advocates here with us today who will share their experience and solutions to address the effects of discrimination and improve the profitability and sustainability of Black farmers.

Folks are noticing our good work in Congress as well. I have here a letter of support for policies included in the American Rescue Plan for relief for Farmers of Color. If there is no objection, I will enter this letter of support from Bayer into the record . . . thank you.*

I'd now like to welcome the distinguished Ranking Member, the gentleman from Pennsylvania, Mr. Thompson, for any opening remarks he would like to give.

The CHAIRMAN. Thank you. I would now like to welcome the distinguished Ranking Member, my friend, the gentleman from Pennsylvania, Mr. Thompson, for his opening remarks. Thank you.

OPENING STATEMENT OF HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

Mr. THOMPSON. Well, good afternoon, and thank you, Mr. Chairman. Always a privilege and honor to work with you on the issues that are so important to rural America, and to our agriculture industry. And thank you for holding today's hearing on such an important issue that I know is not only near and dear to your heart, but it is an issue of such importance that each and every one of us participating today, including those tuning in to our livestream, can learn something from.

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*The letter referred to is located on p. 164.

Today's hearing to review the state of Black farmers in the United States is an opportunity to address some questions that, quite frankly, have gone unanswered for far too long. Everyone participating today is familiar with the 1999 class action suit, *Pigford* v. *Glickman,* a case that alleged decades of discrimination by the United States Department of Agriculture against Black farmers applying for farm loans and other government assistance. Since the original *Pigford* settlement, more than $2 billion have been allocated as compensation for Black farmers.

Without a doubt, there has been discrimination at USDA in the past against Black farmers and other socially disadvantaged groups. Sadly, I am sure, instances of discrimination remain today.

Now, Pub. L. 117–2, the American Rescue Plan of 2021 was signed into law 2 weeks ago today. Among the nearly $2 trillion in spending was $5 billion allocated for Black farmers, $4 billion of which was designated for loan forgiveness. Now, let me be clear. I didn't vote for this bill for many obvious reasons. The fact that the bulk of the multi-trillion-dollar bill had virtually nothing to do with COVID was chief among them. It was also drafted behind closed doors with no input from the Minority party. We never get the best product whenever either party allows that to happen. And moreover, the bill was drafted based on hypotheticals, misinformation, and incomplete data. Unfortunately, that is what happens when you force through partisan legislation through budget reconciliation. Paying off the loans of socially disadvantaged farmers may help in the short-term, but it does very little to address the root cause of this issue. I know my healthcare practice for 28 years, we had to get to the root cause of an issue to truly address it long-term. I think that applies just as important lessons apply to legislation or dealing with public policy issues especially as egregious ones as discrimination within agriculture programs and the support of those. It does nothing to attack discrimination head on, and it certainly doesn't prevent racial exclusion for Black farmers, or any other socially disadvantaged group in the future.

Now, how did USDA leadership fail so spectacularly to allow this ongoing discrimination for so many years? Why were bad actors allowed to continue their comfortable government or appointed jobs when they so brazenly allowed discrimination to continue, even if not having directly engaged in discrimination itself? Where was the oversight? Where was the supervision of these bad actors? Is simply forgiving debt the best way to address this problem and provide a forward thinking and equitable outcome?

The American Rescue Plan of 2021 gives USDA blanket authority to handle the funds provided through the legislation. Well, surely leaving an unelected bureaucracy with a decades long track record of racial discrimination to their own devices cannot be the best way to right wrongs. We cannot forget the progress Congress has already made by authorizing program initiatives through previous farm bills that I am very proud of to assist our Black and other socially disadvantaged farmers. From credit to conservation, there have been a number of provisions that seek to address inequalities.

For example, USDA's Farm Service Agency now targets direct loans and guaranteed loans to eligible socially disadvantaged farm-

ers to buy and to operate family-sized farms and ranches. When it comes to conservation and forestry, the Natural Resources Conservation Service has made a concerted effort to provide resources for socially disadvantaged and historically underserved producers. Every year, NRCS targets five percent of its EQIP investments, that program, for socially disadvantaged farmers. However, over the last decade, NRCS has exceeded expectations with 33 percent of EQIP funding going to historically underserved producers and beginning farmers.

Of course, I would be remiss not to mention the 2018 Farm Bill, and Mr. Chairman, recognize your efforts when it came to doing better and providing the investments in our historically Black 1890 land-grant universities. Thank you for your leadership on that initiative as a part of that farm bill process, including the $80 million in scholarships for those HBCU students to pursue agricultural education.

While much work remains, we should look to this previous progress as really a blueprint in our continued discussions. We must work together as a farm team: farmers, ranchers, producers, legislators, stakeholders, and activists alike to reduce barriers that are preventing Black and other socially disadvantaged farmers from participating fully in a robust farm economy. We must support a strong farm economy that lifts up all.

I would like to thank our Chairman once again. I would especially like to thank our witnesses. We have an impressive list of witnesses here. Having read and digested your written testimony, it was certainly heartfelt. There was a lot of passion, emotion, sharing your life stories throughout that, and that is appreciated, much appreciated. Your testimony is critical in helping us better understand the discrimination Black farmers have faced, and also, it will play a crucial role to ensure our agriculture policy does not discriminate. Rather, it empowers farms of all races, sizes, and commodities.

I am here to listen. We are all here to listen, and I look forward to participating in this long overdue conversation.

Thank you, Chairman, and I yield back.

The CHAIRMAN. Thank you, Ranking Member, for those excellent comments and words.

The chair would request that other Members submit their opening statements for the record so witnesses may begin their testimony and to ensure that there is ample time for all of your questions.

[The prepared statement of Mr. Costa follows:]

PREPARED STATEMENT OF HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

Today's hearing is truly a historic one. I want to thank the Chairman and Ranking Member for providing this opportunity to review the state of Black farmers in our country. In California we've seen a dramatic decrease in the number of Black farmers and unfortunately, socially disadvantaged farmers still face many barriers. In preparation for this hearing I requested testimony from Will Scott, Jr. founder and President of the African American Farmers of California which I will enter in full to the hearing record.

The additional testimony we'll hear today makes it clear that there has been discrimination towards Black farmers by the USDA. I want to point out that there has

also been a history of discrimination against other farmers of color, such as Asian American farmers, in my state.

We're all aware of America's shameful internment of Japanese Americans during World War II. Many of the Japanese Americans forced into internment camps were Pacific Coast farmers, who left behind land they had successfully cultivated for decades. The USDA's Farm Security Agency was tasked with confiscating the land and ensuring that agricultural production was uninterrupted by the forced removal of these Japanese American farmers. Approximately 6,000 Japanese American farms were confiscated, totaling 200,000 acres, during this period.

Additionally, I have many Hmong farmers in my district, who have also faced discriminatory barriers. In 1997, some representatives for Hmong farmers testified before our Committee that they were unable to secure financing through USDA due to discrimination. Local USDA offices and banks were unwilling to provide any assistance to Hmong farmers in submitting farm loan or disaster program applications.

And when Hmong farmers later did gain access to USDA farm loan programs, many of them were taken advantage of by predatory lenders. In 2001, hundreds of Hmong farmers in Arkansas, Oklahoma, and Missouri used FSA guaranteed loans to purchase poultry farms, whose values were inflated by lenders. Hmong farmers were strapped with large mortgages they could not repay. And when these farms failed, the Federal Government stepped in to pay off up to 95 percent of each loan.

I will submit for the record the hearing testimony of Mr. Pheng Vue and Charlie Jonchue Chang before the Committee in 1997, as well as a 2006 article from the *Chicago Tribune* about Hmong poultry farmers losing their farm after taking out FSA guaranteed loans. Additionally, I will submit testimony prepared for this hearing by Blong Xiong, Executive Director of the Fresno Asian Business Institute and Resource Center, further detailing the experiences of Hmong and Southeast Asian farmers during the COVID–19 pandemic.*

Thank you for holding this hearing on such an important topic. I look forward to working with Secretary Vilsack and the Committee to continue to advance the cause of the socially disadvantaged farmers across the country.

The CHAIRMAN. So, without objection, the chair is authorized at any time to declare the Committee in recess, subject to the call of the chair.

And now, let us turn our attention to our distinguished panelists who are here with us today, and we are so delighted.

First, I am very pleased to welcome back to the Agriculture Committee Secretary Tom Vilsack, who is now leading our Department of Agriculture for the second time. Secretary Vilsack needs no introduction to many of us on this Committee, but I will note that he did serve two terms also as the Governor of Iowa before joining the Obama Administration as the 30th Secretary of Agriculture in 2009. He was President Obama's longest serving cabinet Secretary. He was confirmed again in February of this year for his second tenure as Secretary.

Our next witness is Mr. John Boyd, Jr., founder and President of the National Black Farmers Association. Mr. Boyd is a fourth-generation farmer from Baskerville, Virginia, where he owns and operates a 300 acre farm, raising corn, wheat, soybeans, and beef cattle. Mr. Boyd is a familiar presence here in Washington, D.C., as the founder and President of the National Black Farmers Association. Since 1995, the National Black Farmers Association has fought hard for equal treatment for our Black farmers at USDA's Farm Service Agency, particularly with equal access to credit. Also, Mr. Boyd was a key spokesperson for Black farmers during both *Pigford 1* and *Pigford 2*. And Mr. Boyd continues to promote inclusion, equality of opportunity for Black farmers across all sectors of

*The documents referred to are located on p. 302.

our agriculture industry across the nation. It is good to have you here today, Mr. Boyd, and we appreciate your testimony as well.

And now, I am pleased to welcome our third witness, Mr. Cornelius Blanding, Executive Director of the Federation of Southern Cooperatives. Mr. Blanding joins us today with a deep background in management consulting and business development, including 24 years in support of Black farmers and rural landowners. He has served on more boards and committees than we have time to name here today. Of note, though, are USDA's Advisory Committee on Beginning Farmers and Ranchers, as well as a member of the Advisory Board of the Socially Disadvantaged Farmers and Ranchers Policy Research Center. We are very grateful for your time, your experience, and your commitment to Black farmers, and thank you also for joining us today.

Our fourth witness is Mr. Philip J. Haynie III. He is Chairman of the National Black Growers Council. Mr. Haynie is a fifth-generation farmer based in Reedville, Virginia, where he and his family have a grain farm, a timber harvesting operation, a bulk transport business, in addition to a landscaping and excavating company. He is a graduate of Virginia Tech. Mr. Haynie is currently the Chairman of the National Black Growers Council. Welcome, Mr. Haynie. You are clearly a very busy man. Mr. Haynie, we appreciate your participation in being here today and look forward to your excellent testimony.

Next, I would like to welcome Mr. Sedrick Rowe. Mr. Rowe is an organic farmer from Rowe Organic Farms. Mr. Rowe is from Albany, Georgia, where he operates a USDA-certified organic farm, producing peanuts, hemp, watermelons, and canalfa—canola, excuse me. His commitment to agriculture extends from creation of the first Georgia Organic Peanut Association. His pursuit of a Ph.D. in soil health—that is going to come in very handy as we grapple with our climate change, no-till farming, and cover crops. And his commitment to rural Georgia is evident by his work with young farmers in his community, and as a recognized leader of young farmers. He is an example of hard work and brains, and I hear he knows how to play football, too. Thank you for being with us, Mr. Rowe.

Our fifth witness is Mrs. Shirley Sherrod, an extraordinary individual and a legendary leader in the fight to help her Black farmers. Mrs. Shirley Sherrod is Executive Director of the Southwest Georgia Project for Community Education, Incorporated. Mrs. Sherrod is a distinguished fellow Georgian who has served in multiple positions promoting rural communities and agriculture. Mrs. Sherrod is a graduate of Albany State in Albany, Georgia, and Mrs. Sherrod was the first person of color to be appointed as Georgia's state director of the United States Department of Agriculture's Rural Development in 2009. I am really looking forward as we move to really address rural development and rural broadband. Mrs. Sherrod brings years of cumulative expertise to today's panel of witnesses as the founder and Vice President of Development for New Communities, Inc., the nation's first community land trust, the Executive Director of Southwest Georgia's Project for Community Education, Inc., as well as the state lead for Southern Rural Black Women's Initiatives for Economic and Social Justice. Thank

you so very much for sharing your wealth of experience and knowledge with us today, Mrs. Sherrod.

And to introduce our final witness, I am pleased now to yield to our colleague on the Agriculture Committee, the distinguished gentleman from Kansas, Mr. Mann.

Mr. MANN. Thank you, Chairman Scott. Thank you for this hearing. I am honored to introduce to you Arnetta and Earrak Cotton, the owners of Kingdom Community Development Services and Cattle For The Kingdom in Wagoner, Oklahoma. The Cottons have more than 54 years of farm and ranch experience, and have dedicated their lives to outreach and assistance for rural and underserved communities. I am especially grateful for the Cottons and their recent work to distribute USDA Farmers to Families food boxes in Kansas, among other states, and through the Rural Impact Food Pantry at the church that they lead. I very much enjoyed getting to know the Cottons. They are wonderful people. They are the perfect example of serving, educating, and finding ways to farm and ranch despite adversity. Mr. and Mrs. Cotton, we look forward to hearing your testimony in a few minutes.

The CHAIRMAN. I thank the gentleman for his remarks and for his introduction.

Now, we will now proceed to our historic hearing, and with our testimony, and each of our panelists will have 5 minutes. Now, I am going to be strict on the timer so that we can get everybody in and heard. And so, the timer will be visible to everyone on your monitors so that you will have a countdown to zero, at which point, your time will be expired and I will bring down the gavel.

So, now let us start with our distinguished Chairman of the agriculture—the United States Agriculture Department. Mr. Vilsack, our distinguished Secretary, you are now recognized for 5 minutes. Please begin now.

STATEMENT OF HON. THOMAS "TOM" J. VILSACK, SECRETARY, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Secretary VILSACK. Mr. Chairman, thank you very much to you and to Ranking Member Thompson for calling this historic hearing on the state of Black farmers in America and discrimination directed at Black farmers by the Department of Agriculture.

In the interest of time and my belief that the testimony of the other panelists on this panel is far more relevant and more compelling than anything I would offer, I won't read my prepared statement but would ask that it simply be placed in the record.

What I wish to do today is to speak from the heart, and I want to provide you, Mr. Chairman, and Members of this Committee a single and solemn commitment from me and from the team at USDA that we will, over the next 4 years, do everything we can to root out whatever systemic racism and barriers that may exist at the Department of Agriculture directed at Black farmers, socially disadvantaged farmers, and people who live in persistently poor areas in rural America.

Efforts have already been made in the past as you have indicated, Mr. Chairman, good faith efforts to respond to specific acts of discrimination, but more needs to be done to dig deeper into the systemic causes and barriers that perpetuate discriminatory prac-

tices, and to deal directly with the cumulative effect of discrimination, the gap that now exists between those who had the full array of services at USDA, the full array of programs at USDA, and those who, for far too long, have not had that array.

Work has begun already to start the implementation of President Biden's Executive Order on equity. A working group has been formed at USDA across all agencies, and they have already begun to meet and to begin the work of the assessment of services, benefits, contracts, and procurements, and barriers and problems that may exist. I will have the benefit of the guidance and direction for the first time ever of a senior advisor for equity in the Secretary's office. Dr. Dewayne Goldmon has been appointed in that position, and he will work with our new team at the Civil Rights Office, and with the dedicated men and women at USDA to provide advice and direction on equity issues throughout the USDA. I certainly look forward to the day of Senate confirmation of Dr. Jewel Bronaugh, who once confirmed, will be the first African American Deputy Secretary at the United States Department of Agriculture. She and I will partner together to carry out and fulfill the commitment that I made to you today.

Finally, I am grateful for your leadership, Mr. Chairman, and that of Chairman Bishop, Senators Booker, Warnock, and Warren, who helped to shepherd through the American Rescue Plan of 2021 that contains an historic step forward in responding to the cumulative effect of discrimination in the past by providing debt relief for socially disadvantaged producers, by establishing an Equity Commission to review barriers that exist at USDA, to assist with heirs property issues, expanded outreach, market development, and land access. These resources will help restore some balance in the USDA COVID Covenant Relief Approach, and allow an external review of all of our programs at USDA.

We are prepared to move quickly, efficiently, and thoughtfully to implement the American Rescue Plan of 2021 sections related to Black farmers and socially disadvantaged farmers, and other sections of the Rescue Plan that relate to rural America.

As part of my commitment to you today, I also want to provide an additional guarantee, and that is I plan to have in place a system of rigorous reporting, accountability, and oversight in all of our equity efforts.

Let me be clear. There is no place at the USDA for discrimination, none. Nor, for that matter, anywhere. This historic moment to advance equity must not be lost, and I intend to do everything I can to ensure that it isn't.

Mr. Chairman, I look forward to the questions from the Committee at your pleasure.

[The prepared statement of Secretary Vilsack follows:]

PREPARED STATEMENT OF HON. THOMAS "TOM" J. VILSACK, SECRETARY, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Thank you, Mr. Chairman, Ranking Member Thompson, and Members of this Committee.

When I testified in front of the Senate for my confirmation hearing a few months ago, I said the world and our nation are different today than when I served as Agriculture Secretary in a previous Administration. The COVID–19 pandemic has changed all our lives and will continue to do so until enough of us are vaccinated

to put COVID behind us. Some things, however, have not changed. The horrific shootings in Atlanta last week remind us that hatred and bigotry toward non-white Americans and gender-based violence are real, are threats, and must end.

I am here today to discuss with you something not unrelated—the systemic racism and discrimination perpetuated against Black farmers, and the history of discrimination against Black farmers by USDA that has prevented numerous African-Americans, among other people of color, from fully realizing the same level of prosperity and success as their white counterparts. Unfortunately, the racism that resulted in the precipitous decline of Black farmers over the last century has also been evidenced among other groups of socially disadvantaged farmers.

The Congress and the Department have attempted to address the systemic racism and discrimination that has been repeatedly documented and found to plague the programs at USDA, especially in the farm loan programs. In the late 1990's, Congress took the unprecedented step of waiving the statute of limitations to enable socially disadvantaged producers to have the chance to be heard and receive some remedy for the harm they suffered. Congress on several occasions provided funding to support the settlement of these cases, which was accomplished while I was previously in this position. During this time, Congress also acknowledged through support of outreach and other efforts the need to address the systemic discrimination these producers encountered. USDA also undertook efforts of self-examination and reform including through the work of the Civil Rights Action Team and an independent assessment and identification of barriers to USDA programs.

The history of systemic discrimination against Black farmers has been well-documented, including a 2003 U.S. Commission on Civil Rights report which found that Black farm loan applications took 220 days to process as compared to their white counterparts, or a more recent study finding that although Black farmers are disproportionately underrepresented among farmers, were foreclosed on at a higher rate than any other race.

Despite all that has been done, clearly more needs to be done to drive our efforts deeper. Here are two steps we must take. First, we must redress the discrimination that has proven to be systemic, evidently reflecting the way we have designed or implemented our programs, laws and regulations. By focusing on determining whether producers can prove specific, individualized discrimination, our past actions have failed to do the necessary work tailored to addressing the systemic discrimination socially disadvantaged producers face. Second, we must establish the support systems to enable socially disadvantaged producers to have the opportunity to succeed. Only with the establishment of such systems, will we be able to finally address the cumulative effect of discrimination and break the cycles that are holding these producers back.

When I testified in front of the Senate, I committed to bold action to address discrimination in all its forms across USDA agencies, offices and programs. I pledged to ensure all programming is equitable and works to root out systemic racism. And I promised to build one of the most capable and diverse teams in the Federal Government, one that looks like the America we serve.

Within the first 2 months of this Administration, USDA has appointed and nominated an incredibly talented cadre of appointees, reflective of a commitment to build a team that looks like America. USDA field and state offices are often the front door of USDA for producers and other stakeholders seeking support. From loan officers to County Committees to State Directors, it is essential that we build a pipeline and identify leaders for positions that represent the diversity of America and share this Administration's commitment to equity.

Additionally, in response to President Biden's Equity Executive Order, EO 13985, USDA is examining opportunities to increase equity for all underserved populations, ensuring access to healthy meals to tackle nutrition insecurity, putting greater emphasis on our nation-to-nation consultation practices with Tribal nations, and bringing an equity lens to all strategic priorities, especially tackling the climate crisis and improving the rural economy.

In short, we are building a USDA that represents and serves all of America. Many of the new leaders who have joined our team have a background working with producers. They share personal stories about farmers of color being rejected for a farm loan or getting a loan too late in planting season. Those farmers—some of whom you will hear from today—will tell you that they never forget the sting or consequences of that rejection, which can be long-lasting and even generational. In addition, creating more equitable opportunities for Black farmers is a rising tide that can lift all boats. As one study found, closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional $5 trillion in gross domestic product and six million jobs to the American economy over the next 5 years.

I am here today to say that racism and discrimination have no place at the Department of Agriculture. I will not tolerate it, and I am committed to rooting it out and establishing a relationship with producers that is built on a commitment to equity, trust and customer service. One of the most important steps I took in my previous tenure as Agriculture Secretary was to use authority granted under the 2002 Farm Bill to appoint voting members to over 385 Farm Service Agency County Committees, addressing a longstanding inequity due to the under-representation of socially disadvantaged farmers and ranchers. We must ensure these important appointments continue and that these individuals have privileges equal to the elected members.

I was pleased when the socially disadvantaged farmer provisions in the American Rescue Plan began to come together. I'm grateful to you, Mr. Chairman, for your leadership, alongside Chairman Bishop, and of course Senators Booker, Warnock, and Chairwoman Stabenow.

From the beginning, these provisions recognized that on top of the economic pain caused by the pandemic's impact on the economy and agriculture, socially disadvantaged farmers are also dealing with a disproportionate share of COVID infection rates, hospitalizations, death and economic hurt.

The law provides funding to address longstanding racial equity issues within the Department and across agriculture. It provides debt relief for socially disadvantaged farmers and ranchers to respond to the cumulative impacts of systemic discrimination and barriers to access that have created a cycle of debt.

The new law also provides approximately $1 billion in additional funding for assistance and support to socially disadvantaged producers and groups. USDA is in the process of standing up a Racial Equity Commission to identify and address barriers across USDA. The law also directs USDA to invest in programs to facilitate land access, strengthen outreach and education, business development, and more. USDA is now engaged in a process of outreach and seeking feedback directly from socially disadvantaged producers as we implement the law. This will be a collaborative, inclusive process.

Before I close, I want to say that all of us here should want successful farmers. We should want more farmers. We should want farmers who can pass their land down to the next generation—who are role models including for young people of color to take up farming and ranching. We should want farming to be associated with equity and opportunity and entrepreneurship—not racism and barriers and intimidation. We should want farmers of color to have equal opportunity to contribute to the diverse fabric of American agriculture. We should make clear that prosperous farmers of color means a prosperous agricultural sector and a prosperous America. And we should do everything we can to make that possible. You have my commitment that I will do just that.

Thank you for your time today.

The CHAIRMAN. Thank you, Mr. Secretary. Thank you very much for your very good testimony that we have just heard.

Now, I want to recognize for 5 minutes our next panelist, Mr. Boyd. You are now recognized to begin.

Mr. Boyd, you may be muted.

STATEMENT OF JOHN W. BOYD, JR., FOUNDER AND PRESIDENT, NATIONAL BLACK FARMERS ASSOCIATION, BASKERVILLE, VA

Mr. BOYD. There we go. I am sorry. Okay.

Mr. Chairman, thank you very much. First, glad to give honor to God, first and foremost, and I would like to thank you, the Ranking Member Thompson, Congressman Thompson, the other congressperson from North Carolina, the Vice Chair, Alma Adams. I have spent some time visiting with most Members of the Agriculture Committee to talk to them about the plight of the Black farmers this week, so I would like to thank all of the Members who took time to visit with me personally to talk about the plight of the Black farmers.

It is an honor to be here today to talk to you and this Committee. This is a hearing, Mr. Chairman, that I personally have been advo-

cating for, for over 30 years. When I first began to advocate and press the issue on Capitol Hill, we could never even get a full Committee Agriculture hearing. The people who are watching here, this is a very, very historic hearing and nature. Where the only hearing we could get at that time was with the Congressional Black Caucus in 1997 where all of the Members participated and listened to the plight of Black farmers. On behalf of every enslaved Black man in this country, on behalf of every sharecropper in this country, on behalf of every Black farmer who tilled the soil, past and present, we thank you and this Committee for finally hearing our cries.

I am a fourth-generation farmer, and I was trained to farm by my grandfather, Thomas Boyd, and also my other grandfather, Lee Robinson, a sharecropper, and my father, John Boyd, Sr., who is probably watching this hearing today. I have a long, rich history of farming along the Roanoke River in Mecklenburg County, Virginia, where my great-grandfather, Andrew Boyd, was a slave. We bring a lot of history and wealth and pride and wisdom to this Committee today as we reach out to talk to you.

Currently today, I raise corn, wheat, and soybeans, but I was trained as a tobacco, cotton, and peanut farmer. Many of those things were bought out under the government buyouts, and I, too, switched over to those types of commodities.

Today, as you know, Mr. Chairman, in your comments, we are less than one percent of the nation's farmers, and we are facing extinction. At the turn of the century, we were over one million Black farm families strong, tilling 20 million acres of land in this country. Today, we are down to 4½ million acres of land in this country, and less than 50,000 Black farmers in this country. We got to this place partly by the United States Department of Agriculture and its discrimination, and I can attest that discrimination was alive and well at the Department of Agriculture, and we need to resolve the backlog of complaints that exist there. We need to improve program delivery at local offices around the country where those farmers, even today when they walk into the office and inquire about the Farmers of Color Act that recently passed, and we are getting a snobby and disrespected type of tone from the local offices, that they don't know anything about it and don't know how it is going to move forward. That was the same type of information that got us here in the first place, Mr. Chairman. This Committee worked hard to get that measure passed and we need to—I'm urging the Secretary today—and I heard his comments—to move swiftly and implement the bill so that the farmers can get the debt relief, and also the $29 billion that was doled out in the Trump Administration, less than 0.01 percent went to Black farmers, 0.01 percent out of the $29 billion went to Black farmers, Mr. Chairman.

We can do better than that, and it was due to the act of discrimination by using the same policies by rolling this information out through the county offices, and is failing because Black farmers don't trust the United States Department of Agriculture. We have to find a better way to do that, and that is why we named it, Mr. Chairman, the Last Plantation, and rightfully so.

And today, we need to move in a more cohesive way. This isn't a Republican issue. It is not a Democratic issue. It has happened on the hands of all Presidents, and I have met with Sonny Perdue,

and it was the worst meeting in history for me as a leader where he said Black farmers had to get big or get out. He didn't need any tokens or people who didn't want to work on these committees. That is the type of discrimination that Black farmers are facing, and—it looks like I am running out of my time, but I can talk to you, Mr. Chairman, about this all day long.

I am looking forward to getting all of the questions and input from this Committee, and again, thank you for having this very, very important hearing.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF JOHN W. BOYD, JR., FOUNDER AND PRESIDENT, NATIONAL BLACK FARMERS ASSOCIATION, BASKERVILLE, VA

Dear Honorable Chairman David Scott, Vice Chair Alma Adams, and Congressman Glenn "GT" Thompson, Ranking Member. Thank you for the invitation. It is truly an honor to address your Committee hearing, *A Hearing to Review the State of Black Farmers in the U.S.*

I am John Boyd, Founder and President of the National Black Farmers Association (NBFA). The National Black Farmers Association seeks justice in terms of the distribution of wealth, opportunities, and privileges within the United States "U.S." and U.S. territories.

The National Black Farmers Association (NBFA) is a nonprofit 501(c)[(3)] organization with farm training sites across the United States in rural and urban areas. NBFA is a community-based organization with a national constituency of over 116,000 members predominately in 42 states. Our membership consists of full-time farmers, part-time farmers, land and timber owners and many concerned citizens. To date, the organization continues to work diligently to improve the quality of life in rural communities through improved agricultural outreach, technical assistance, access to credit for small farmers, family farm business development, food distribution, rural economic development and environmental protection with a Memorandum of Understanding (MOU) with United States Department of Agriculture (USDA), U.S. Forest Service and Environmental Protection Agency.

As a national civil rights figure representing Black Farmers, I have met with President Barack Obama, President Bill Clinton, President George W. Bush and President Jimmy Carter. I have led dozens of training sessions and community meetings across the nation, Africa and Haiti serving as a social justice advocate for women, Native American and Hispanic farmers in their pursuit to fair access to USDA programs and services. As a result, I am highly regarded in the farm community as someone "who cares" and has access to critical information about programs for Black and other minority, youth, veteran, women and limited resource farmers with a proven ability to deliver high-quality technical advice and solutions. The latest example of my personal commitment and corporate resolve to ensure civil, economic, environmental and social justice and fiscal responsibility for NBFA members and other small-scale farmers is the NBFA call to action "ReClaiming, ReGaining, and ReGenerating Our Family Farms".

The NBFA has been providing sustainable agriculture workshops and conferences for over 30 years due to the ongoing injustices faced by Black and other minority farmers. The NBFA provides all educational outreach training initiatives, direct technical assistance and conferences free of charge to attendees and open invitation for all to attend in accordance with the MOU between USDA, EPA, U.S. Forest Service. SC Commission for Minority Affairs and the NBFA.

I am a fourth-generation farmer, maintaining about 1,300 acres in Southside, Virginia, where I grow soybeans, wheat, corn and raise beef cattle.

The long history of discrimination by the United States Department of Agriculture (USDA) is not in dispute.

Scholars, commissions, the courts, and even the Department itself have confirmed that USDA systematically denied loans, subsidies and other benefits to Black farmers that were routinely provided to white farmers.

- In 1965, the U.S. Commission on Civil Rights *found* [1] that discrimination in farm programs had contributed to a decline in Black ownership of farmland.
- In 1968, the U.S. Commission on Civil Rights *found* [2] that Black farmers faced discrimination when seeking farm loans and other forms of assistance.
- In 1970, the U.S. Commission on Civil Rights *found* [3] discrimination in the administration of USDA programs.
- 1982, the U.S. Commission on Civil Rights *documented* [4] discrimination complaints at USDA county offices.
- In 1995, the [General Accounting] Office *found* [5] USDA county committees had few people of color.
- In 1996, a study for USDA's Farm Services Agency *found* [6] farmers were not getting an equitable share of farm payments and loans.
- In 1997, USDA's Inspector General *documented* [7] a "climate of disorder" among USDA civil rights staff.
- In 1997, the Civil Rights Action Team created by USDA *documented* [8] stories of discrimination against farmers of color.
- In 1998, the USDA's Commission on Small Farms *cites* [9] discrimination as a cause of the decline of Black farmers.
- In 1999, a Federal court *found* [10] USDA discriminated against Black farmers by denying or delaying loans.
- In 2001, the U.S. Commission on Civil rights *found* [11] Black farmers waited four times longer than white farmers to receive farm loans.
- In 2008, the Government Accountability Office *reported* [12] that USDA had still not resolved many discrimination complaints.

But discrimination is not something that I read about in a report or a court transcript. I have attached to my testimony the reports by the Commission on Civil Rights, the Department of Agriculture, and the Government Accountability Office as well as written testimony I have presented to Congress over the years as the NBFA President that document this history of discrimination, differential treatment, and breach of trust by USDA. They also detail the struggle the NBFA has encountered at the USDA to end racial discrimination and achieve justice for Black Farmers as the NBFA was a named plaintiff in *In Re Black Farmers Discrimination* and has filed objections and sought legal remedies to protect Black Farmers in America.

In 1983, I was introduced to the USDA Farmers Home Administration (now known as Farm Service Agency) by an elderly Black farmer who was fighting off foreclosure. Once I purchased the farm with a farm ownership loan, the lien was recorded in the local county courthouse. That was the being of my relationship or lack thereof that brings me before you today to discuss the "State of Black Farmers". I experienced racial discrimination personally when I sought farm operating loans from the Department. I was called "boy." I was spit on. My loan applications on numerous occasions were torn up and thrown in the trash while I watched. Upon investigation by the USDA Office of Civil Rights, several applications were found unprocessed in my USDA file. In my county office, Black farmers were only seen

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[1] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1965_USCCR-Report.pdf*.
[2] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1968_USCCR-Report.pdf*.
[3] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/cr12en2.pdf*.
[4] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1990_House-Report.pdf*.
[5] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1995_Minorities-and-Women-on-Farm-Committees.pdf*.
[6] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1996_DJ-Miller-Report.pdf*.
[7] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1997_IG-Report.pdf*.
[8] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1997-crat-report.pdf*.
[9] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1998-NCSF-Report.pdf*.
[10] *https://acresofancestry.org/wp-content/uploads/2021/01/April-1999-Court-Opinion-Approving-Consent-Decree-.pdf*.
[11] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/2001_USCCR-Report.pdf*.
[12] *https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/2008_GAO-Report.pdf*.

on Wednesday—or what came to be known as "Black Wednesday." When Black farmers received USDA loans they were assigned "supervised" bank accounts which required white loan officers to co-sign every transaction.

As a result of differential treatment and discrimination against Black farmers like myself, the number of Black farmers has fallen dramatically—from more than 900,000 in 1920 to less than 50,000 today.

Unfortunately, the effects of discrimination by the Department can be felt decades after reaching historic settlement agreements. I reached a settlement agreement with USDA in 1997 which provided complete debt relief. In 2019, I was informed that USDA had breached the settlement agreement and over $600,000 in USDA liens remained against my farm according to a title search. I filed a complaint against USDA for Breach of Agreement and Retaliation because the amounts recorded in the liens were erroneous and the prepared Certificates of Satisfaction to release the liens had been prepared but never executed or filed as they remained unsigned by the local county FSA official in my USDA file. It wasn't until I secured and paid for the services of an attorney to file these Certificates that my farm was no longer in jeopardy of [land loss] at the hands of the USDA. This wasn't the 1st time USDA officials had failed to act upon my behalf and I am here today because I want to openly address why the NBFA has continued to call for accountability and transparency at the Department in 2021. Too many Black Farmers continue to request our assistance to address program complaints and civil rights violations.

Discrimination continues to be reflected and reinforced by current USDA programs.

While Black farmers receive about $60 million in annual commodity subsidies, white farmers annually receive about $10 *billion* in commodity subsidies.

While an eligible Black farmer receives, on average, $7,755 in commodity subsidies, an eligible white farmer receives, on average, $17,206 in commodity subsidies.

Like commodity subsidies, *ad hoc* disaster payments also overwhelmingly flow to white farmers.

Experts found that 99% of the Market Facilitation Payments made to offset the effects of President Trump's trade war went to white farmers. Experts also found that 97% of Coronavirus Food Assistance Payments made to address the [COVID]–19 pandemic went to white farmers.

The disparity in the crop insurance program—which requires a farmer-paid premium many Black farmers cannot afford—may be even greater, but Congress will not lift the veil of secrecy that hides who receives crop insurance subsidies.

As you know, arm income support payments are tied to production or revenue. The largest 10% of subsidy recipients collect more than half of all subsidies. Virtually all of these farmers are white.

The result of decades of discrimination is that Black farms are smaller, and our revenues are smaller than those of our white neighbors. Therefore, eligible Black farmers receive less support from USDA and fall further and further behind. What's more, a disproportionate share of Black farmers produce farm products that are not even eligible for traditional subsidies.

Rather than right these historic wrongs, government programs have largely perpetuated systemic racism.

In response to discrimination by the Department, I joined with other farmers to sue USDA, which resulted in the *Pigford* and *In Re: Black Farmers Discrimination* settlements. By acknowledging the long history of discrimination, the Black Farmer settlements were an important first step. But they failed to provide farmers the debt relief Black farmers needed.

During the Trump Trade war, it was unacceptable that foreign owned corporations benefited at an alarming rate while tax-paying American farmers such as myself received min[u]scule amounts of the relief designated with stated purpose to help American Farmers. Economic fairness was at stake in that matter but failed to provide much needed relief for the disruption to our farms.

On June 19, 2019, I testified before the U.S. Financial Services Committee. I stated, "Unless there is a set aside amount for support of small-scale farmers in the proposed $16 Billion Bailout, we will be treated as invisible and insignificant participants in the process. Policy decisions regarding farmers will continue to disproportionately reward foreign-owned corporations and exclude already disadvantaged farmers in our category. Justice would be served in the current crisis by a vote for bipartisan legislation from this Committee to set aside $5 Billion to help

address the needs of Black and other small-scale farmers. Fair treatment is all we are asking. Just justice." [13]

By providing debt relief to Black farmers and other farmers of color, the American Rescue Plan Act begins to fulfil the promises of the Black Farmers lawsuits and, more importantly, gives new life to Black farmers facing foreclosure. But there is still much more to be done to right these historic wrongs and to ensure that Black farmers remain part of the fabric of American agriculture.

To support Black farmers, we must reform our subsidy and crop insurance programs to level the playing field between white farmers and Black farmers. We must make these programs more transparent, so Black farmers can see whether promised reforms are actually working. We must expand access to land and credit so that Black farmers can expand our operations. And we must improve outreach and technical assistance to Black farmers who have been treated as second-class citizens by the Department for too long.

Thank you, Chairman Scott, for holding this historic hearing.

APPENDIX

Editor's note: the documents listed were submitted by the witness as an *Appendix.* They are listed here in the order that they were submitted. Due to its size the *Appendix* is retained in Committee file, and the individual documents are available online at the hyperlinks noted. **Note:** items marked with (†) denote that in addition to the excerpt the full report is retained in Committee file.

1. USDA RBS Research, Report 194: *Black Farmers in America, 1865–2000 The Pursuit of Independent Farming and the Role of Cooperatives* (*https://www.rd.usda.gov/files/RR194.pdf*) [14]
2. USDA NASS, 1964 Census of Agriculture, *Vol. 2, Part 8, Color, Race, and Tenure of Farm Operator* (*http://lib-usda-05.serverfarm.cornell.edu/usda/AgCensusImages/1964/02/08/1964-02-08.pdf*), Table 4. Number of Negro and Other Nonwhite Farm Operators, by Regions and States: 1900 to 1964, p. 761 †
3. USDA NASS, 1964 Census of Agriculture, *Vol. 2, Part 8, Color, Race, and Tenure of Farm Operator* (*http://lib-usda-05.serverfarm.cornell.edu/usda/AgCensusImages/1964/02/08/1964-02-08.pdf*), Table 3. Number of Farms by Color and by Tenure of Operator, and Land in Farms by Tenure and Operator, by Regions and States: 1880 to 1964, p. 756 †
4. U.S. Commission on Civil Rights, 1965, *Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture. A Report of the United States Commission on Civil Rights, 1965* (*http://files.eric.ed.gov/fulltext/ED068206.pdf*)
5. U.S. Commission on Civil Rights, 1965, *Civil Rights Under Federal Programs: An Analysis of Title VI of The Civil Rights Act of 1964* (*https://hdl.handle.net/2027/mdp.39015019789091*) [15]
6. U.S. Commission on Civil Rights, 1970, *Federal Civil Rights Enforcement Effort: A Report of The United States Commission on Civil Rights 1970* (*https://www2.law.umaryland.edu/marshall/usccr/documents/cr12en2.pdf*), pp. I–III, 48–49 †
7. USDA, January 1981, *A Time to Choose: Summary Report on the Structure of Agriculture* (*https://archive.org/details/timetochoosesumm00unit/page/n1/mode/2up*)
8. U.S. Commission on Civil Rights, February 1982, *The Decline of Black Farming in America* (*https://files.eric.ed.gov/fulltext/ED222604.pdf*)
9. USDA, Economic Research Service, July 1986, Rural Development Research Report Number 59, *Black Farmers and Their Farms* (*https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1982_USDA-History.pdf*)

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[13] *https://docs.house.gov/meetings/BA/BA10/20190619/109679/HHRG-116-BA10-Wstate-BoydJ-20190619-U1.pdf* (video testimony: *https://youtu.be/Ibm-zA4wQII*)

[14] **Note:** contained further on in the Appendix is an excerpt from this report, p. 24 (Appendix Table 3—Farm operators in the U.S. by race, 1900 to 1997).

[15] **Note:** this document is available at a variety of university sites; however, in all extant instances they are using the "Digitized by Google" copy.

10. House Rept. 101–984, *The Minority Farmer: A Disappearing American Resource; Has The Farmers Home Administration Been The Primary Catalyst?* (*https://books.google.com/books/download/Congressional_Serial_Set.pdf*) [16]
11. USDA, February 1997, *Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team* (*https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1997-crat-report.pdf*), p. 9 †
12. U.S. DOJ, 1994, Vol. 18, *Authority of USDA to Award Monetary Relief for Discrimination* [17] (*https://www.justice.gov/olc/file/626886/download*), pp. 52–73 †
13. U.S. GAO, September 29, 1995, GAO/GGD–95–211, *Equal Employment Opportunity Women and Minority Representation at Interior, Agriculture, Navy, and State* (*https://www.gao.gov/assets/ggd-95-211.pdf*)
14. U.S. GAO, March 1, 1995, GAO Decision, B–260588, RCED–95–113R, *Minorities and Women on Farm Committees* (*https://www.gao.gov/assets/rced-95-113r.pdf*)
15. USDA FSA, March 4, 1996, D.J. Miller Disparity Study Final Report, *Producer Participation and EEO Complaint Process Study for the Farm Service Agency (FSA) of the U.S. Department of Agriculture, Part I, Vol. I–II* (*https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/1996_DJ-Miller-Report.pdf*)
16. USDA CRIT, September 1997, *Implementation of the Civil Rights Action Team Report at USDA: An Interim Progress Report* (*https://permanent.fdlp.gov/lps15852/critprog.pdf*)
17. U.S. GAO, March 19, 1997, GAO/T–RCED–97–112, *Farm Programs: Efforts to Achieve Equitable Treatment of Minority Farmers* (*https://www.gao.gov/assets/t-rced-97-112.pdf*)
18. USDA OIG, February 27, 1997, Report No. 50801–2–Hq(1), *Report for the Secretary on Civil Rights Issues—Phase I, Farm Loan Programs—Civil Rights Complaint System Evaluation* (*https://www.usda.gov/sites/default/files/oig.htm*)
19. U.S. District Court for D.C., April 14, 1999, Civil Action No 97–1978 (PLF), *Timothy C. Pigford, et al., Plaintiffs,* v. *Dan Glickman, Secretary, The United States Department Of Agriculture, Defendant.* Civil Action No. 98–1693 (PLF), *Cecil Brewington, et al., Plaintiffs,* v. *Daniel R. Glickman, Defendant, Notice of Class Certification and Proposed Class Settlement* (*https://www.dm.usda.gov/pigford.pdf*)
20. USDA NCSF, January 1998, *A Time to Act: A Report of the USDA National Commission on Small Farms* (*https://archive.org/download/timetoact1545usda/timetoact1545usda.pdf*)
21. U.S. District Court for D.C., April 14, 1999, Civil Action No 97–1978 (PLF), *Timothy C. Pigford, et al., Plaintiffs,* v. *Dan Glickman, Secretary, The United States Department of Agriculture, Defendant.* Civil Action No. 98–1693 (PLF), *Cecil Brewington, et al., Plaintiffs,* v. *Daniel R. Glickman, Defendant, Opinion* (*https://media.dcd.uscourts.gov/pigfordmonitor/orders/19990414op.pdf*)
22. USDA NRCS, undated, *Civil Rights at USDA: A Backgrounder on Efforts by the Obama Administration* (*https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Publications/Offices_of_Goodness/USDA Civil Rights at USDA A Backgrounder on Efforts by the Obama Administration.pdf*)
23. U.S. Commission on Civil Rights, February 2001, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination. Volume VII: The Mississippi Delta Report* (*https://files.eric.ed.gov/fulltext/ED457307.pdf*)
24. USDA NASS, June 2004, *2002 Census of Agriculture,* AC–02–A–51, *United States Summary and State Data, Volume 1, Geographic Area Series, Part 51* (*http://lib-usda-05.serverfarm.cornell.edu/usda/AgCensusImages/2002/01/51/2002-01-51.pdf*), pp. 48–49 †

[16] **Note:** the submission in the *Appendix* document is from a LexisNexis printout of the House report. The item retained in Committee file is a pdf excerpted from the Congressional Serial Set 14029 digitized by Google.

[17] **Note:** this is an excerpt from the U.S. Department of Justice report entitled, *Opinions of the Office of Legal Counsel of the United States Department of Justice Consisting of Selected Memorandum Opinions Advising the President of the United States, the Attorney General and Other Executive Officers of the Federal Government in Relation to Their Official Duties,* Volume 18, 1994.

25. USDA NASS, December 2009, *2007 Census of Agriculture,* AC–07–A–51, *United States Summary and State Data, Volume 1, Geographic Area Series, Part 51* (*https://www.nass.usda.gov/Publications/AgCensus/2007/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf*), pp. 58–61 †

26. U.S. GPO, 110–246, *Statute Compilation,* December 20, 2018, *110–246—Food, Conservation, and Energy Act of 2008.xml* (*https://www.agriculture.senate.gov/imo/media/doc/110-246_Food, Conservation, And Energy Act Of 2008.pdf*), pp. 92–95 † [18]

27. U.S. GAO, October 22, 2008, GAO–09–62, *U.S. Department of Agriculture: Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights* (*https://www.gao.gov/assets/gao-09-62.pdf*)

28. Committee on Oversight and Government Reform Hearing, Subcommittee on Government Management, Organization, and Procurement, May 14, 2008 *Management of Civil Rights at the USDA* (*https://www.govinfo.gov/content/pkg/CHRG-110hhrg48172/pdf/CHRG-110hhrg48172.pdf*), Serial No. 110–137

29. USDA OASCR, November 5, 2010, *Informational Memorandum for Deputy Chief of Staff to the Secretary, Proposed Resolution to Adjust the Recorded Yields of Black Farmers in Clarendon County, South Carolina* (*https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/2010_Black-Farmers-Yield-Clarendon-SC.pdf*)

30. U.S. DOJ, February 18, 2010, *Department of Justice and USDA Announce Historic Settlement in Lawsuit by Black Farmers Claiming Discrimination by USDA* (*https://www.justice.gov/opa/pr/department-justice-and-usda-announce-historic-settlement-lawsuit-black-farmers-claiming*)

31. 111th Congress, H.R. 2847, *An Act making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes.* (*https://www.congress.gov/111/bills/hr2847/BILLS-111hr2847eah.pdf*), pp. 90–97 † [19]

32. USDA Office of the Administrative Law Judges, Office of Hearings and Appeals, February 13, 1984, SOL Docket No. 09–0177 *Charles McDonald, Complainant* v. *Tom Vilsack, Secretary, United States Department Of Agriculture, Decision and Order* (*https://oalj.oha.usda.gov/sites/default/files/100708SOL09-0177DO.pdf*)

33. USDA NASS, May 8, 2019, *2012 Census of Agriculture, Race, Ethnicity and Gender Profiles, United States* (*https://www.nass.usda.gov/Publications/AgCensus/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/cpd99000.pdf*)

34. USDA NASS, September 2014, ACH12–10, *2012 Census of Agriculture Highlights, Black Farmers: Up 12 percent since 2007; most live in southern states* (*https://www.nass.usda.gov/Publications/Highlights/2014/Highlights_Black_Farmers.pdf*)

35. U.S. District Court for D.C., April 1, 2012, Civil Action No 97–1978–PLF, Document 1812, *Monitor's Final Report on Good Faith Implementation of the Consent Decree and Recommendation for Status Conference* (*https://media.dcd.uscourts.gov/pigfordmonitor/reports/Rpt20120331_final.pdf*) [20]

36. USDA NASS, September 2, 2020, *2017 Census of Agriculture, Race, Ethnicity and Gender Profiles, United States* (*https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/cpd99000.pdf*)

37. USDA NASS, April 2019, *2017 Census of Agriculture,* AC–17–A–51, *United States Summary and State Data, Volume 1, Geographic Area Series, Part 51* (*https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf*), pp. 72–75 †

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[18] **Note:** the full compilation is retained in Committee file. Further note: the compilation has been updated as of *January 8, 2019* (*https://www.govinfo.gov/content/pkg/COMPS-10237/pdf/COMPS-10237.pdf*).

[19] **Note:** the bill was signed into law (*Public Law 111–147* (*https://www.congress.gov/111/plaws/publ147/PLAW-111publ147.pdf*)) March 18, 2010.

[20] **Note:** there is an *Appendix* (*https://media.dcd.uscourts.gov/pigfordmonitor/reports/Rpt20120331_final-app.pdf*) to the report. This document was not included in the submission; therefore, it is also retained in Committee file.

38. U.S. GAO, July 11, 2019, GAO–19–539, *Agricultural Lending: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited* (*https://www.gao.gov/assets/gao-19-539.pdf*)
39. Warren Democrats, undated, *Addressing Discrimination and Ensuring Equity for Farmers of Color* (*https://elizabethwarren.com/plans/equity-farmers-of-color*)
40. Onika Abraham, Director, Farm School NYC, New York, *et al.,* letter dated August 31, 2019, *Re: Justice for Black Farmers* (*https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/2019_WARREN-LETTER.pdf*)
41. 116th Congress, *S. 4929, Justice for Black Farmers Act of 2020* (*https://www.congress.gov/116/bills/s4929/BILLS-116s4929is.pdf*)
42. U.S. GAO, February 24, 2021, GAO–21–399T, *Financial Services: Fair Lending, Access, and Retirement Security* (*https://www.gao.gov/products/gao-21-399t*)
43. 117th Congress, *H.R. 1319, Union Calendar No. 1, American Rescue Plan Act of 2021* (*https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319rh.pdf*)[21]
44. *Emergency Relief for Farmers of Color Act* (*https://static.ewg.org/reports/2021/BlackFarmerDiscriminationTimeline/2021_Warnock.pdf*)

Submitted as Separate Items (Not in *Appendix*), the documents that are available online will not be republished herein, and are available at the hyperlinks noted.

1. USDA, Apr. 2020, *Commitment to Progress: Civil Rights at the United States Department of Agriculture* (*https://archive.org/details/CAT11079176*)
2. Case: 20–16758, February 19, 2021, *National Association of Wheat Growers, et al., Plaintiffs—Appellees,* v. *Xavier Becerra, in His Official Capacity as Attorney General of the State of California, Defendant—Appellant, and Lauren Zeise, in Her Official Capacity as Director of the Office of Environmental Health Hazard Assessment, Defendant.* ***Amicus Curiae Brief*** *of the National Black Farmers Association in Support of Appellant and Reversal* (*https://docs.house.gov/meetings/AG/AG00/20210325/111400/HHRG-117-AG00-Wstate-BoydJ-20210325-SD013.pdf*)

SUBMISSION NO. 3

January 28, 1997

Informational Memorandum to the Secretary

Subject: Discrimination Complaints filed by Minority Farmers in the State of Virginia
To: DAN GLICKMAN, *Secretary of Agriculture*
From: LLOYD A. JONES, *State Director,* USDA Rural Development

The purpose of this memorandum is to provide an overview and general assessment of the activities and process which lead to preliminary investigations of alleged discriminatory practices at the local level of the United States Department of Agriculture (USDA). This memorandum is intended to serve as a confirmation that discriminatory practices appear to have imposed themselves upon our external customers (in particular, minority farmers) in Mecklenburg, Brunswick, Lunenburg and other counties in southside and southeastern Virginia. It is my opinion that these discriminatory practices are the result of three main components which are noted as follows: super intense regulatory barriers which are unfriendly to the small producers, poor quality customer service (with a healthy portion of weak employee performance), and a lack of sensitivity for the needs and limited resources of small producers (to include an apparent unwillingness to communicate with some producers in a manner that they could understand the regulatory requirements imposed by the agency, meaning the Farmers Home Administration, in the customer's attempt to obtain a loan or to service an existing loan) by some employees within USDA. This report is my effort to relay to you a chronology of events that took place in response to charges that were brought to my attention by minority farmers.

[21] **Note:** the bill was signed into law (Public Law 117–2) March 11, 2021; however, as of this date (**April 6, 2021**) the Public Law has not been published the *enrolled version* (*https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf*) is the latest available copy.

As a former career, and currently a political appointee, civil servant, I have worked for the Department of Agriculture for more than 20 years. During that time, I have had the opportunity to observe and react to issues that could be construed as poor customer service. It is my belief that the support and enforcement of the civil rights and EEO law within USDA have been monumental challenges for both senior and mid-level management. As a State Director, it is my responsibility to make sure that these laws, as mandated by Congress and the Clinton Administration, are successfully administered.

Recently, there has been a flurry of complaints, allegations, innuendoes and misstatements concerning discrimination complaints and activities within the Farmers Home Administration (FmHA) in Virginia. The following chronological history of events that took place should clarify most, if not all, of these allegations.

Chronological History

John W. Boyd, Jr.

February 19, 1992—A discrimination complaint was received from Mr. Boyd by the Farmer Programs Chief, Herman Lundy, and the State Civil Rights Manager, Ava Marshall.

February 24, 1992—A copy of the discrimination complaint was sent to the National Office Equal Opportunity Division in Washington, D.C.

April 2, 1992—The State Director notified the County Supervisor of problems found in a review of Mr. Boyd's case by the Farm Division in the State Office which indicated that application and loan processing had been handled inappropriately. An explanation was requested.

April 21, 1992—The County Supervisor wrote a response to the State Director's request indicating he believed he had handled Mr. Boyd's case in all fairness and in accordance with FmHA procedures.

June 22, 1992—The State Director notified the County Supervisor of the importance of processing requests within the timeframes stated in FmHA procedures.

July 17, 1992—A request for preliminary inquiry was received by the State Office from the National Office Equal Opportunity Staff for investigation.

Due to illness, Ava Marshall was unable to act on the preliminary inquiry for approximately 45 days. She communicated with the National Office on several occasions to inform them of her efforts to respond to their request.

April 9, 1993—Ava Marshall became seriously ill and was diagnosed with multiple sclerosis.

On or about **May 9, 1993**—A Civil Rights team from Mississippi came to the Virginia State FmHA office to assist in completing the preliminary inquiry assignment which was being conducted by Ava Marshall.

May 12, 1993—The State Director wrote to the County Supervisor acknowledging that the restructuring of Mr. Boyd's farm loans were not completed. The County Supervisor did not follow instructions at the time he ran the Debt Adjustment Loan Restructuring System (DALR$) program. He forgot to include the $5,000.00 Operating Loan. The County Supervisor was directed to take appropriate corrective actions within thirty (30) days.

May 14, 1993—A loan review made by Russell L. Marsh, Farmer Programs Chief, indicated this case had not been properly handled by James Garnett, the Chase City County Supervisor. Mr. Boyd had no chance of meeting his obligations due to the failure to properly service his loan accounts by the County Supervisor. His FmHA accounts had been referred to a credit bureau by the County Supervisor and is currently showing up as delinquent when, in fact, they should be current. Mr. Boyd also stated that a payment of $3,100.00 made in late 1992 was never credited to his account. The County Supervisor was given thirty (30) days to correct these actions.

June 1, 1993—The findings of the team from Mississippi were sent to the National Office Equal Opportunity Staff.

On or about **December 12, 1993**—Doug McDowell, Equal Opportunity Specialist, from the National Office called Ava Marshall, State Civil Rights Manager, and informed her the Mississippi report was unsatisfactory and more information was needed on this case.

January 4, 1994—A new request for additional information was sent to Ava Marshall to research, gather information, and prepare a report which required a considerable amount of time.

June 16, 1994—Ava Marshall, State Civil Rights Manager, compiled and sent new information with recommendations and conclusions to Washington, D.C.

June 24, 1994—The State Civil Rights Manager met with Russell Lee Marsh, Farmer Programs Chief, to discuss payments Mr. Boyd indicated were made and not credited to his account. The wrong amount was credited to Mr. Boyd's account and

too much was given to another borrower. Mr. Marsh instructed the County Office to reverse the payment from the other borrower's account and apply the correct amount to Mr. Boyd's account. They are to notify Mr. Marsh when this is completed. Once completed, everything in the original May 12, 1993, memorandum must still be done. He indicated this needed to be done right away so the accounts could be properly set up, and the loan be serviced in accordance with FmHA Instructions.

July 14, 1994—The State Director notified Sharron Longino, Associate Administrator, FmHA, that after Mr. Boyd having been in business for ten (10) years, the FmHA Chase City County Supervisor's actions had put him further behind in his farming operations and debt servicing than he was when he started. Mr. Boyd had no farm income to pay his loans and relied totally on non-farm income for his family living expenses. FmHA was holding a mortgage on Mr. Boyd's farm with a new poultry house which was not even being utilized. The County Supervisor and District Director provided no supervisory support to Mr. Boyd which increased his chances for failure.

August 15, 1994—The National Office Farmer Programs Division reviewed Mr. Boyd's case and provided specific recommendations to the Equal Opportunity Staff for reconciling the problems with this case.

September 12, 1994—The National Office responded with corrective servicing actions to resolve this case.

October 11, 1994—Mr. Boyd and his attorney met with the State Director, the Farmer Programs Chief, and six (6) other members of the FmHA staff to discuss items outlined in the letter from the National Office.

October 24, 1994—The State Director wrote to Mr. Boyd notifying him of the corrective actions that were to be taken by the Chase City County Office concerning his farm accounts.

October 24, 1994—The State Director wrote to Mr. Boyd notifying him of actions taken on his FmHA rural housing application.

November 1, 1994—The State Director responded to the National Office regarding the outcome of the letter dated September 12, 1994. This letter indicated that all corrective actions suggested by the National Office were not completed. Mr. Boyd was not satisfied with the results of the meeting or the actions taken by the State Office staff, and proceeded to inform the National Office that he wanted to continue with his complaint as filed.

January 10, 1995—The new Chase City County Supervisor, Anne J. Rickman, provided the State Director with an update on the status of Mr. Boyd's loan restructuring and information needed on an operating loan.

October 1, 1995—Farm Service Agency assumed responsibility for agricultural credit lending activities.

April 5, 1996—J. Calvin Parrish, Acting State Executive Director, Farm Service Agency, sent Mr. Boyd a copy of his 1992 original discrimination complaint.

October 11, 1996—The final decision of USDA, signed by Wardell C. Townsend, Jr., Assistant Secretary for Administration and Designated Director of Equal Opportunity Officer, on John Boyd's February 18, 1992 complaint alleging discrimination based on race, found that discrimination on the basis of race had occurred and ordered corrective actions be offered.

November 26, 1996—Otis Dailey, District Director, Farmville, Virginia, reported that according to the final decision from Wardell C. Townsend, Jr., the Assistant Secretary for Administration and Designated Director of Equal Opportunity Officer dated October 11, 1996, the complainant met with him in April 1988 to express concerns about James Garnett failing to process loan applications and the acceleration of John Boyd's account. Mr. Dailey said that he does not deny meeting with Mr. Boyd, but he does not remember it. Mr. Dailey reported he does not recall Mr. Boyd contacting or attempting to contact him until the summer of 1996 concerning a 502 Rural Housing application he filed in the Chase City Office and assigned to the District Office for processing. Prior to the appeal date set up by the Appeals Officer, Mr. Boyd called and requested information from his file for the meeting. Mr. Dailey met Mr. Boyd in Chase City and assisted him with what he needed for the appeal. The day Mr. Boyd met with Mr. Dailey, Mr. Boyd asked that he follow him out of the office into the hall. Mr. Boyd made statements about Mr. Garnett's handling of his farm loans, and felt it was because of his race. Again, Mr. Boyd said that he met with Mr. Dailey years ago about the charges made against Mr. Garnett. Mr. Dailey stated that there were no specific incidents that could be considered discriminatory.

Mr. Dailey was notified by memorandum from the State Director that Mr. Boyd had filed a Civil Rights complaint alleging discrimination. In June 1993, Anne Rickman, District Farm Specialist, was assigned to the District Office. All responsibilities for farm loans were designated to Anne Rickman. The Farm Program was

handled by the State Office through the District Farm Specialist. Mr. Dailey reported that, at that time, he was distanced from farm activities in the District Office and the John Boyd case. In a discussion with the District Farm Specialist, Anne Rickman, later to be the new Chase City County Supervisor, it was reported the complainant's requests were being taken care of to resolve the concerns. Mr. Dailey stated he had had no contacts with Mr. Boyd since being informed that his complaint had been turned over to the State Civil Rights Manager in 1992. Mr. Dailey states specifically, as District Director, he was not involved "in the loop." Mr. Dailey stated that in his position, it was like one hand did not know what the other was doing. Mr. Dailey stated that the District Farm Specialist representing him was actively and aggressively working towards "fixing" Mr. Boyd's loan problems, thereby keeping him on his farm and operational. Mr. Dailey stated that in discussions with the District Farm Specialist and regular contacts with the County Office, it was reported Mr. Boyd's problems were being handled. Mr. Dailey met with Mr. Boyd in the summer of 1996 in the Chase City Office. Mr. Dailey said it is to be noted that he was questioned about this case, officially, approximately February 1994. This was after the County Supervisor had been forced to accept a transfer or separate from the agency, and the performance appraisal for the County Supervisor had been completed. Mr. Dailey stated that his comments were taken out of "context" during the February 1994 meeting.

Chronological History

Willie L. Crute, Jr.

January 22, 1994—Discrimination complaint was filed by Mr. Willie Crute based on race against James Garnett, County Supervisor, Chase City, Virginia.

February 17, 1994—A copy of the discrimination complaint was sent to the National Office Equal Opportunity Division by the State Director.

March 18, 1994—Freedom of Information Act (FOIA) request was submitted to Lloyd A. Jones, State Director, by Mr. Crute's attorney, requesting documents related to loan applications filed by Mr. Willie L. Crute, Jr.

April 20, 1994—Freedom of Information Act request was denied in part and appeal rights were given by Randall M. Welch, FOIA Officer.

May 23, 1994—Request for preliminary inquiry into this complaint was requested by Carlton L. Lewis, Chief, Program Compliance Branch, Equal Opportunity Staff, FmHA, National Office.

June 2, 1994—Freedom of Information Act appeal requested by Mr. Crute's attorney on the initial request for information.

July 1, 1994—Freedom of Information Act request was made by Willie L. Crute, Jr. for several documents in his file.

July 18, 1994—Two (2) of the items in Mr. Crute's request for information were sent; approval from the National Office on the other three (3) items was requested.

July 19, 1994—The results of the preliminary inquiry were sent to the National Office Equal Opportunity Staff for review.

August 9, 1994—The results of the preliminary inquiry were sent back for recommendations and summary of the events. Ava Marshall, State Civil Rights Manager, had made recommendations and conclusions, previously; however, when reviewed by her supervisor, Mr. Reginald Rountree, she was instructed to remove them.

August 16, 1994—The results of the preliminary inquiry were resubmitted with recommendations and conclusions to the National Office Equal Opportunity Staff as requested.

December 21, 1994—Request was received from Philip Southers, Attorney, OGC, to close their files on Willie L. Crute, Jr.

January 9, 1995—Response from Lloyd A. Jones, State Director, in reference to the memorandum dated December 21, 1994. Mr. Jones advised Mr. Southers to keep the files open since Mr. Crute had filed a law suit against the agency.

October 1, 1995—Farm Service Agency assumed responsibility for the agricultural credit lending activities.

January 24, 1996—Donald L. Davis, State Executive Director, Farm Service Agency, wrote to Mr. Crute notifying him they were not aware of any offer to settle his complaint by the National Office, and offered him an opportunity to file a Tort Claim if he wanted to do so. Mr. Lee Marsh, AgCredit Director, sent Mr. Crute a Tort Claim form to complete.

July 1, 1996—The final decision of USDA, signed by Wardell C. Townsend, Jr., Assistant Secretary for Administration and Designated Director of Equal Opportunity Officer, on Willie L. Crute, Jr.'s January 22, 1994 complaint alleging discrimination based on race, found that discrimination on the basis of race had occurred.

November 26, 1996—Otis Daily, District Director, reported that through his regular contacts with the Chase City Office and the District Farm Specialist, he learned Mr. Crute had filed a discrimination complaint being handled by the State Civil Rights Manager. He stated that to his knowledge, no contacts were ever made by him with Mr. Crute.

Chronological History

Eric R. Rice

August 24, 1993—Mr. Eric R. Rice filed a discrimination complaint based on race against Mr. Charles M. Featherston, County Supervisor, Brunswick County FmHA Office.

October 19, 1993—Instructions for completing a preliminary inquiry on Eric R. Rice was sent to the State Director.

April 15, 1994—Jacqui Micheli, Equal Opportunity Specialist, National Office, Equal Opportunity Staff, mailed Ava Marshall a copy of the preliminary inquiry report of Eric R. Rice that was done by Pat Baker, state Civil Rights Coordinator, Delaware. Ms. Baker concluded from her investigation, the major problem in the Brunswick County Office was the attitude of the County Supervisor. She stated that, for many years, the Black farmers felt Mr. Featherstun had total control of the FmHA office and their applications/benefits. She reported the processing cards did not show a large discrepancy in processing time; however, a review of the files did show the servicing attitude which may have deterred minorities from applying for all benefits/options, because they felt it would do them no good. Ms. Baker admitted in her conclusions that since she was from another state, she did not have enough time to fully complete the review of all items reported by the Black farmers serviced by this County Office to determine if differences were made between Black and white farmers in areas of loan making.

January 3, 1995—Records show that Carrie Schmidt, Acting State Civil Rights Coordinator, in the absence of Ava Marshall, State Civil Rights Manager, requested in a letter signed by Lloyd A. Jones, State Director, to the Maryland/Delaware State Director for his State Civil Rights Coordinator to assist Virginia on this preliminary inquiry. These records are very hard to understand because the letter is dated January 3, 1995, and requesting assistance from the State Civil Rights Coordinator in Delaware from November 15, 1993, through November 19, 1993. Apparently there was a typographical error in the dates noted.

February 2, 1995—A letter sent from Vicky E. Hunt, Acting Chief, Program Complaints Adjudication Division, to Cheryl Prejean Greaux, Director, Equal Opportunity Staff, transmitting a copy of the Department's final decision on the discrimination complaint of Mr. Eric R. Rice. Ms. Hunt told Ms. Greaux that she had forwarded her request to conduct an onsite investigation into the discrimination complaints of Mr. Rice and other minority farmers in Lawrenceville, Virginia, to the Evaluation and Investigation Division for appropriate action. Mr. Rice's complaint from a civil rights standpoint was closed at this time.

February 10, 1995—A letter from the Department went to Mr. Rice stating his complaint was not determined to be discrimination based on race.

April 3, 1995—A letter from Carlton L. Lewis, Branch Chief, Program Compliance Staff, Civil Rights Division, was sent to Lloyd A. Jones, State Director, indicating the Department had responded to Mr. Rice's complaint with a decision that discrimination had not occurred and the file should be closed.

August 3, 1995—A letter from Mike Espy, Secretary of Agriculture, was sent to Eric R. Rice asking for additional information to be provided to continue investigation of his discrimination complaint. He was given fifteen (15) days to respond to this letter. He was told if FmHA did not receive the information on his complaint, the case would be closed. Secretary Espy indicated his files would be returned to the Virginia FmHA State Director to consider Mr. Rice's application for debt settlement.

(Note: This file was given to us by Farm Service Agency to prepare this report and is not complete. We do not have a copy of the preliminary inquiry, and most of the dates in the information we have are conflicting throughout the file.)

Chronological History

Sherman D. Witcher

January 25, 1994—Mr. Witcher filed a discrimination complaint based on age and race.

February 17, 1994—Mr. Witcher's discrimination complaint was sent to the Equal Opportunity Division in the National Office requesting a guide for conducting a preliminary inquiry.

March 23, 1994—A letter was sent by Lloyd A. Jones, State Director, resubmitting copies of the discrimination complaints from Willie Crute and Sherman Witcher to the National Office Equal Opportunity Division requesting guides for preliminary inquiry, as it had been over a month since they were first submitted.

(Note: Recently in November 1996, when we requested the files on this case from Farm Service Agency, we were told they had nothing on Sherman Witcher; however, we found the above information attached to other documents in the files of Willie L. Crute, also a complainant. We have no idea of whether a preliminary inquiry or decision was made in this case, or what the outcome has been since.)

Chronological History

William S. Warren

January 10, 1992—Mr. William S. Warren filed a discrimination complaint based on race against Ron Norton, County Supervisor, Southampton FmHA County Office.

February 24, 1992—Lloyd A. Jones. State Director, sent a copy of the discrimination complaint to the Equal Opportunity Staff.

March 30, 1992—Equal Opportunity Staff sent Lloyd A. Jones a guide on conducting preliminary inquiry into this complaint.

September 3, 1992—Ava Marshall began working on the preliminary inquiries as requested by the National Office. Shortly after beginning work on this preliminary inquiry, Ava Marshall became ill and was out from work most of early 1993 after being diagnosed with multiple sclerosis.

July 21, 1993—Mr. Jones. realizing Ms. Marshall was not going to return anytime soon, requested assistance from the West Virginia State Civil Rights Coordinator to conduct these preliminary inquiries.

August 23, 1993—Leland Kesner, State Civil Rights Coordinator from West Virginia, met with Mr. Warren at his home.

November 19, 1993—Mr. Kesner submitted the results to the Equal Opportunity Staff.

May 13, 1994—A letter was sent from Michael Dunn, Administrator to Robert Franko recommending that the case be closed from a civil rights standpoint without further reporting.

March 2, 1995—Congressman Norman Sisisky received a response to Mr. Warren's inquiry concerning a decision on his discrimination complaint indicating that Mr. Warren's complaint was being reviewed by Office of Civil Rights Evaluation (OCRE) and a decision would be made as quickly as possible. Once a decision was made, Mr. Warren would be notified directly.

March 2, 1995—Lou Anne Kling, Acting Deputy Administrator, Farm Credit Programs, again, verified Mr. Warren's claim was still being reviewed by OCRE. She indicated a decision will be made in the near future.

(Note: It appears, from the records that we received from Farm Service Agency, there has been no further action on discrimination to date.)

Chronological History

Carol Clay

A White Female Borrower

September 8, 1994—A memorandum from Carlton Lewis, Branch Chief, Program Compliance Staff, Civil Rights Division, to Lloyd A. Jones, State Director, requesting the State Civil Rights Manager attempt to conciliate Ms. Clay's complaint or conduct a preliminary inquiry into the subject's complaint, and provide the National Office, Equal Opportunity Staff with a copy of the proposed conciliation or the preliminary report.

May 30, 1995—A memorandum from Cheryl Prejean Greaux to Willie Cook, an employee on the CFSA Staff, with the original RECD casefile enclosed. On June 2, 1994, the RECD Equal Opportunity Division requested the State Director to have his Acting State Civil Rights Coordinator attempt conciliation, and if conciliation was not necessary, conduct a preliminary inquiry. A copy of this memorandum renotified the Virginia State Director the file was transferred to CFSA. She pointed out that no further action had been taken by the Equal Opportunity staff at this time.

August 2, 1995—Lloyd A. Jones, State Director, sent a report to the National Equal Opportunity Staff on the preliminary inquiry alleging discrimination by Carol Clay, submitted by Leland Kesner, State Civil Rights Coordinator, West Virginia.

(Note: No further information is available on the outcome of this complaint since the file was transferred to FSA. There is no information in the files giving us the outcome of this complaint after being sent to the National Office.)

Chronological History

Linwood Brown

July 21, 1994—Mr. Linwood Brown filed a discrimination complaint against Rose Finch, Acting FmHA County Supervisor in Lawrenceville County Office.

July 26, 1994—A copy of Mr. Brown's complaint was sent to the Equal Opportunity Division in Washington, D.C. It was pointed out, at that time, that this was the second complaint Mr. Brown had filed against this office and no actions by the Brunswick County Office have been taken in previous complaints.

(Note: No further in formation is available on this case since it was submitted to the National Office Equal Opportunity Staff on July 26, 1994.)

Chronological History

John and Betty Townsend

White Farm Borrowers

This case was closed by the Department on March 13, 1995, in a letter signed by Jetie B. Wilds, Jr., Deputy Director of Evaluation and Adjudication on the basis that no discrimination occurred based on race.

Chronological History

Minority Farmers of Brunswick Country (Lawrenceville, Virginia)

Once I received a copy of the report from the Delaware State Civil Rights Coordinator, I realized this problem was much more serious than I anticipated. I discussed my concerns on numerous occasions after a complete review of complaints my office had received from Brunswick, Mecklenburg, Lunenburg, Sussex, and Nottoway Counties in Virginia. I discussed the concerns that I had regarding these issues with the appropriate National Office officials. I finally submitted a request in writing on August 2, 1994, for a full and complete investigation coordinated by the National Office, FmHA, on program delivery, in this entire area where most of the complaints had originated.

It was my opinion, as State Director, that a more experienced team in the area of civil rights should have been allowed to look into the complaints made by Brunswick County farmers alleging discrimination.

The seventeen (17) farmers who were affected by this are:

JOHN WYATT	JULIA SEWARD	ROBERT SEWARD
BEATRICE RICE	WALTER RICE, JR.	CHARLES BLAND
JAMES MACLIN	MARY MACLIN	LAURA RICE
IRENE HAYES	ERIC RICE	LARRY TUCKER
JAMES WALKER	WILLIAM ROYSTER	LEON WALL, SR.
LINWOOD BROWN	ALVIN RICE	

October 26, 1993—Carrie Schmidt, Acting State Civil Rights Coordinator, prepared a memorandum for the State Director's signature indicating the cases evidenced by the December 31, 1992, memorandum had been resolved. Mrs. Schmidt was very new to the civil rights program and perhaps did not understand the complexity of these cases. Specifically, they involved both violations by the County Supervisor in program areas and civil rights areas. This memorandum was incorrectly prepared because the action taken on these cases was program related only. The files on the discrimination complaints should remain open and the National investigation conducted as recommended.

August 2, 1994—A memorandum was developed and signed by Lloyd A. Jones, State Director for FmHA, Virginia, requesting a full and complete investigation of the discrimination complaints filed by the minority farmers in Brunswick County.

August 29, 1994—A letter was written by Walter Dent, Acting Director Equal Opportunity Staff, to Robert Franko requesting assistance on the matter of discrimination on minority farmers and employees in the Brunswick County area.

September 13, 1994—Robert Franko, Associate Director of Compliance and Enforcement, responded to Walter Dent on his request to conduct an onsite investigation on the minority farmers in Lawrenceville, Virginia, by stating a request had been sent to the Evaluation and Investigation Division (EID) for review and appropriate action. He advised Mr. Dent this staff would evaluate all information pertaining to the subject complaint, and advised the Enforcement Division as to whether [an] investigation would be scheduled.

July 20, 1996—Thomas Beaumont, Chief, Program Complaints Adjudication, wrote to Willie D. Cook, Director, Equal Opportunity, FSA, requesting additional information regarding minority farmers and employees in the Lawrenceville, Virginia, FmHA office. Mr. Beaumont advised Mr. Cook FmHA had notified his office that it had conducted an investigation at the request of several minority farmers and employees in the Lawrenceville office, found several civil rights violations, and recommended his office conduct an on site investigation. As of July 20, 1996, no on[s]ite investigation was conducted. He also pointed out that the memorandum prepared by Mrs. Schmidt was insufficient to close the cases from a civil rights point. He requested that Mr. Cook advise all the farmers who made written complaints to advise whether they were satisfied with the actions taken. Mr. Beaumont indicated, upon receipt on this information, his office will process these cases.

August 13, 1996—Willie Cook, Director, Equal Opportunity, Farm Service Agency, wrote to Donald Davis, State Executive Director, Virginia State FSA Office, asking his staff to contact the following farmers on their original discrimination complaints:

LINWOOD BROWN
RICHARD BAINS
DAVID and DOROTHY CRAIG
TOMMIE LOWE
JAMES WALKER
ROBERT STEWARD
JOHN WYATT

Chronological History

Other Farmers Who Filed Discrimination Complaints With FmHA Whose Civil Rights Files Could Not Be Found By FSA Since the Reorganization

Lloyd A. Jones, State Director, Rural Development, Virginia, was unable to obtain civil rights files from Farm Service Agency on the following borrowers to prepare the chronological history requested. (See attached list which was the response from FSA).

ALEXANDER AND HELEN T. WARREN
MARY HAYES (Daughter of JAMES HAYES)
CALVIN BROWN
WILLIAM ROYSTER
JEROME BROWN
JAMES and SALLY WALKER
LARRY TUCKER
RICHARD PEARSON
JOHN WYATT
JOHN LIPSCOMB
THURMAN DOUGLAS WITCHER
JOHN and BETTY TOWNSEND

Executive Summary and Opinion

I take this opportunity to express my concern regarding the plight of the small and family farm agriculture producers in America and, more specifically, in the Commonwealth of Virginia. As previously stated, I have had the opportunity to serve as State Director of the Farmers Home Administration and Rural Development for approximately 7 years. During that time, I received numerous complaints as noted above that involved alleged civil rights violations by employees within USDA and, more specifically, the Farmers Home Administration. After thoroughly investigating the cases and obtaining information surrounding the allegations, I was convinced that the complaints of civil rights violations did, in fact, have merit and warranted a more intense investigation by the Office of Civil Rights Enforcement or the appropriate investigative agency.

In my effort to find the truth to the issues brought to my attention, I met with several farmers, Black and white, during the tenure period of March 10, 1990, through September 30, 1995. The result of my discussions with these farmers consistently and persistently reaffirmed that there was, in fact, extremely poor customer service being rendered in the counties of Mecklenburg, Brunswick, Lunenburg, Nottoway, and Southampton. The names of James Garnett (Mecklenburg), Charles Featherstun (Brunswick), Waverly Brown (Lunenburg and Nottoway) and Ron Norton (Southampton), Berry Wright (District Director, Franklin, VA) and Otis Dailey (District Director, Farmville, Virginia) all former employees of the Farmers Home Administration were intimately connected and in fact were viewed by most, if not all, of the complainants as the problem. Often, I would hear comments to the effect that these USDA employees did have any concern or compassion for their plight or sensitivity to their needs. These comments were made by the complainants noted above as well as others that attempted or were participating in the USDA programs. The line authority for supervision of these was as follows:

LLOYD A. JONES, *State Director*
BERRY WRIGHT, *District Director*
RON NORTON, *County Supervisor*
CHARLES FEATHERSTUN, *County Supervisor*

Note: Mr. Wright had first line supervisory responsibility over Mr. Norton and Mr. Featherstun.

LLOYD A. JONES, *State Director*
JAMES GARNETT, *County Supervisor*

OTIS DAILEY, *District Director* WAVERLY BROWN, *County Supervisor*

Note: Mr. Otis Dailey had first line supervisory responsibility over Mr. Garnett and Mr. Brown.

Please note that Mr. Ron Norton is the only local and/or district employee that is still employed with USDA. Mr. Norton presently works for the Farm Service Agency.

It is my opinion that the poor customer service that I made reference to above given by these employees was the disguise used to enforce the entrenched subtle discrimination practices carried out by them and possibly some of their subordinate employees in administering USDA programs. I am convinced that discriminatory practices become such a way of life with some people that it is difficult, if not impossible, for them to separate right from wrong and cultural acceptance from blatant double and triple standards for people that are different because of some physical feature that has nothing to do with the character of the person or their ability to manage a farming operation. When I met with these farmers it was evident that they were sincere, determined, offended, disappointed, honest and, yet, hopeful for relief.

Because of the cumbersome process that currently exists in the administrative process of civil rights complaints[,] it became increasingly clear to me that it was up to me to take administrative action in resolving the personnel issues in question with regard to performance of their duties and thereby finding a way to utilize the skills of these employees in other areas that would maximize there potential with regard to good customer service. Therefore, some employees were given the option of accepting reassignment offers or being released from duty.

It is also clear to me that the need for a strong civil rights enforcement process is imperative to taking corrective action in eradicating discriminatory practices in Virginia and throughout this country. Although I believe [the] vast majority of the USDA workforce is in fact dedicated to top quality customer service to all, it is also my belief and confirmation that there are employees that do not have the understanding and sensitivity that it takes to be a public servant. I also believe that there are employees who knowingly discriminate against people who are different from them regardless of the basis of that difference whether it is based on physical characteristics or economic conditions. In my effort to carry out an effective outreach program by working with and through the 1890 Land-Grant Institution in Virginia, which is Virginia State University, it was still difficult to gain the full commitment needed from some of the local USDA personnel in providing the technical assistance in developing and carrying out a financial and/or business plan that supported the most effective and efficient use of a customer's resources, particularly for the small producers. Virginia State University and Farmers Home Administration worked hand in hand by seeking and obtaining grants to provide the financial resources for staff personnel that would forge strong partnerships between USDA, VSU and the end-user of the services that we provide. Some USDA employees did display the supportive and positive attitude that was necessary to assist our customers in the most effective and efficient way possible. In carrying out this initiative of reaching the small producer with special focus in southside Virginia, there were approximately 90 farmers that technical assistance specialists from VSU provided support to small producers with special emphasis on reaching minority farmers. I also employed a visiting professor to work for FmHA in assisting farmers with technical support. Mr. Hermon Macklin was the visiting professor for VSU and FmHA. I have attached Mr. Macklin's reports for your review also. His report reveals that there was concern about the small and minority farmer.

I am persuaded by my [own] personal experiences with USDA, as an employee and a manager, that discrimination does, in fact, exist within the ranks of this huge department; and having been on the receiving end of off-color remarks, ethnic jokes, and insensitive behavior towards minorities and women, it is clear to me that the "good ol boy" system is still a force to be reckoned with even though we are on the verge of entering the 21st century with new and exciting opportunities that lie ahead for all of us. Discrimination has no place for any of us now or in the future; it needs to be eradicated now.

I strongly recommend that these cases of discrimination be settled as soon as possible and that any idea of reopening the Willie Crute and John Boyd cases for reinvestigation be quashed. Any effort along those lines would be a clear indication of double jeopardy for the victims of discrimination.

My assessment of these issues areas follows:

A. Discrimination has been proven and a reasonable settlement should proceed with all haste.

B. Civil rights is a people issue and it must be raised to a status of number one priority. It cannot continue to be an afterthought for most and no thought at all for far too many.

C. Diversity in management is critically important in [bringing] about change in the behavior and attitude of employees at all levels of the USDA rank file workforce.

D. Minority farmers need an avenue of support through USDA in spite of traditional policies that were unfriendly to small producers.

E. The small producer issue and minority farmers must be addressed in the farm bill now and in the future. This is such a critical issue because it does in fact lay the footing and the foundation for agriculture and the small producer for the future.

F. The 1890 Land-Grant Institutions must become intimate partners with USDA in our effort to improve our relationship with minority farmers and to encourage women and minorities to be willing to pursue production agriculture as a profession and business that can be viable and support a lifestyle consistent with that of other professions.

G. Recognize that this a major cultural change for many USDA employees and attitudes may only be changed when managers have the authority and flexibility to immediately take appropriate corrective action with insubordinate and insensitive behavior.

H. Immediately reevaluate current policy on the collection of farm accounts to incorporate more flexibility for all rank and file to assess the needs of each borrower on its on merit and not allow the customer to be a victim of a "cookie cutter" approach.

I. Immediately consider developing training for all USDA and non USDA staff that will include cultural diversity, sensitivity, civil rights and Equal Employment Opportunity, *etc.*

In closing, I hope this report has been of some help to you in gaining at least my perspective of the problems that we had in Virginia and how we resolved some of those problems. I would be more than happy to meet with you to discuss any part of this report at your convenience.

LLOYD A. JONES,
State Director.

[ATTACHMENTS]

Quarterly Report

January, February, March 1994

H.L. MACLIN,
Agricultural Management Specialist.

Fifty two (52) one-on-one contacts were made during the last quarter. Sixty four (64) telephone calls (out going and incoming) were made or received during the same period. These contacts were in conjunction with agricultural management and clarification of subject materials or documents received by borrowers from Farmers Home Administration (FmHA). In many cases the print on the documents was so faded out or dull that it was very hard to read much less to understand. This situation should be corrected in the County Supervisor's Office.

The request by two delinquent borrowers have been granted. One was for a loan write-down and buy-out under FmHA instruction 1951–S. The other was for homestead protection and conveyance of farm property to U.S. Government.

I have counseled with one determined applicant to no avail. He wants to overshadow existing financial responsibilities. Mr. Lipscomb contacted me at home by telephone. The call lasted over 2 hours! He feels that he is not being treated fairly by all levels of Farmers Home Administration. This applicant, according to reports from FmHA, has not complied with requests for information, and he is determined to go beyond County, District, and State Administrators in his quest for a loan.

By request, I spent 1 day with a new SDA borrower (J. Smith) in Prince Edward County to discuss some enterprise options for a newly purchased farm financed by Farmers Home Administration. Mr. & Mrs. Smith are employed full-time, and operate other business enterprises on the side for additional income. They are young and the parents of one 4 year old. They have established goals and appear to be hard workers and should be successful in their endeavors. Follow-up counseling is important to assure that this family understand the justification of purchasing additional

tractor and other machinery. Purchasing another tractor was one of Mr. Smith's high priorities. At this stage, other options should be considered before venturing into more indebtedness.

In analyzing the farm situation, pastures need to be improved and fenced. Once this is done the beef cattle herd should be upgraded and numbers adjusted according to the number of acres of pasture land available for grazing. A lot of pine trees were damaged and fallen by the ice storm last winter. They should be cut and marketed as soon as possible. Mr. Smith plans are to harvest the damaged timber himself and market. Maybe this should be his first option.

Theodore Francis, a man involved in a trucking business in North Carolina, is very anxious to establish a beef cattle herd on his one hundred and sixty (160) acre farm in Mecklenburg County. He needs financial assistance to get started with this enterprise. He telephoned my home to receive information about the FmHA SDA program. A visit was made to Mr. Francis' farm on Thursday, March 10. The farm has good potentials for beef cattle or meat goat production. Approximately one hundred (100) plus acres could be developed for pasture. There is a watering and fish pond on the farm which would serve as a source of water for livestock.

I have referred Mr. Francis to our County FmHA Supervisor in Chase City, Virginia for possible financial assistance. On March 16[,] I contacted the County FMHA Supervisor in Chase City to provide an overview of my visit with Mr. Francis. It was indicated that Mr. Francis had contacted the FmHA Office and a conference date scheduled for Tuesday, March 22 was verified.

Participated in Farm Management Staff meetings and several county management workshops. Assisted Farm Management Specialists with FmHA borrowers and non-borrowers with enterprise record keeping. On March 17, visited five farm families in Southampton County to discuss record keeping and farm management programs. I have received some feedback from FmHA County Supervisors commending the work of Farm Management Specialists on how helpful they have been in developing farm and home plans for borrowers. Relationship between borrowers and county supervisors have improved in some counties. There is a better understanding among borrowers about the overall borrowing and payback process, what their options are in certain financial circumstances, how to concur with FmHA requests in many situations, and the need and advantage of keeping farm records for each enterprise.

I have established a linkage between the FmHA Management Specialist at Virginia State University and borrowers I have assisted, so as not to disrupt management assistance in the future.

I have pledged my support to the FmHA Farm Management Project at Virginia State University, and will continue to support the program and assist the Management Specialist with the program.

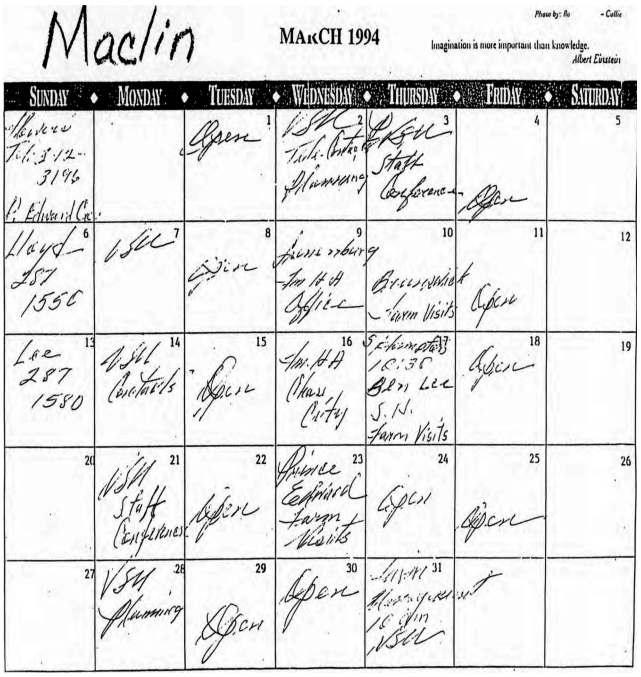
January 26–28[,] I participated in the State Farmer Programs Training Seminar at the Omni Hotel, Newport News, Virginia. The presentations were reviews and updates of farmer programs. Emphasis on Supervisor-Borrower relationship was a fundamental part of the discussions. It was made clear and understood that FmHA County Supervisors must have full knowledge of all details involved in FmHA Farmer Programs before taking any action involving borrowers and loan applicants. For me, the sessions were another plus to enhance the image of FmHA Programs.

During the short period of employment by FmHA I wish to say it has been another learning experience for me. The job was a challenging endeavor working with rural agricultural families who needed assistance and appeared to have had an appreciation for the help rendered through the SDA FmHA Program.

Many thanks to the FmHA State Director for providing this opportunity for me to serve people in the Commonwealth of Virginia. I stand by with an open mind to support and assist Farmers Home Administration whenever called upon in the future.

I wish to extend my appreciation to state and county staff members who have made my job very satisfying, informative and productive. May the program efforts continue to enhance the "Well-Being" of needy families.

Thanks to the Director of Virginia Cooperative Extension and staff for a pleasant, personal environment and working relationship during my stay at the University. I will invariably remember the many kind and helpful program suggestions generated by Virginia Cooperative Extension.



Bi-Monthly Report

November and December, 1993

H.L. MACLIN,
Visiting Professor.

Visitation to FmHA County Offices in Farmville, Chase City, Courtland, and Brunswick to secure SDA updates and general information related to SDA borrowers. It is encouraging to find improvement in loan payments and Farm and Home Plans for 1994. FmHA County Supervisors indicated that the Farm Management Program coming from VSU is having a tremendous impact on borrowers farming systems. Many borrowers are beginning to realize the importance of enterprise record keeping. With the awareness of nonprofit enterprises, borrowers and small farmers should be able to increase farm profits.

Five socially disadvantaged farmers contacted me concerning the SDA program. Some are interested in loans to purchase farms, and others are looking for funds to establish livestock and poultry enterprises. I visited several of these farmers and frequent contacts were made by phone to answer questions or provide information relating to the FmHA program.

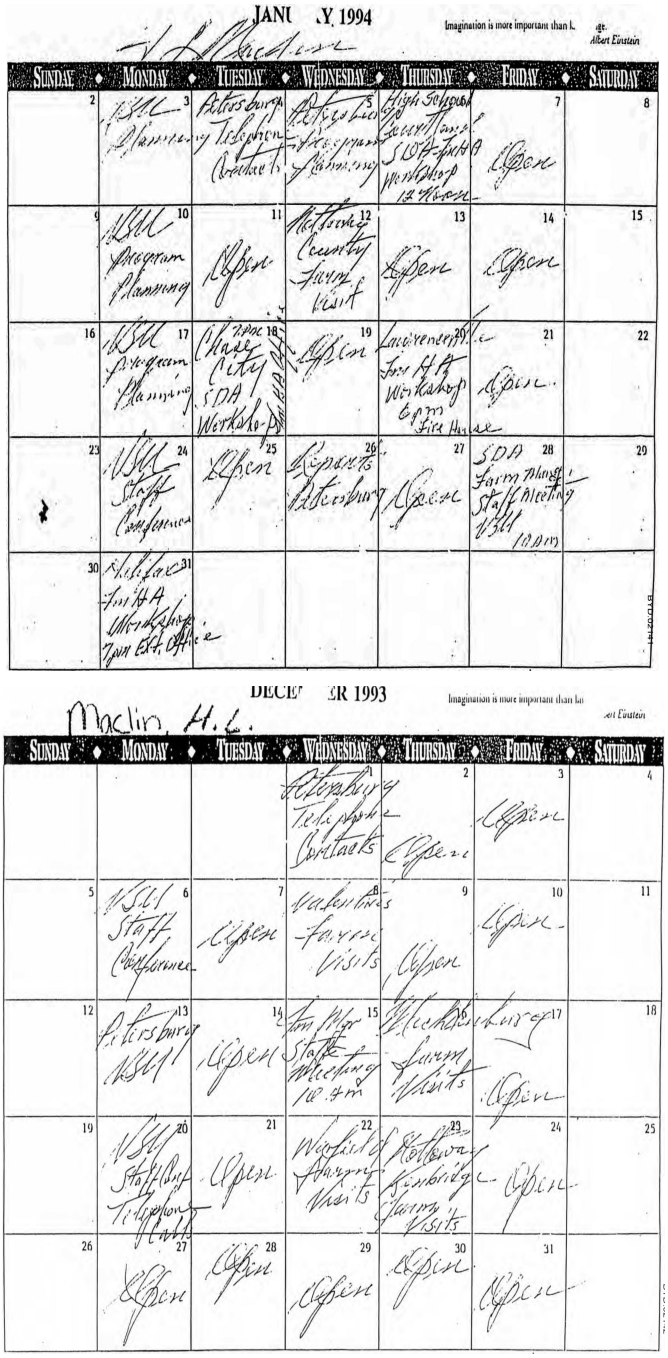
Participated in two farm management meetings at VSU on November 30 and December 15. Places visited in conducting the SDA program were Farmville, Courtland, Cumberland, Chase City, Valentines, Warfield, Dolphin, Baskerville, and Crewe.

Other activities involved maintaining good public relationships with Virginia Cooperative Extension and Virginia State University through participation and involvement in Thanksgiving and Christmas events on the University campus.

Considerable time was spent with the Farm Management Specialist in planning FmHA borrowers workshops to be conducted in January and February of 1994. I took some time out to enjoy the "Holiday Seasons" (Thanksgiving and Christmas).

During the next reporting period I am planning to work closely with farm planning and financial management workshops; also SDA borrowers Farm and Home Plans.

Will attend and participate in the Farmer Program Training January 26–28, 1994.



JANU .Y 1994

Imagination is more important than k... Albert Einstein

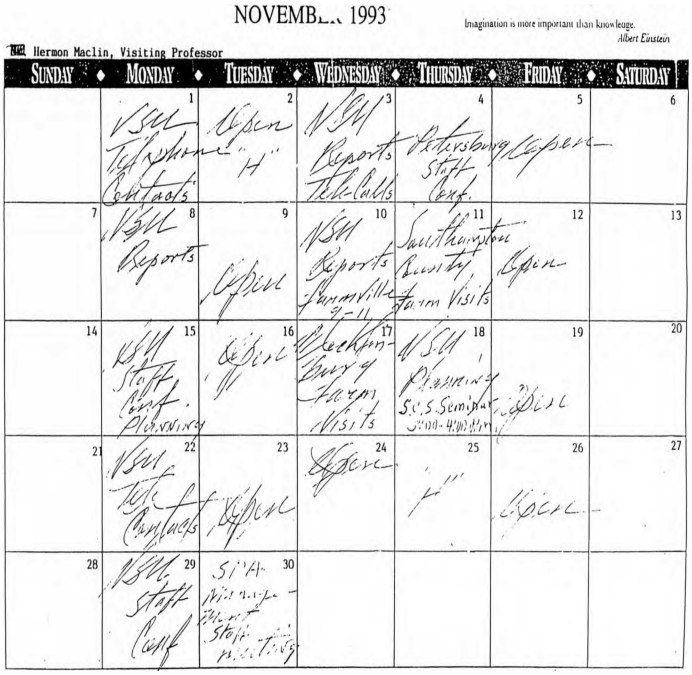
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
2	3 WSU Program Planning	Petersburg Telephone Contacts	5 Petersburg Area Planning	High School Career Days SDA Youth Workshop 12 Noon	7 Open	8
9	10 WSU Program Planning	11 Open	12 Nelsonville Community Farm Visit	13 Open	14 Open	15
16	17 WSU Program Planning	18 Chase City SDA Workshop	19 Open	20 Lawrenceburg Jam HA Workshop 6pm Fire House	21 Open	22
23	24 WSU Staff Conferences	25 Open	26 Cynthiana Petersburg	27 Open	28 SDA Farm Manager Staff Meeting WSU 10 Am	29
30	31 Nelsonville Jam HA Workshop Jam Exh. Office					

DECEMBER 1993

Imagination is more important than kn... Albert Einstein

Maclin, H. L.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1 Petersburg Telephone Contacts	2 Open	3 Open	4
5	6 WSU Staff Conferences	7 Open	8 Walkerton Farm Visits	9 Open	10 Open	11
12	13 Petersburg WSU	14 Open	15 Jam. Mgr. Staff Meeting 10 Am	16 Fleckenstein Farm Visits	17 Open	18
19	20 WSU Staff Telephone Contacts	21 Open	22 Waldorf Farm Visits	23 Nelsonville Lawrenceburg Farm Visits	24 Open	25
26	27 Open	28 Open	29 Open	30 Open	31 Open	



Bi-Monthly Report

September & October, 1993

H.L. MACLIN,
Visiting Professor

Fourteen visits were made during this reporting period to SDA borrowers in Greensville, Lunenburg, Mecklenburg, Southampton, and Brunswick Counties. These visits involved updating correspondence from FmHA, existing status, future plans, and assistance needed. My findings were that many borrowers were faced with low crop yields and poor quality products due to the drought. This situation will lower profits and farm income resulting in less money to pay financial responsibilities. Some are looking at alternative enterprises; and others off-farm employment to supplement farm income. A few are trying to obtain family support so as to put forth efforts to raise money and pay off indebtedness. None want to [lose] their farms.

To soften the needs of the SDA borrowers, there are only a few options based on the current FmHA guidelines. One possibility would be to set up a farming system, including only enterprises that have been proven profitable based on the geographic characteristics of the area. Restructure the loan so that payments will be compatible to the established farming system. "Lease-back payback" is a good option, but it only applies to those borrowers showing a cash flow. What about SDA borrowers not showing a "cash flow" operation? Can a farming system be developed based on available resources that will provide enough farm profit to show cash flow adequate for family living and positive potential of paying off the loan? These are options that can be initiated and closely monitored by FmHA.

Representatives from the USDA FmHA–EDS Office in Alexander, Virginia, I–MO–FU, a co-worker and I visited and interviewed four SDA farmers in Greensville and Brunswick Counties. The interviews were centered around FmHA Programs each participated in and how effective the program was in solving their problems. What were some of their immediate needs and some of the things they thought might help them. The "feed back" as a result of the visits impressed the USDA visitors very much according to comments at the end of the day. We also visited the Brunswick County FmHA Supervisor's office.

Participated in two farm management meetings involving FmHA and CES Farm Management Specialist at VSU. Assisted two Management Specialists in South-

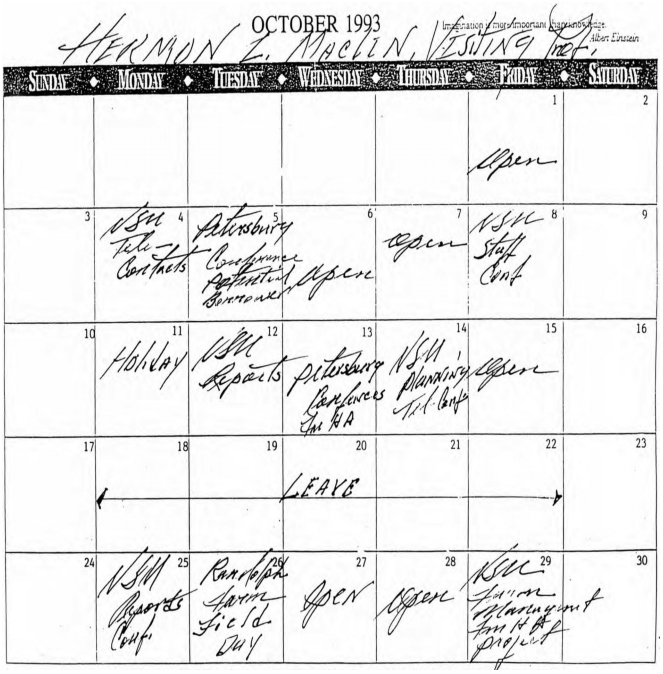
ampton and Mecklenburg Counties with programs dealing with on-farm family financial management.

Attended and participated in a Research Field Day on October 26 at VSU's John Randolph Farm, Petersburg, Virginia. Participated in USDA satellite program September 8 at VSU. Met with the Southside Business/Education Commission in South Boston on September 14, and in Farmville September 15. Also on September 15 visited the FmHA office in Farmville, the Cumberland CES office and FmHA State Office. On September 24 visited FmHA office in Chase City, and two borrowers in Mecklenburg County.

On October 19 attended an Open House at the new location of FmHA and ASCS State Offices in the Culpeper Building, 1606 Santa Rose Road, Richmond, Virginia.

On November 5 attended a "Gala Affair" Agriculture Alumni Banquet at Virginia State University.

Plans are being formulated for Borrowers Workshops to be conducted during the months of December '93, January and February '94. Much time will be devoted working with Management Specialists in planning and executing these programs. Some time will be spent working one-on-one with borrowers requesting assistance.



[August 5, 1992]

July Monthly Report (1992)

H.L. MACLIN,
Visiting Professor.

On July 8, 1992, I visited the last two 1951–S Socially Disadvantaged Borrowers assigned by the State Director (Administrative Notice (AN), Virginia AN No. 540 (1943A) dated December 20, 1991). The purpose of this AN is to provide guidance for the Visiting Professor in an effort to improve the assistance provided to the Socially Disadvantaged Applicants (SDA), particularly those borrowers who are unable to acquire the educational assistance from other sources to interpret correspondence received from FmHA.

The Visiting Professor conducted a total of fifteen conferences with eight SDAs assigned. These SDAs were selected by County FmHA Supervisors in four counties. The Visiting Professor provided timely assistance to these borrowers and made sure they understood all proceedings coming from the FmHA, and their (borrowers) responsibilities during 1951–S processing. The borrowers were informed of their rights

under FmHA regulations. It is the intent that no borrower will lose the family farm merely because of lack of information.

In all cases, borrowers have been very receptive and eager to learn more about FmHA and their individual situation. Most borrowers realize their management short-comings, but their financial predicament do not look encouraging for a future turn-a-round.

On July 8, 1992[,] I visited Sylvester Warren and discussed with him, his daughter, and son some of his related activities and proceedings with FmHA. The following information were revealed.

Sylvester Warren age 67, Courtland, Virginia owns approximately 250 acres of farm and timber land. He grows one hundred acres of peanuts. Of this number, he rents fifty. He also produces two hundred acres of soybeans[,] fifty acres are grown on his farm and one hundred and fifty acres are rented. He received [S]ocial [S]ecurity benefits, the sum of $352.00 monthly. His liabilities from other creditors are Sovern Peanuts Company $40,000; S.P.A. $40,000; and Southern States Corporation $2,500. Indebtedness to Farmers Home Administration was not revealed. He has requested a $14,000 production loan through Farmers Home Administration for the year 1992. He has not paid FmHA anything in several years. He is current in payments with other loaning agencies.

In 1991 twenty six thousand dollar worth of hardwood and pine timber was sold from approximately 100 acres of timberland. Mr. Warren indicated that he and his family cut the trees and paid a trucker to haul logs to the market place. He also stated that the County Supervisor for Farmers Home Administration was aware of the transaction prior to selling the timber. He had held conferences with the County Supervisor and told him he wanted to sell the timber to pay some debts. If this is true, which I have no reason to doubt, the timber was sold in good faith.

Mr. Warren filed for a crop disaster loan in 1991 with ASCS. According to statements from Mr. Warren and Vivian (his daughter) with the right of "Power Attorney", the application was misplaced or left in the office of the ASCS. Since he has refiled for disaster loan with no avail.

Sylvester Warren is the father of 13 children. Three daughters live in his household. One works full time off the farm, one is in tracking partnership business with her brothers, and one helped on the farm. Mr. Warren's wife expired 2 years ago. His education is limited to the first grade. He says he knows how to farm because he grew seed peanuts 10 years for a seed company in North Carolina. Mr. Warren has hired an attorney to handle his business affairs. Telephone [**Redated**].

On July 8, 1992[,] I held a conference with the wife of Clifton Slade, Surry, Virginia. She indicated that her husband Clifton had suffered a stroke and was not able to carry on his farming and other business activities. His nephew, Glen Slade, conducts the farming operation on his four hundred acre farm.

Since visiting the Slade Farm, I contacted Mr. Slade by telephone for additional information. He indicated that his son, Clifton, was assisting him with his business activities.

I received a telephone call from Mr. Lundy, Chief, Farmer Programs, to contact Mr. George E. Morris, Borrower, FmHA, Hwy Rt. 3, Lancaster, Virginia, who had received 1951–S serving actions to give assistance in filing FmHA package with County Supervisor. George E. Morris was contacted by telephone to obtain a statement on his situation. He indicated that he had been misinformed and needed help in dealing with the problem.

On July 16, 1992, I visited Mr. Morris and held a conference with him and his wife. They are retired farmers with an indebtedness of twenty-six hundred dollars ($2,600) owed to FmHA and a four thousand dollar ($4,000) debt with Northern Neck State Bank, Warsaw, Virginia. They rent their farm land for twenty nine hundred dollars ($2,900) annually. Mr. Morris indicated that his son, who lives in the District of Columbia, helps in financial management of the farm. He had received a 1951 Service Action Processing package from the County Supervisors (office at Tappahannock) on June 6, 1992. He asked for assistance in filing package. (His package was completed to be returned to the County's FmHA Office.)

Mr. Morris appeared to have been very disoriented over the 1951-Serving Action process. I indicated to him that he had two options. One, file the application requesting rescheduling of payments; and, two, borrow money and pay off the indebtedness.

Having established credit at the local bank. it appeared to be advantageous for him to borrow the small amount of money ($2,600) owed FmHA and pay off the loan.

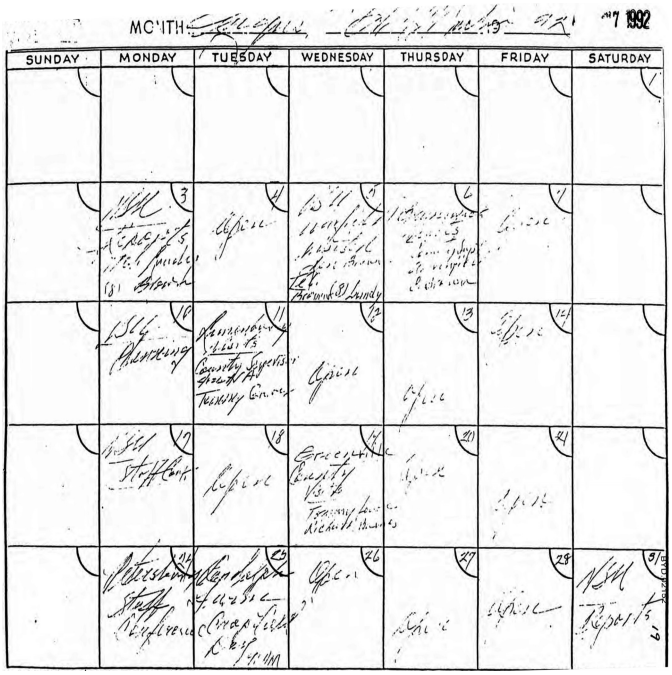
As a follow-up to my visit, Mr. Morris was contacted by telephone to check on his decision. He thanked me for the visit and the assistance rendered in guiding him

to make the decision to borrow the money and pay off the FmHA loan. He also stated that if I ran for President, I would get his vote.

On July 24, 1992, I participated in the Soil Conservation Service (SCS) tour in Prince Edward County. I had the opportunity to observe a Dairy Lot Rotational Management System and a Poultry Dead Bird Litter System. I was particularly interested in the poultry demonstration because a FmHA borrower is applying for a loan to construct a Dead Bird Litter System on his poultry farm. ASCS will pay 75% of the cost when constructed in accordance to specifications.

I visited and discussed the operation of a Poultry Broiler Enterprise System with borrower Steven Faircloth in Prince Edward County.

I had a conference with the Chief Farmer Programs and the State Director on July 27, 1992. Purpose—administrative procedure.



[June 15, 1992]

Virginia State University
P.O. Box 9081
Petersburg, Virginia 23803
June 12, 1992

Dear Friends:

Farm ownership loans for socially disadvantaged persons will be discussed in the Town Hall Building, Bank Street, Waverly, Virginia on June 23, 1992, beginning at 7:30 p.m.

The forum will be conducted by Farmers Home Administration's (FmHA) Management Specialist. Lloyd A. Jones, State Director, FmHA will be our guest speaker, assisted by Herman Lundy, Chief of Farmer Programs—both from the FmHA State Office, Richmond, Virginia.

The discussion will be centered on the need, purpose, and benefits from the SDA program to land owners. There will be 1 hour of allotted time for group discussion on issues related to Farmer's Home Administration programs.

We hope you will attend and participate in these activities. This is your opportunity to meet our State Director and let him know how you feel about the FmHA Program.

Sincerely,

HERMON MACLIN,
Management Specialist FmHA.

Farm Ownership Loans for Disadvantaged Persons

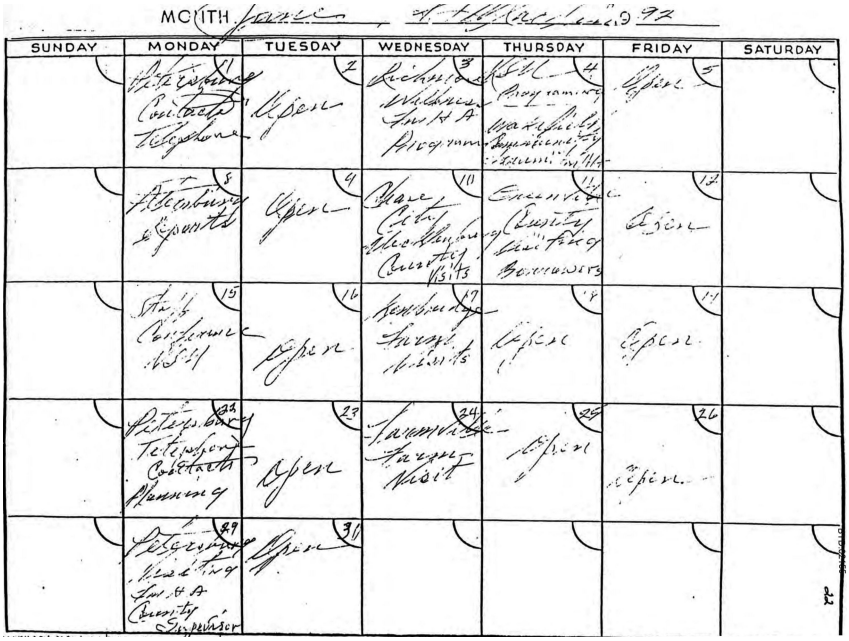
FmHA Forum

June 23, 1992

Town Hall Building
Bank Street
Waverly, Virginia

Agenda

7:00 p.m.	Opening Remarks	H.L. Maclin
	Introduction Speaker	HERMAN LUNDY, *Chief, Farmer Programs*
	Forum Speaker	Lloyd Jones, *State Director,* FmHA
8:00 p.m.	Group Discussion	GLADYS B. HOLLAND, *Coordinator for Discussion*
9:00 p.m.	Closing Comment	H.L. MACLIN



June 12, 1992*
Virginia State University
P.O. Box 9081
Petersburg, Virginia 23803

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*__Editor's note:__ this dated report was duplicated in the submitted documents, it is reproduced herein as received.

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Sincerely,



HERMON MACLIN,
Management Specialist FmHA.

May Monthly Report (1992)
H.L. MACLIN,
Visiting Professor.

On May 7[,] a management conference was held with Linwood Brown at his home. We discussed his past farming program. We noted low tobacco yields and poor quality. His hog operation wasn't paying off, he had a low soybean yield, and he indicated a need for tobacco rotation system. For the last 40 years tobacco has been planted on the same fields year after year. He admitted to management problems.

Linwood agreed to cooperate with CES and FmHA in developing a better crop rotation system and eliminating his hog project. Plans are being developed to rotate his tobacco crop. Tobacco will be the only crop he plans to grow in 1992. He planted pine seedlings during the planting season to supplement his income.

On May 8[,] a visit was made to the farm of Richard Barnes, an SDA borrower. He grows approximately 4,000 lbs of flue-cured tobacco, 50 acres of peanuts, and 120 acres of soybeans. His liabilities to FmHA is $140,000. His setback has been due to disaster crop failure over a period of years without insurance protection. Growing corn was his greatest crop failure. He has no plans for growing more corn.

In talking with Mr. Barnes, he is behind in planting this year due to inadequate production money. FmHA has not processed his production loan (PL) he applied for in October 1991. Richard usually is the first to plant crops in his community. He is very disturbed over the time it is taking to process his PL. While visiting him the County Supervisor telephoned to let him know his application has been processed, and will be mailed to Richmond on Monday, May 11.

Applying chemicals to the land and planting seeds in the soil on time, according to recommendations, are very necessary in maximizing crop yields. Based on the telephone calls I have received this year from borrowers, there is a need for investigation of loan processing systems.

Had the opportunity to meet with USDA staff members and Chief of Farmer Programs on May 13. At this meeting a progress report was made to inform the staff about some of the program activities conducted

Visited borrower Linwood Brown in Brunswick County to discuss his farm plan. It was noted that his tobacco crop was looking very good. He indicated that he needed some more funds to complete his tobacco fertilizer application program. He seems to have exhausted all sources for financial assistance to no avail.

I received several telephone calls from borrowers seeking information on issues affecting their farming business. For some, referrals were made to the District and State Officers. Others were handled by visits or telephone.

I have been in close contact with County, District and State Offices in planning a district meeting for small farmers to be held in Wakefield Town Hall on June 4 at 7:30 p.m.

On [M]ay 26–28, I was in attendance at State Cooperative Extension Service Conference in Charlottesville, Virginia. Time permitted me to discuss rural educational and service programs with members of the CES staff.

June 12, 1992
Virginia State University
P.O. Box 9081

Petersburg, Virginia 23803

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Sincerely,



HERMON MACLIN,
Management Specialist FmHA.

[May 18, 1992]
May 14, 1992

Mr. LLOYD JONES,
State Director,
Farmers Home Administration,
Richmond, Virginia

Dear Dr. Jones:

In consideration of our telephone conversation on May 4, 1991, our FmHA staff has scheduled two (2) SDA community meetings. We are happy and very pleased to know that you will serve as our guest speaker.

The first meeting will be held at **Paul D, Camp Community College, Franklin, Virginia on Tuesday, June 2, 1992, at 7:30 p.m.**

The second meeting will be held in **The Town Hall Building, Bank Street, Waverly, Virginia on Thursday, June 4, 1992, beginning at 7:30 p.m.**

You are familiar with the profile used in previous meeting you participated in. The profile will be the same.

Sincerely,



HERMON L. MACLIN,
FmHA Visiting Professor.

1992

April Monthly Report
H.L. MACLIN,
Visiting Professor.

The month of April began with a trip to Sussex County to visit farmer Phillip Smith, borrower Fm.H.A. and a socially disadvantaged person. Phillip was delinquent in 1991 Fm.H.A. payments and was concerned very much about a production loan applied for in December, 1991. He indicated the "dire need" for the loan to get started with his 1992 farm plan.

Mr. Smith admitted to the management mistakes made in 1991 and what he plans to do about them in 1992. Too much outside labor was one thing that cut into profits. Fuel efficiency was another management problem. His peanut yields were above average. Soybean yields were very low, basically due to droughty conditions.

Smith feels that he can profit in 1992 by his mistakes in 1991. He has adequate seed stock for 1992 planting, which will save thousands of dollars in production cost. He plans to cut labor costs and fuel fifty percent (50%).

Mr. Smith discovered through the Cooperative Extension Services Agent that he was wasting money buying fertilizer and lime that the soil did not need to maximize production. In 1991, fertilizer dealers tested the soils on his farm and recommended fertilizer and lime application. For the year 1992, the Cooperative Extension Service Agent assisted in soil sampling and mailing to laboratory for analysis. Tests were returned indicating no fertilizer and lime application were needed for 1992 crop year.

Smith qualified for disaster payments for his soybean crop. Payments were expected in April, 1992, and will help in overcoming his crop lost in 1991.

Since my visit with Phillip Smith a production loan has been made through a local bank.

On April 9, a conference was held with Donnie Whitfield in the Office of Cooperative Extension Service, Courtland, Virginia. His primary interest is in farming, although he works a full-time job. He grew some crops in 1990 on the family farm. He plans to farm part-time in 1992. He hopes to get a production loan and a (FOL) loan to buy a farm. Donnie expressed whole-heartedly the desire and love for farming. He impressed me as a good candidate for a (FOL) Farm Ownership Loan. Assistance was provided in making application for a production loan for 1992. Other assistance is pending based on locating a desirable farm for sale.

County Supervisor, Ronald Norton, was visited on the same day to discuss Donnie Whitfield's situation and the assigned borrower, Sylvester Warren.

Ron was impressed and highly recommended Donnie as a good potential borrower.

Sylvester Warren, 1951–S, borrower with liabilities outstanding of approximately $175,000.00. Fm.H.A. holding second Deed of Trust on property. Ron asked me to go out and talk with Sylvester to get a "feel" of the situation. I will be scheduling a visit in May.

On April 10, held conference with County Supervisor, Waverly Brown, to get a progress report on Sylvester Holmes, Tommie Graves and Mark Reese. Tommie Graves is in the process of completing application for a loan to buy a 47 acre farm. Holmes and Reese are trying to get commitments from owners of land they wish to purchase. I also had the opportunity to visit with Mrs. Mark Reese for an update on loan application. Assisted Mr. and Mrs. George Hendricks in filling out Farm and Home Plan for 1992.

Attended the State Meeting for Farmers Home Administration, April 13–16, 1992, at the Marriott Motel, Norfolk, Virginia. The program content was designed to update the staff on administrative changes and to create a better relationship among Fm.H.A. personnel. Also, to eliminate existing barriers between borrowers and staff members. In essence, to improve the overall structure and image of Fm.H.A. from top to bottom.

Visited James Garnett, County Supervisor, Mecklenburg County on April 29, 1992. I had a very interesting discussion with Jim concerning SDA borrowers: David Oliver and John Boyd, both are part-time farmers working full-time in Northern, Virginia. These borrowers are delinquent in payments, but (classified as 1951–S) in the last year are making payments and showing considerable progress.

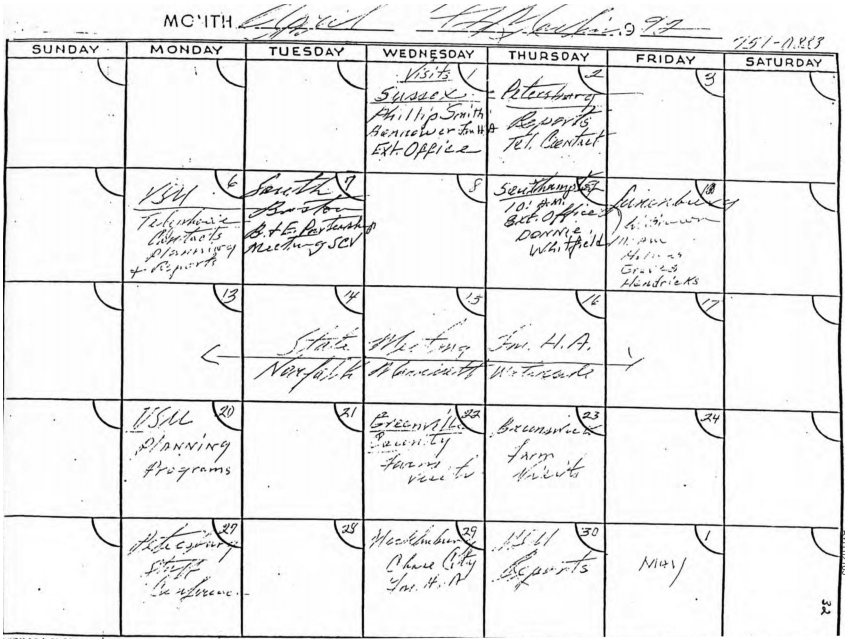
~~**David**~~ ~~**Oliver**~~ **John Boyd** is interested in full-time farming. He discussed his concerns with supervisor and Chief of Farmer Programs.

~~**David**~~ **John** would like to borrow more money to establish a poultry enterprise and build a dwelling for his family. Fm.H.A. is analyzing the potentials of the proposal. No decision at the present date.

Alfred King rents a small amount of tobacco. He is a part-time farmer. He would like to sell his farm to his son, Dennis. If this business deal can be negotiated it would resolve Alfred's liability to Fm.H.A.

James and Shirley Small rented and farmed forty (40) acres in 1990, hoping to purchase the farm in 1991. In 1991, Fm.H.A. made a loan to the Smalls of $85,000 to purchase the farm. It's a one hundred acre farm, 4,000 lbs. tobacco and a dwelling.

The County Supervisor, Garnett, would like to visit and introduce me to these borrowers in May. This should establish a working relationship between SDA borrowers and the visiting professor.



[April 28, 1992]

First Quarter

Reporting Period

January 1–March 31, 1992

H.L. MACLIN,
Visiting Professor.

For the first quarter (1992) a great amount of time was spent visiting by telephone and person to person contacts with County Supervisors, Waverly Brown; Wayne Dail; Charles Featherston, and borrowers located in their jurisdictions. On several occasions conferences were held with the Chief of Farmer programs and the State Director Farmers Home Administration to discuss the issues involved in conducting the Socially Disadvantaged programs and a progress update on some of the day by day activities. Conferences were held with the staff members of Cooperative Extension Services to gather pertinent information on farm enterprise budgets and analysis of farm plans. Whenever necessary, the visiting professor has served in the capacity of removing or preventing obstacles that prevented full participation of those persons in Fm.H.A.'s farm ownership loan program. Have also provided technical assistance to qualified applicants in applying for loans and in developing sound farm and home plans essential for successful farm operation.

L.T. Holmes; Silvester Holmes; Tommie Graves; Mark Reese; and Charles King; Ron Ellis, potential borrowers, were visited and contacted by telephone several times to discuss Operating Loans (OL) and Farm Ownership Loans (FOL) and assisted in developing farm and home plans.

Ron Ellis, by request from County Supervisor Waverly Brown, assisted with developing a feasible Farm and Home Plan. Enterprise options were developed with the cooperation and assistance of Anthony Hankins, Cooperative Extension Services Specialist Alternative Enterprises. Ron had developed a loan budget in excess of $200,000. But in analysis income potentials results showed maximum loan budget of $52,000. No decision has been made to make application for loan through Fm.H.A.

Tommie Graves has filed an application for a loan to purchase a farm. Option papers are being processed. Upon completion, he should qualify for a (FOL) Farm Ownership Loan.

Mark Reese wishes to make application for a FOL. Application is being processed.

Mr. Silvester Holmes, a previous borrower of Fm.H.A. is interested in purchasing adjoining farm consisting of approximately 172 acres. This farm was used primarily for live-stock production (beef cattle) by owner. A considerable amount of land is open, consisting of a very good stand of fescue and grass mixture. No* price has been established for the property estimated at $65,000–$75,000.

Silvester owns 100+ acres of land. The land is basically pasture land. He is a beef cattle producer which consist of 30 brood cows and a [simmental] bull. He has adequate farm equipment for operation and liability free. The family is in the process of building a new house on the farm site (pay as you go). At the present time his gross income from beef cattle ranges from $10,000 to $15,000 annually. His wife grows tobacco with a gross income of an average $10,000 annually.

Holmes was involved in an auto accident a few years back resulting in leaving him physically handicapped. He hires a full-time employee. Holmes manages the farm and performs small farm chores. As soon as the selling price of the farm (172 acres) can be determined, plans are to make application for a loan through Fm.H.A.

On January 27, 1992, Vernon Orrell, Farmer Program Specialist, provided some basic training in working with 1951–S. Servicing Actions borrowers. To inform some of the right of appeal and other essentials involved in the process.

State Director, Lloyd A. Jones, requested the visiting professor to visit county supervisors and assist in communicating with borrowers receiving 1951–S. Servicing Actions.

Visits and conferences were held with the following County Supervisors to get an update on borrower assigned. They were:

a. Charles Featherston
b. Waverly Brown
c. Ronald Norton; also Barry Wright
d. George Haskett
e. Wayne Dail, by phone

Charles Featherston, County Supervisor, indicated assistance needed by the following borrowers:

Richard Barnes (Greenville County)

Grows tobacco and peanuts. Management problem expenses too high for some reasons. He has reduced the size on acreage but expenses remain the same. Some *question??*

Visited Steven Faircloth on March 24, 1992[,] after receiving a telephone call asking for help in management. Also discussed with Wayne Dail, County Supervisor, Steven's situation before making the visit.

Steven has taken Chapter 7. He stated that this was a must in order to clear some of his liabilities. Now he feels secure enough to take care of responsibilities for his poultry (Broiler) enterprise. He stated that he was current in his payments to Fm.H.A.

He was desirous of installing nipple drinkers in the poultry house and building disposal facilities for his chickens. He is filing application for same with Fm.H.A.

An invitation was extended [to] me to attend the Annual Association Meeting the evening of March 24, 1992 in Farmville. In discussions with the Chairman and other members it was indicated that nipple drinkers and disposal facilities will be required by all poultry producers in the near future.

Discussed borrower, Steven Faircloth's poultry enterprise with Wayne Dail. Also, discussed the matter with District Supervisor, Otis Daily. The option of installing nipple drinkers and disposal facilities requested by Faircloth will be required by the Tyson Company in the near future is my understanding.

Participated in a forestry field day and tour sponsored by Cooperative Extension Service, VSU, March 7, 1992. Served on the Governor's appointed "Business/Education Partnership Commission" for Southside Virginia, and participated in two membership meetings.

Attended a swine Contract Operational Meeting in Brunswick County on March 13, 1992 sponsored by Cooperative Extension Services. The meeting involved Carrolls Foods of Virginia Contract Swine Production, an agreement between producer (farmer) and Carrolls Foods of Virginia to grow feeder pigs or/and finished hogs on a percentage contract basis. The company furnishing animal feed and transportation to producer and market. The farmer providing the facility, equipment, labor and management.

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*__Editor's note:__ the submission included an out of sequence set of hand-numbered pages (34–36). They have been published in sequence herein.

Contacted the State Office (Herman Lundy) to inform management process used by the visiting professor in processing borrowers' proposals. Managing the potential borrower before loan application, defining resources, liabilities, income, enterprise, potential and capabilities of pay back.

Linwood Brown

Crop yield very low (tobacco). Quality of tobacco poor, preparing for market poor. Swine production average pigs per sow five per year. He purchases all of his feed. Selling hogs off butchering pole.

Need to improve crop rotation. Tobacco behind tobacco for many years.

Calvin Brown

Trying to lease farm and buy back. Too much of a gentleman farmer. Cannot do much without people around.

Frank Webb and Tommy Lowe in a lease back-pay-back situation. Need assistance in management.

Visited with Mr. Waverly Brown, County Supervisor, to get an update on the status of George Hendricks, Kenbridge, Virginia. He indicated: Limited in educational (4th) abilities.

Assistance Needed:

- Making farm and home plan
- Record keeping (problem area)
- Swine Operation (very poor)
- Flue-cured tobacco (average)

Visited his farm and planned tentative dates for one-on-one conference. Also, visited with Mrs. Dorothy Graves in making application for loan to purchase 47 acre farm.

Visited with borrowers, Calvin Brown; Linwood Brown; George Hendricks, Jr.[;] and Clifton Slade.

Visited an assigned borrower to update his farm and house plan, and to pass on a few management practices.

Discussed, by phone, a complaint made by a borrower in Greenville County (Charles King). The complaint involved an application for a Fm.H.A. Guaranteed Loan to install an automatic nesting system for layers (hens). According to King and his wife, the application was filed in November, 1991. I received the call in March, 1992.

The visiting professor spent considerable time with Waverly Brown, County Supervisor, in conference with Tommie and Dorothy Graves, and Mark Reese and his wife. Both families are interested in purchasing additional land. We also visited Ron Ellis' farm to identify resources.

[March 12, 1992]

March 9, 1992

Mr. HERMAN LUNDY,
Chief, Farmer Programs Division,
Richmond, Virginia

Dear Mr. Lundy,

The enclosed Farm Plan supersedes plan submitted by Mr. Ron Ellis in January 1992. Specialist Anthony Hankins, (CES) Alternative Agriculture and I assisted Mr. Ellis in developing a revised plan that would be feasible and logical to his status.

Mr. Ellis wasn't too pleased over the revised proposal. He plans to meet with Mr. Waverly Brown, County Supervisor FmHA, Kenbridge, Virginia to further discuss his intentions.

We feel that fifty one thousands two hundred dollars would be maximum liability in the case of Mr. Ron Ellis, with this we recommend off farm employment.

Sincerely,



HERMON L. MACLIN,
Visiting Professor.

[Enclosure] *

A Farm Loan Application to Establish Commercial Production of Pastured Poultry on my Farm in Lunenburg County

Submitted to Farmers Home Administration

By: Ronald J. Ellis, 1928 Berkeley Avenue, Petersburg, VA 23805, Phone—[**Redacted**]

Introduction

New meat products being sold from several commercial farms in Virginia come from "pastured poultry" in the form of processed broiler and roaster chickens. "Pastured poultry" refers to chickens that are fed and grown outside within portable pens on clean grass pastures. Pastured poultry are often also called "range poultry." These poultry products offer consumers an alternative to the broiler and roaster chickens grown within confinement buildings by farmers under contract with large vertically-integrated poultry companies. Many consumers are glad to have an alternative to the poultry products offered for sale at supermarkets because they have concerns about the safety of the big brand name poultry products. A great deal of media attention on the vertically-integrated poultry industry has made consumers worried about cleanliness, *[S]almonella* and adulterants. Consumers have learned that chickens raised within $^{3}/_{4}'^{2}$ of living space must be fed high levels of vitamins and antibiotics to grow. They do not like the images seen on television of the huge automated poultry processing plants operated by the big companies. Those processing plants do not appear to be clean and wholesome.

The vertically-integrated poultry companies have recently caused financial hardship for a number of Virginia farmers. Farmers who borrow money to build confinement buildings under contract arrangement with the big companies must face the risk that their company will move operations away from them at some point in the future. This has occurred at several locations in Virginia in recent years. The farmer is left with big buildings, big debts and no markets for any broilers they may raise.

Pastured poultry are sold at retail prices directly to consumers and at wholesale prices to restaurants and health food stores. On farm processing assures cleanliness and same day freshness of all poultry sold. Pastured birds offer a completely different meat to the consumer than the big broiler house birds.

The flavor is different. Many restaurant chefs prefer to serve pastured poultry or "range poultry" to their customers because they believe that the flavor is superior to that of factory floor chickens. Prices paid for pastured poultry are normally twice as high as prices paid for regular broilers ($1.00 per lb. *versus* $.50 per lb.)

Commercial production of pastured poultry has proven to be a profitable enterprise for family farm operations. The best person to contact to discuss the viability of this enterprise is Mr. Joel Salatin, owner of Polyface Farm Inc., near Staunton, Virginia. Mr. Salatin has been producing and marketing pastured poultry from his farm since 1965. He developed the flock feeding and management system that will be used on my farm in Lunenburg County. (see attached Pastured Poultry Manual).**

Mr. Salatin may be reached at [**Redacted**].

Objectives

To establish commercial production of 20,000 broiler and roaster chickens annually on my 84.5 acre farm in Lunenburg County.

To process and market 20,000 broiler and roaster chickens annually from my 84.5 acre farm in Lunenburg County.

Method

In April, May and June of 1992, construct 100 floorless cages 10′ by 12′ by 2′ high.

In July of 1992, construct a brooder house with heat lamps for raising baby chicks. Upon completion, purchase 11,000 chicks and begin raising them.

On August 1, 1992, stock 10,000 pullets in the 100 portable pens and grow them out until mid-October. Market these chickens.

In mid-April of 1993, stock 10,000 pullets in the 100 portable pens and grow them out until the end of June. Process and market these chickens.

In early July of 1993, stock 10,000 pullets in the 100 portable pens and grow them out until October. Process and market these chickens.

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* **Editor's note:** the submission included an out of sequence set of hand-numbered pages (51–53). They have been published in sequence herein.

** **Editor's note:** the attachment referenced was not included as part of Mr. Boyd's submission.

Continue to produce and market two crops of broiler and roaster chickens each year (20,000 birds).

Budget 1992	
Portable pen materials	$10,000
Purchased feeds	4,000
Scalders and pickers	2,000
Brooder house materials	800
Baby chicks (11,000)	2,500
Hired labor	2,000
Utilities	2,000
Transportation	1,500
Total costs	$25,000
Gross income from sale of 10,000 roaster chickens	$20,000
Net income for 1992	(−$5,600)
Budget 1993	
Purchased feeds	$9,600
Baby chicks (22,000)	5,000
Hired labor	4,000
Utilities	4,000
Transportation	3,000
Total costs	$25,600
Gross income from sale of 20,000 roaster chickens	$40,000
Net income for 1993	$14,400
Loan request from Farmer's Home Administration to establish commercial production of pastured poultry on my farm in Lunenburg County in 1992 and 1993:	$51,200

Semi-Annual Report

July–December 1991

H.L. MACLIN,
Visiting Professor

In the first semi-annual report it was clearly stated that the issues affecting socially disadvantage[d] people were: educational, financial and managerial which indicate the necessity of a training and management system in coherence with the financial assistance rendered to borrowers by Farmers Home Administration. With facts in the proper prospective our program initiative for the last 6 months were designed to provide some assistance to SDA and SDP that would enhance profitability and success. Also the wise choice of owning or purchasing land whenever feasible.

In an effort to provide assistance to the socially disadvantage[d] people the visiting professor visited twenty-eight farm families, telephoned fifty-four people to plan, execute or evaluate the program and conducted/attended fourteen staff conference. Three multi-county (SDP) meetings were conducted involving state staff program support. Approximately sixty-eight people attended these meetings.

For self improvement, attended three agricultural field days, participated in two training meetings and three State Staff Meetings. In developing better public relationship the agent serves on the Virginia Governor's (21 member) Business/Education Partnership Commission for Southside Virginia. Three meetings were held during this reporting period, in which the visiting professor attended and participated. The State Director and Chief of Farmers Program (FmHA) were personally involved and provided administrative leadership in administering the program.

Socially Disadvantaged

In analyzing the restraints of the Socially Disadvantaged as to the successful endeavors undertaken, there is a tremendous need for training and the basic knowledge for success.

To alleviate and improve upon some of the present borrow[er] situation, one-on-one contacts by the visiting professor and community meetings were conducted to establish a relationship between SDA and the State Administration Lenders. So far three meetings were held involving Farmers Home Administration personnel. The first meeting was held in Farmville, Virginia approximately eighteen Socially Dis-

advantaged people were in attendance along with the County Supervisor, Wayne Dail. Representing the State Office were Ada Marshall and Herman Lundy, Chief of Farmer Programs. A brief overview of the purpose of the meeting was presented by Wayne Dail, County Supervisor FHA. The stated essence was to inform and update people on issues affecting the Socially Disadvantage[d] and Farmers Home Administration. The role of the visiting professor was described as an active link between the S.D.P. and the Chief of Farmer Programs and State Director, as to the issues affecting the Socially Disadvantaged. The Chief of Farmer Programs, Herman Lundy, outlined and discussed in details the background for the establishment of funds for farm ownership loans to eligible members of Socially Disadvantaged groups who will operate family-size farms, and the benefits anticipated as a result of the program.

The three key points in his discussion, emphasized very clearly by Mr. Lundy: intent of FmHA:

- Make funds and farmland in the possession of FmHA more available to socially disadvantaged persons.
- Discover and remove obstacles that prevent the full participation of those persons in FmHA farm ownership loan programs.
- Provide necessary technical assistance to qualified applicants in applying for the loans and in developing the sound farm management practices essential for success in their farming operations.

Ada Marshall, Coordinator Civil Rights expressed her concern of equal treatment for all borrowers and their rights of appeal. Group discussion followed each presentation. Based on the reaction of the people information presented was informative and appreciative.

On the evening of October 29, and December 18, 1991 starting at 7:30 p.m. a second and third meeting were held in Brunswick and Lunenburg for the socially disadvantage[d] people to inform and develop a closer relationship between the social disadvantaged people and the State Director, Lloyd Jones, from the point-of-view of FmHA program design. These meetings were well attended. Representatives from the State, Lloyd Jones and Herman Lundy; from the District Offices, Berry Wright and Otis Dailey; representing the Counties Office were Supervisors Charles Featherstun, Waverly Brown, and Wayne Dail. Dr. Thomas Law, President, St. Paul's College, Lawrenceville, Virginia, represented the College's while Gladys Holland, CES VSU, Richard Booker, Assistant Director, CES VSU and Richard Cagan, CES, CRD VSU were representatives of Virginia State University, Petersburg, Va.

Herman Lundy, Chief of Farmer Programs described the purpose of the meetings as a method of establishing better understanding of Farmer programs and the State Directors's office.

It is very important for State FmHA staff and the socially disadvantage[d] to be able to relate with each other and discuss issues involving FmHA and the people directly affected by the program, concluded Mr. Lundy.

Lloyd Jones, State Director, was the guest speaker at both meetings. He started off with creating a positive attitude of FmHA by informing the people of his concerns of issues affecting them and their concerns were problems that concerns him and the entire staff of Farmers Home Administration. Mr. Jones discussion was indicative of bringing the people and the staff of Farmers Home Administration closer together in dialogue, positive thinking and affirmative action. Mr. Jones left no doubt in anyone['s] mind of his sincerity in the well being of the socially disadvantage[d] people. He open the doors to the State Office in welcoming the people to telephone or visit for a conference at anytime or whenever an issue can not be resolved on a county or district level. Jones sensitivity of the people problem projected over the audience like a beacon light. The people could feel his concerns and reacted in response.

Mr. Jones was seriously concerned by the [loss] of land by SDP and the need for more people to re-think their priorities. The meetings were designed to accommodate a low profile where everybody felt very much [a part] of the discussion. The discussion periods were extended beyond allotted time in order to give everybody the opportunity to participate.

The need for a training system for borrowers and county FmHA board members were emphasized during the meeting. Farm management and closer check on SDA resources, capabilities, and past farming history were mentioned as very important components for successful farming enterprise.

These meetings provided an opportunity for people to meet the State Director and ask question[s] concerning FmHA programs. A total of sixty eight people participated in these meetings conducted by the visiting professor. These conducted meet-

ings were the beginning of a series of group meetings planned in the future. We can assume that the results of these group meetings strongly emphasizes the importance of initiating educational assistance programs for S.D.P. and FmHA personnel. The need for Cooperative Extension Service assistance in Farm Management; Budgeting; Enterprise selections, alternative enterprises; and in developing a feasible family farm.

The visiting professor attended and participated in a "Small Farmer Training Assistance Project Meeting" in Washington, D.C., September 18–20, 1991. Representatives from several states participated in the program sponsored by the National FmHA Administration Office. An exchange of ideas and methods used to assist the socially disadvantaged were presented by organized discussion groups. The meeting resulted in providing a vast number of approaches to the problems of socially disadvantage[d] people. Also, provided some successful examples of assistance to family farmers.

Highlights of Small Farmer Conference—September 18–20, 1991 Washington, D.C.

Overview of Nine States Programs

Effective Teaching, Training and Success

1. One-on-one technical and financial assistance
   - Technical assistance to include farm, home and goals of family
   - Estate planning for Black land loss and property transfer between generations and need for wills
   - FmHA borrowers only to outreach primarily
2. 1890 project Cooperative Extension Program (CESP) staff to attend FmHA training meetings to remain abreast of changes, issues and reverse.
3. How to set up SDA project—joint decision within the State between CEP and FmHA to address the need of State and county, *i.e.,* technical assistance to FmHA borrowers to emphasize SDA outreach.
4. How to get farmers more involved—let the farmer pick the time and place, build around issues or current problems, build around social activities or groups, *i.e.,* churches, friends on technical tours (civic organizations and public assemblies).
5. Develop materials more suitable to that clientele, *i.e.,* FmHA record book is too difficult choose another, *i.e.,* CES " ", recipe budget box.
6. Develop a student program to create positive image for agriculture High school, 1st grade-up, film on Hi-Tech harvest, tours to campus, *etc.*
7. The Council of 1890 Presidents and interested farm groups should put pressure (lobby) to appropriate the $10M that has been authorized.
8. Problems if continuity of program is disrupted.

To Assure Delivery of Programs and Training

FmHA should be responsible for adequate ongoing training of SDA employees:

a. 1890 Institution develop news articles, pamphlets, radio and TV programs for delivery to target clientele; must be reviewed and approved by FmHA for technical accuracy prior to delivery to news media and public.

   The 1890 extension personnel working with the SDA Project are provided orientation training by the 1890 and 1862 Land-Grant Institutional personnel and FmHA State Office.

   During the year follow-up training should be provided by FmHA and technical subject matter specialists from the Extension Service.

Cooperative Agreement with 1890—FmHA

1. Model document
   - good
   - allows for flexibility
2. Paperwork/Reporting
   - standardized
   - minimized
3. Evaluation Criteria
   - quantifiable and realistic for Part I?

- Part II criteria = more important

4. Success/Continuity
   - If project is successful, funding for following cycle should be automatic (18 months = relatively short)
   - 1890s' responsibilities for continuity
   - strengthening 1890s' programs

FmHA Loan Servicing/Processing

FmHA Supervisors should use all available agencies to assist in coming up with a suitable farm plan. The potential borrower can go to the Agricultural College, Extension Service, to assist with initial preparation of a farm plan. FmHA County Supervisors should assist in imputing data once received from the borrower. County Supervisors must adhere to the statutory requirement for 30 day and 60 day milestones for processing and notification of loan applications. A piecemeal approach on the part of the borrower in disclosing debts and FmHA notification incomplete request will delay processing.

Assessment of Applicant Potential for Success

Investment—Other resources

Grantee should work with individuals who have a potential for success. 1890 county extension representatives should screen applicants, their resources and investments and their capability for success before bringing them to the FmHA Office. Those who are poor candidates for success should be told.

The 1890 Institution needs to be an active participant in County, District and State FAC meetings with other public and private institutions and entities invited at local level as appropriate.

Continuing Extending Projects To Avoid Breaks in Service

FmHA should:

Invite proposals and extensions in a timely manner with specific timeframes.

Statement: Need for Cooperatives

1. Small farmers should be encouraged and assisted to assemble themselves in production units/cooperative in order to meet market demand, receive greater return on investments, share cost of cooling, grading, packing and transporting products to market.
2. USDA should assist cooperatives/production units with mechanism for financing of processing and marketing facilities by direct loans if guaranteed loans are unavailable.
3. Hold small farm conference on alternative farm enterprise. Include representative from successful cooperative presenters at conference.

   In regard to funding for alternative farm enterprise:

   a. The Administrator should clarify and strengthen the policy statement on financing alternative agriculture enterprise.

Recruiting and Retaining Students

Recruitment can begin with an approach to careers in agriculture education at an early age, teaching students about the wide array of jobs related to agriculture.

Retention efforts may be tied to productive internships and cooperative experiences plus tutorial programs and exposure to other agency staff as occasional teachers using innovative teaching techniques and field trips.

All 42 USDA agencies should be involved in recruitment for interns, cooperative education and other types of employment opportunities at both high school and college level.

How Can We Get More Dollars for Alternative Enterprises

Involve all agencies to make a complete analysis of farm potential by looking at alternative enterprises that are profitable. County Supervisors should provide guidance as well as the Extension Service.

1. Procedures and 1890 representatives need to do a better job of developing crop budgets, marketing plans and so forth (financial data).
2. Training FmHA employees on financing alternative crops.
3. Involving lenders (sell alternative crops).

Evaluation Summary Statement

In evaluating the program efforts, one must conclude that the socially disadvantaged people have been denied opportunities to fully participate in a bias society. This situation had a degenerating effect on the economics, educational and social development of socially disadvantaged people. To the extent of [loss] of land ownership, economic depression, deprivation of job opportunities and inferior educational systems.

Land loss among Blacks continue to climb above the average of all ethnic groups. There are a few purchases but land losses are much greater than the gains. The trend for Black land ownership look bleak. Economic change could reverse the land ownership trend among (SDP) socially disadvantage[d] people. The future will tell.

In conducting program efforts, emphasis on economic development through better resource management, educational training and self esteem were priorities in program execution. Group community meetings one-on-one contacts, mass media, bulletins, letters, telecommunication and conference were the methods employed to upgrade socially disadvantaged people.

Although the program initiatives had some impact on the well being of (SDP) socially disadvantage[d] people there still remains a wide economic and social gap between ethnic groups in the state of Virginia.

[December 13, 1991]

Virginia State University
P.O. Box 540
Petersburg, Virginia 23803

9 December 1991

Dear Friends:

Farm ownership loans for socially disadvantaged persons will be discussed in the Agriculture Service Building, 116 Commerce Street, Kenbridge, Virginia on December 18, beginning at 7:00 p.m.

The forum will be conducted by Farmers Home Administration's Management Specialist. Lloyd A. Jones, State Director, FmHA, will be our guest speaker, assisted by Herman Lundy, Chief of Farmer Programs—both from the FmHA State Office, Richmond, Virginia.

The discussion will be centered on the need, purpose, and benefits from the SDA program to land owners. There will be 1 hour of allotted time for group discussion on issues related to Farmers Home Administration programs.

We hope you will attend and participate in these activities. This is your opportunity to meet our State Director and let him know how you feel about the FmHA Program.

Sincerely,



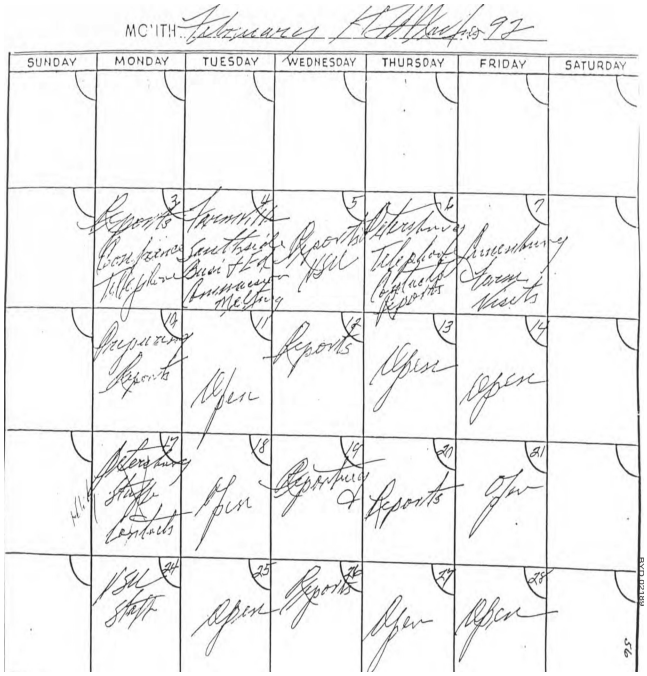
HERMON MACLIN,
Management Specialist, FmHA

MC'ITH March, 1992

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	2 VSH Contacts w. Brown B. Wright Planning	3	4 Brunswick Charles Featherston Records update SOA	5 Petersburg Reports	6 Greenville Visit SOA	7 Field Day VSH
	9 OPEN	10 OPEN	11 VSH Report Telephone	12 Amelia Farm Visits Holmes Grain Bins	13 Brunswick L. Brown C. Brown	MAR 06 1992
	16 VSH Conference	17	18 Farmville Longwood College Business Ed. Conference	19 Surry Farm H.A. Farm Visit CES.	20	
	23 Petersburg Contacts Reports	24	25 Southampton Farm. H.A.	26 Kenbridge Farm. H. A. Farm Visits	27	
	30 VSH Staff Conference	31				

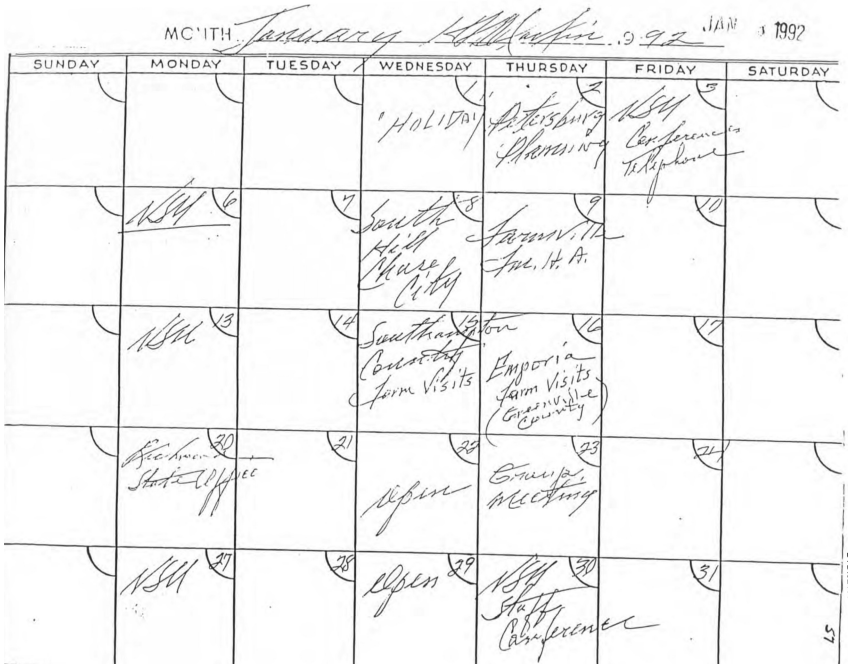
MC'ITH February, 1992

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	3 Reports Conferences Telephone	4 Farmville Southside Bus. Ed. Assoc. Meeting	5 Reports VSH	6 Petersburg Telephone Contacts Reports	7 Prince Edward Farm Visits	
	10 Preparing Reports	11 Open	12 Reports	13 Open	14 Open	
	17 Petersburg Staff Conferences	18 Open	19 Reports	20 Reports	21 Open	
	24 VSH Staff	25 Open	26 Reports	27 Open	28 Open	



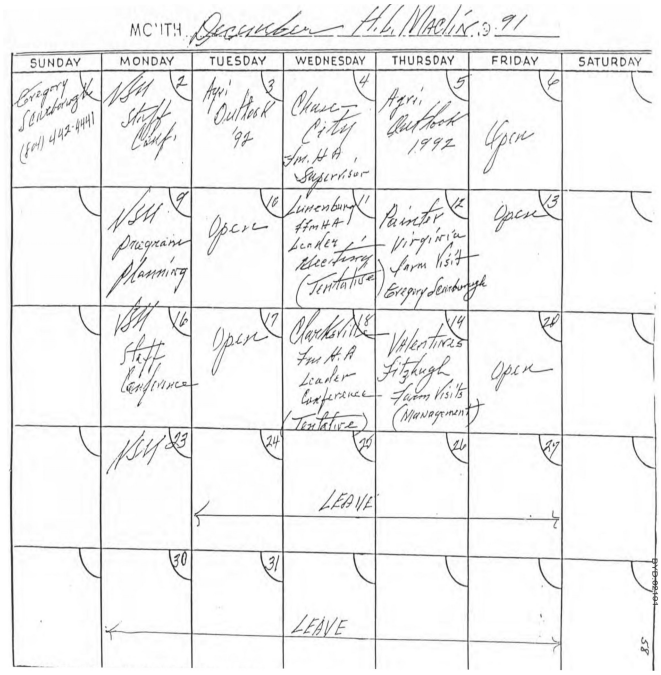
MO'ITH January 1992

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	3 Reports Conferences Telephone	4 Farmville Southside Annual Meeting	5 Reports VSU	6 Petersburg Telephone Contacts Reports	7 Prince Edward Farm Visits	
	10 Preparing Reports	11 Open	12 Reports	13 Open	14 Open	
	17 Petersburg Staff Conferences	18 Open	19 Reports	20 Reports	21 Open	
	24 VSU Staff	25 Open	26 Reports	27 Open	28 Open	



MO'ITH January 1992 JAN 3 1992

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1 HOLIDAY	2 Petersburg Planning	3 VSU Conferences Telephone	
	6 VSU	7	8 South Hill Nurse City	9 Farmville Fne. H. A.	10	
	13 VSU	14	15 Southside Community Farm Visits	16 Emporia Farm Visits Greensville County	17	
	20 Richmond State Office	21	22 Open	23 Group Meeting	24	
	27 VSU	28	29 Open	30 VSU Staff Conference	31	



[October 17, 1991]

Virginia State University
P.O. Box 540

Petersburg, Virginia 23803

16 October 1991

Dear Friends:

Farm ownership loans for socially disadvantaged persons will be discussed on October 29 beginning at 7:00 p.m. in the Government Building located on Tobacco Street, Lawrenceville, Virginia.

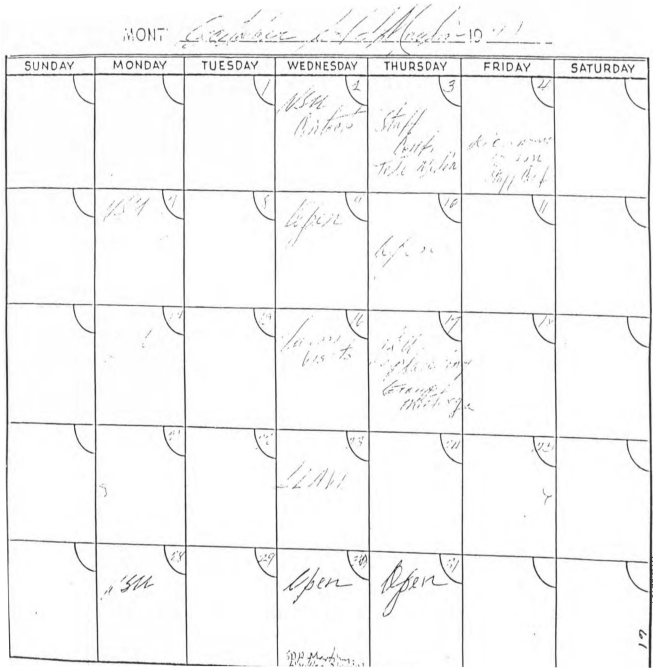
The forum will be conducted by Farmers Home Administration's Management Specialist. Lloyd A. Jones, State Director, FmHA, will be our guest speaker, assisted by Herman Lundy, Chief of Farmer Programs—both from the FmHA State Office, Richmond, Virginia.

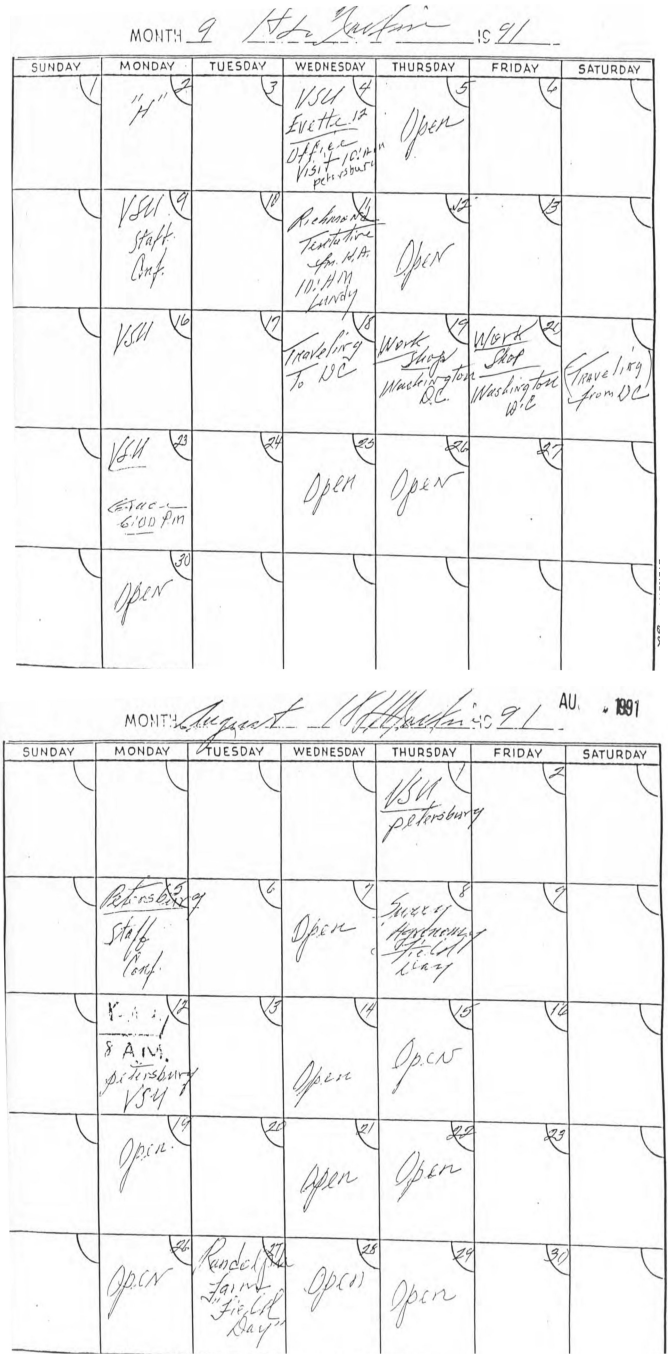
The discussion will be centered on the need, purpose, and benefits from the SDA program to land owners. There will be 1 hour of allotted time for group discussion on issues related to Farmers Home Administration programs.

We hope you will attend and participate in these activities. This is your opportunity to meet our State Director and let him know how you feel about the FmHA Program.

Sincerely,

HERMON MACLIN,
Management Specialist, FmHA





MONTH 9 [illegible] 19 91

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	2 "H"	3	4 VSU Evette 12 Office VSU + 10:00 Petersburg	5 Open	6	
	9 VSU Staff Conf.	10	11 Richmond Testimony for M.A. 10:00 AM Lunch	12 Open	13	
	16 VSU	17	18 Traveling To DC	19 Work Shop Washington D.C.	20 Work Shop Washington D.C.	Traveling from DC
	23 VSU Exec. 6:00 PM	24	25 Open	26 Open	27	
	30 Open					

MONTH August [illegible] 19 91 AU[illegible] 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1 VSU petersburg	2	
	5 Petersburg Staff Conf.	6	7 Open	8 Surrey Agriculture Office Library	9	
	12 [illegible] 8 A.M. petersburg VSU	13	14 Open	15 Open	16	
	19 Open	20	21 Open	22 Open	23	
	26 Open	27 Randolph Farm Field Day	28 Open	29 Open	30	

[July 16, 1991]

Semi-Annual Report

Farmers Home Administration
Virginia State University
Petersburg, Virginia

June 30, 1991

HERMON L. MACLIN,
(Visiting Professor).

The visiting professor serves as an adviser to the State Director in matters concerning Black-owned farms and other socially disadvantaged borrowers. Efforts are made to enhance management of socially disadvantaged farm families and to establish a closer rapport with Virginia State University.

In an effort to focus attention on objectives of the Socially Disadvantaged Program, the visiting professor performed a varied number of activities. Seventy eight (78) days were spent during the months of January through June 1991 conducting the program.

Special emphasis was placed on locating and assisting socially disadvantaged families who may qualify for FmHA assistance; to inform and advise the general public and special interest groups about available FmHA agricultural assistance; to identify resources available to SDA; and to make recommendations for alternative farm enterprises which would enhance profitability.

Socially Disadvantaged Program (SDA) objectives were presented to members of the NAACP in Brunswick and Mecklenburg Counties. Programs were duplicated, in Charlotte and Halifax Counties, February 20 and 28 respectively to members of the County Assembly. Total attendance at the meetings was 140. A workshop was conducted in Farmville, Va on March 20, 1991.

Approximately 15 people attended this activity in the ASCS Conference Room. The Chief, Farmer Programs and the Civil Rights Coordinator made presentations. Mr. Herman Lundy, Chief, Farmer Programs, outlined the procedures and requirements for obtaining SDA loans, what is required from the borrowers and what to expect from Farmers Home Administration (FmHA). Ms. Ava Marshall, Civil Rights Coordinator expressed her concern about equality of treatment for all borrowers as provided by the Civil Rights Act, and your right to participate.

The duties of the visiting professor and the program objectives were defined in common terms to clarify some of the terminology. For example there were questions concerning the eligibility for a SDA loan. Can an individual receive a loan on the basis of sufficient education or training without having farming experience (within 1 year of the last 5)? This question needs further clarification so as to leave no doubt in anyone's mind on the matter of qualification for borrowers.

Wayne Dail, County Supervisor, FmHA, extended an invitation and encouraged borrowers to visit his office for assistance at anytime. Cooperative Extension Service (CES) was represented at the meeting by Kylor Reed, Agent, and Warren Scott, Technician. The participants expressed their appreciation for receiving a better understanding of the SDA and FmHA at-large program.

Six visits were made to discuss the SDA Program with FmHA Supervisors in Halifax, Lunenburg, Prince Edward, Southampton, Brunswick and Mecklenburg Counties. A list of SDA borrowers were provided by the County Supervisors that perhaps would need some managerial help. Conferences were conducted with Cooperative Extension Service in Dinwiddie, Greenville, Southampton, Brunswick, Lunenburg, Nottoway, Sussex, Surry and Amelia Counties. Each Cooperative Extension Service unit was provided with [an] overview of the FmHA SDA programs and was asked as an educational source to inform the public.

Twenty on-farm visits were made during the work period. Discussions involved crops to plant for profit, non-profitable crops for the farming area, and general management practices. On several occasions visits were made to inform the borrowers about the SDA programs.

Approximately 100 telephone calls were received and made to discuss program objectives, planning activities, scheduling appointments, and responding to request. Many conferences were held with the Chief, Farmer Programs (Herman Lundy); staff members Gladys Holland, Joel Plath, and CES Director Dr. Lorenza Lyons and Vice President Dr. Clinton Turner.

At the request of Ben Lee, Vocational Agricultural Instructor, Southampton County a "pep" talk was given to 18 high school students enrolled in vocational agriculture at the Southampton High School, Courtland, Virginia. The discussion involved the importance of securing a good education for personal satisfaction or self-esteem, for public service, economic future, better livelihood, a resource for better community development, and the "Well Being of the Family." Outlined career oppor-

tunities in areas of agriculture and related occupations, and what is required in order to compete with the "working world?" Closing remarks were centered around the agricultural program at Virginia State University and would like for each class member to consider attending The State Land-Grant University.

A very small number of people attending the group meetings were engaged in farming. Nevertheless, the people were interested in knowing more about the FmHA programs for the benefit of informing others who may need the service. Several farmers indicated their desire for further contacts with the representatives from the FmHA. The names, addresses and telephone numbers are a part of our files at VSU for the purpose of future contacts.

The on-farm visits with borrowers indicates a need for better farm records. Record books are provided but very few farm enterprise records are kept. This creates a problem when time comes for farm planning. There is no way of pin-pointing profitable farm enterprises without records of the past farming year. Although there are crop and livestock budgets available each farming operation is different. So the average budget in many cases are not applicable. Many farm operations need assistance in decision making. If the operation is without any records of the last years cropping system, it is hard for operators or management specialist to make the right decision for the current year. A farm management specialist knowing the land capabilities for the State of Virginia could inform the farm operator what to expect in return from each enterprise.

Judging from observation, capital investment is one of the major causes for the situation borrowers are confronted with today. A large number of borrowers have purchased additional tractors for certain jobs only, to avoid the time it takes to change equipment. The same job in many instances, can be done with one tractor. This management system cuts profits and should be closely monitored.

Traditional farming is one of the major obstacles of many socially disadvantaged farm families today. Growing a set number of acres of grain, so many acres of hay, *etc.,* because of tradition, can be costly to the farming operation. The cropping system should be designed to fill the needs of the operators and at the same time show a profit. For an example, corn cannot be grown in South Central Virginia for a profit based on current prices. The cost input per acre for corn on the average is about $240.00. Average corn prices paid to producers amount $2.40. A very few farmers will average 100 bushels of corn per acre. At $2.40 per bushel this is only the "break-even point." For assurance reasons only, corn production in a livestock operation may be justified.

There are other farm enterprises that should be eliminated in farming situations in order to establish a profitable unit. These factors must be taken into consideration when we establish farm plans for borrowers. Cooperative Extension Service and CSRS at Virginia State University have established farm enterprises designed for small farmers. Some of these enterprises could be profitable for some borrowers.

The socially disadvantaged borrowers are confronted with many management problems. A large number were "share croppers" before becoming borrowers and potential owners. They are confronted with new horizons—decision making. Quite often, the wrong decision is made, resulting in poor farm management. Perhaps this could have been prevented through some form of educational channel. Maybe a farm management backup system. During the several conferences with FmHA County Supervisors, it was indicated that the socially disadvantaged borrowers needed more assistance in management and that the existing condition of FmHA (S–51) could have been because of poor supervision.

Many socially disadvantaged borrowers become wors[e] off financially as a result of borrowing money and over-extending their capabilities to manage their farming operation than they were before making the loan. When this type of situation occurs the relationship between the borrowers and Farmers Home Administration changes from a positive attitude to a negative attitude. In this state of affairs the image of the loaning agency culminates into a very undesirable state of being. To prevent or reduce to the minimum discontent between both parties, perhaps an analysis of the past records should be made to determine what went wrong; based on findings establish guidelines and procedures that will better fit the needs of SDAs and not their destitutions.

Socially disadvantaged people will continue to be victims of landownership losses unless something can be done to instill in the minds of young people that "owning land is a precious heritage and without it, there is no legal independency to live on."

Most of our professionals in teaching positions have taught our youth to endeavor in careers other than agriculture. This in many respects, have dampened the minds of young people and their appreciation for land ownership. Blacks who lived on and farmed the land operated with limited resources. This created hardship for many

Black families causing many family members to leave the farm and the land with no intention of returning; nor maintaining family ownership. Blacks who worked as share-croppers worked hard, but owned nothing. They were poorly educated and whenever the opportunity presented itself they would migrate to cities with an attitude of **hate** for land.

Recommendation

In order to be more serviceable in making loans to the socially disadvantaged clientele, FmHA should take a closer look at guidelines in determining eligibility for socially disadvantaged applicants. For example, potential borrowers with farming experience or training in agriculture should be considered not on the basis of having farmed 1 year of the last 5, but on the basis of farming experience, agricultural training, managerial ability, available resources and other human traits important to successful business endeavors.

SDA needs more on-farm management assistance during the production of farm enterprises. Perhaps more when the borrower has farmed as a tenant, when all farm management decisions were made daily by the landowner. Being accustomed to executing decisions and not making any, puts the borrower in a situation where management becomes a new chore that is difficult to cope with, from the standpoint of making the right decision. A farm management specialist could assist these borrowers whenever these problems occur.

A closer check on farm machinery, equipment and buildings should be done to ascertain proper maintenance. Through my observation some borrower's roofs on buildings are falling in because of negligence. Machinery is improperly housed and in need of repairs.

Farm enterprise recordkeeping should be enhanced and put on the priority list of demands. Maybe the official FmHA record book should be revised to better fit the requirements and at the same time much easier for the borrower to record farm transactions. More emphasis and time should be considered in writing individual farm plans. No two farming situations are alike. This being true, all precautions should be used in choosing farm enterprises adaptable to the operator and show profitability.

It is believed that much more can be done to help borrowers who are in default and classified as FmHA 51–S. There is a need for a comprehensive program to study the situation and other factors responsible for a large number of socially disadvantaged borrowers who are victims.

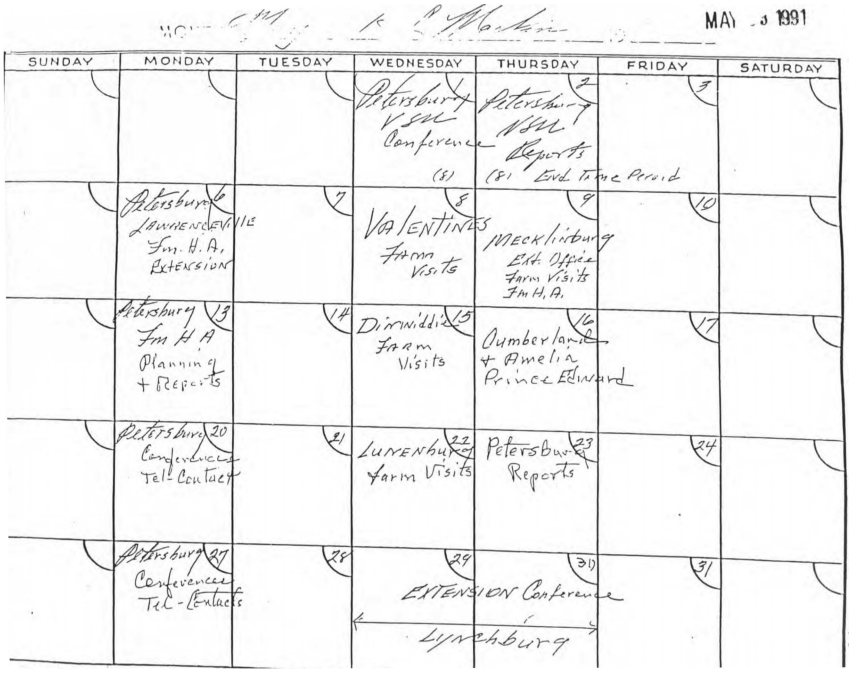
Based on the list of borrowers received from Farmers Home Administration County Supervisors, it was indicated that over fifty percent of the socially disadvantaged borrowers were classified as FmHA 51–S—Default in payments. With this type of situation involving most of the Counties it is a possibility that socially disadvantaged farmers will continue to lose land and capital at an increasing rate. On the other hand, the initiation of an educational enhancement program and establishing some new initiatives will perhaps slow down the present trend.

MONTH Jeaz Cy - L L Hamilton 19 91 JUL 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1 Reports Staff Conf. VSH	2	3 Farmville Tech Ctr Cumberland Farm Visits	4 Open	5	
	8 VSH Conf Staff Members	9	10 Dolphin Farm Visits	11 Valentines Fish Harmony	12	
	15 VSH Staff Conf.	16	17 Danville Business Education Partnership Commission Meeting	18 Open	19	
	22 VSH Reports Staff Conf Tel. Contacts	23	24 Open	25 Open	26	
	29 VSH Staff Conf Tel. Contacts	30	31 Open			

MONTH Jeaz Cy - L L Hamilton 19 91 JUN 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1
	3 Petersburg Reports Staff Conf.	4	5 Petersburg Staff Conf. Holland State Staff Lunch Holland State	6 Williamsburg Reports Travel Itinerary	7	
	10 Petersburg Reports Staff Conf.	11 Farmville State Tel. Conference	12	13 Petersburg Farmer & Supervisor Contacts	14	
	17 Petersburg Farmville University	18	19 Brunswick Farm Visit	20 Weathersburg Farm Visits	21	
	24 Petersburg Staff Conf.	25	26 Open	27 Surry Ext Office	28	



Rise Up—Celebrate Our Successes

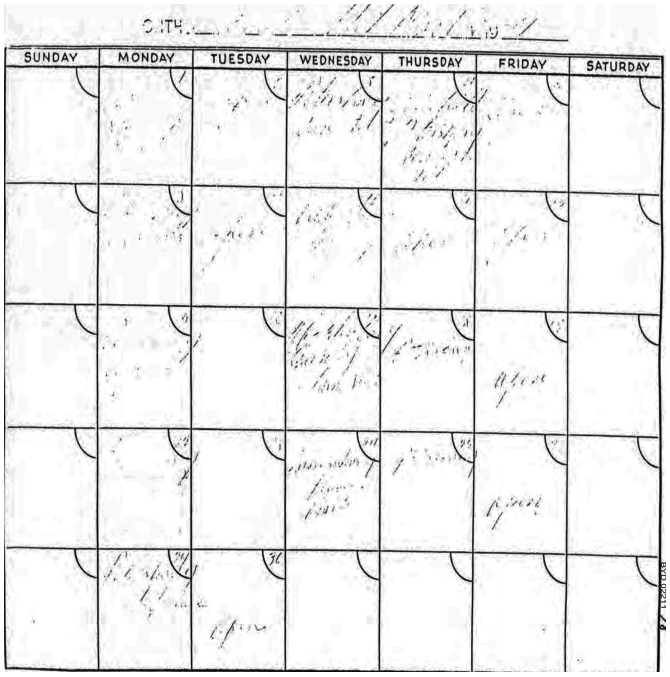
1991 Conference of Extension Professional Associations

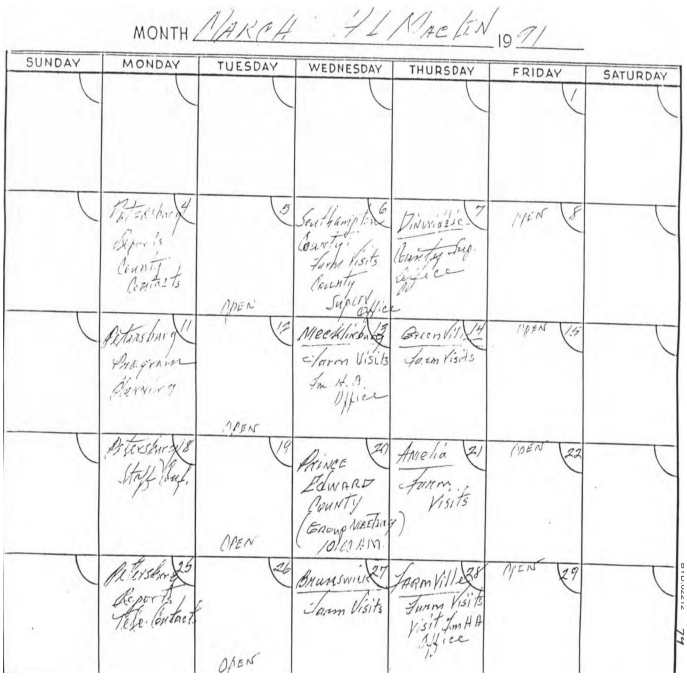
May 28–30, Lynchburg Radisson

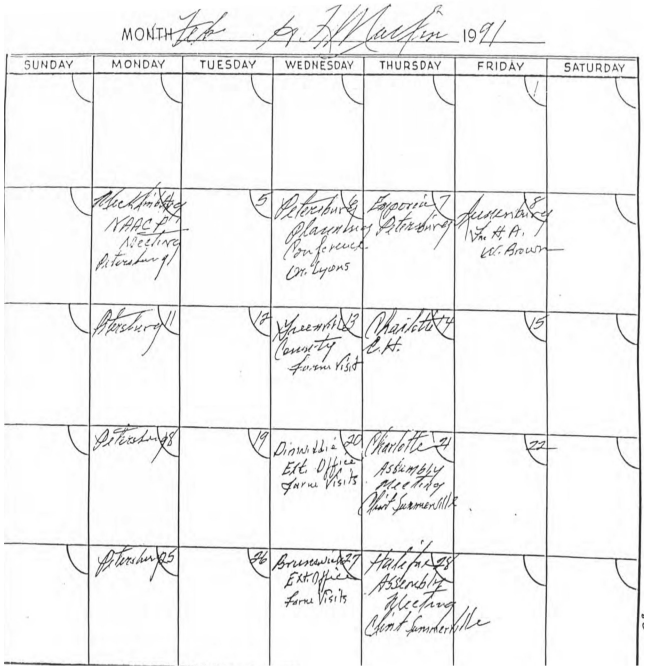
Tuesday	7–9:00 p.m.	Board meetings (if needed)
Wednesday, May 29	7–9 a.m.	Early arrival refreshments hospitality room
	8:00	Registration, Hotel lobby
	9:00	Benefits Update, Kenneth Martin—Ballroom
	9:50	Break
	10:10	Association Committee Meetings
	11:00	VESA State Committee Meetings
	11:00	Professional Improvement Seminars (3)
	11:45	Buffet Luncheon hosted by VESA and "Special" after lunch program for all attending
	1:30 p.m.	Professional Improvement Seminars (2)
	1:30	VAE4–HA Annual Meeting
	2:30	Refreshment break
	2:50	Epsilon Sigma Phi Annual Meeting
	3:00	Professional Improvement Seminar for Agents with less than 5 years service and Agents not E.S.P. members. "Jest For The Fun Of It" sponsored by VESA
	4:15	DSA Awards Presentation sponsored by VAEHE. All conference participants please attend!
	6:00	Country Dinner sponsored by VAEHE
	7:30	Board Meetings (if needed)
	7:30	Social sponsored by VAEHE
Thursday, May 30	8:00 a.m.	VAAEA and VAEHE Annual Meetings
	8:30	Professional Improvement Seminar, VAE4–HA
	10:00	Refreshment Break
	10:20	VESA Annual Meeting
	11:45	Hotel check-out
	12:15	Awards Luncheon hosted by Epsilon Sigma Phi
	2:00	Conference evaluation and comment
	2:15	Association Board Meetings
	2:30	VESA Board Meeting
	3:00	Have a safe trip home!

- Committee lists and detailed meeting locations will be in your packet upon arrival. Country Dinner location will be announced via electronic mail 1 to 2 weeks prior to the conference.

- The elements of the program are listed as of 2/15/91 and may be subject to slight changes. Contact Gene Daniel in Gloucester, EXO73, if you have a problem or question prior to registration.
- No registration needed for P.I. seminars. First come . . .

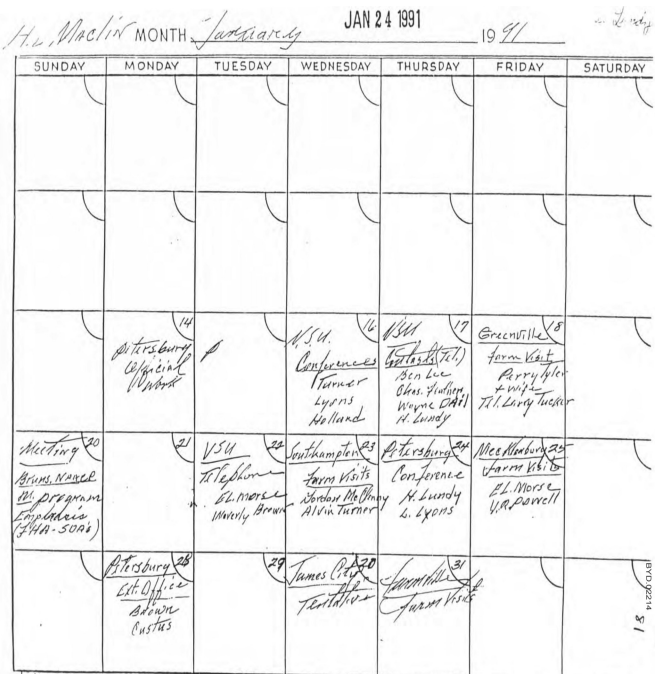






MONTH Feb. by H. Maclin 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	
	Blackstone 4 NAACP Meeting Petersburg	5	Petersburg 6 Planning Conference Dr. Lyons	Emporia 7 Petersburg	Greensville 8 Va. H.A. W. Brown	
	Petersburg 11	12	Greensville 13 County Farm Visit	Charlotte 14 C.H.	15	
	Petersburg 18	19	Dinwiddie 20 Ext. Office Farm Visits	Charlotte 21 Assembly Appreciation Mont Farmerville	22	
	Petersburg 25	26	Brunswick 27 Ext Office Farm Visits	Halifax 28 Assembly Meeting Chase Summerville		



H.L. Maclin MONTH January JAN 24 1991 1991

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	Petersburg 14 Ext Office Brown		VSU 16 Conferences Turner Lyons Holland	VSU 17 Petersburg (Tel.) Ben Lee Chas. Faulkner Wayne Dail H. Lundy	Greenville 18 Farm Visit Perry Ayler & wife H.L. Lundy Tucker	
Meeting 20 Brims, Nance Va. program Emphasis (FHA-SOAS)	21	VSU 22 Telephone D.L. Morse Waverly Brown	Southampton 23 Farm Visits Gordon McCloney Alvin Turner	Petersburg 24 Conference H. Lundy L. Lyons	Mecklenburg 25 Farm Visit D.L. Morse V.A. Powell	
	Petersburg 28 Ext Office Brown Custies	29	James City 30 Telephone	Emporia 31 Farm Visit		

BYD 02214

MONTH [illegible] 19[illegible] SEP v. 1990

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
2	3	4	5 VSH Reports Tele-Calls Staff Conf.	6 Surry Ext Office	7 Cumberland Ext-Office Smith H.A. Office	8
9	10 VSH	11 Stockly Mount Fam. H. A Office	12 Franklin County, Farm Visits	13 Southampton County	14	15
16	17 VSH	18	19 Mecklenburg Ext. + Schools	20	21 Surry Field Day	22
23	24 VSH	25 4-H 10:00	26 Lunenburg Fam. H. A.	27	28 Brunswick Farm Visits	29
30						

MONTH [illegible] 19[illegible]

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1 VSH Reports Fam. H.A. Staff Meeting Perf.	2 VSH Planning Materials for Activities	3 Williams Surry Smith H. Charlie's Riley 4-H's.	4 Greensville Farm Visits Farm Visits Wrapped	5
6 Fam. H.A. Office 11 Schools Appomattox 10 A.M. 260 mi.	7 VSH	8 VSH Reports Telephone Schedules	9 Office	10 Brunswick County Farm Visit	11 Surry Tentative	12
13 VSH Telephone Calls Contacts	14	15 Spoke. Energy Identify	16 Office	17 Tentative H Leaders Conference Richmond Va.	18 Office	19
20 VSH	21 Office	22 Fam. H.A. Farmville	23 Office	24		
27 VSH	28 Reports Speaker BES. Agri Field Day Extension	29 Office	30 Office	31 VSH		

Farmers Home Administration

Progress Report—August and September, 1990

Visiting Professor (Management Specialist)

The Socially Disadvantaged Program (SDP) effort in conjunction with Virginia State University, involving Cooperative Extension Service (CES) as liaison to the program, is being administered in twelve counties. One staff meeting was held with the Director of CES and the Associate Vice President for Agriculture and Extension to discuss on-going activities. Seven conferences were held with CES agents in Sussex, Southampton, Cumberland, Prince Edward, Charles City, and Brunswick. These conferences were designed to enhance the program objectives. Three staff meetings and several telephone conferences were held with Chief Farmer Programs Director, and one with the State Director, Farmers Home Administration, and Chief Farmer Programs Director for the purpose of program evaluation and recommendations. Visited four (4) farm families who were interested in SDA program loans.

The Visiting Professor worked thirty three (33) days conducting educational presentations at group meetings held by Civic Organizations, NAACP Chapters, Churches, and Farmers Home Administration Districts. Conferences were held with County (Fm.H.A.) Supervisors in Charles City, Brunswick, Mecklenburg, Prince Edward, Cumberland, Greensville, Lunenburg, and Franklin (special assignment) Counties.

In the office, research was conducted on Farmers Home Administration procedures and policies. Also did some research on Black Demographics. Weekly conferences were held with CES staff associated with Fm.H.A. programs to coordinate efforts, exchange ideas, activities, and accomplishments. Telephone calls were made to schedule group meetings, staff conferences, and one-on-one farm visits.

During group meetings in Prince Edward County a number of questions were asked about Fm.H.A. policies and County Supervisor. Some felt that they were not treated fairly on several occasions. Others discussed the hassle they were confronted with along with too much "red tape". A list of names interested in buying land was provided for loan consideration. In churches the ministers requested an area meeting for the benefit of several counties to discuss farm ownership loans for socially disadvantaged persons. Based on conferences with a number of CES staff members and Fm.H.A. County Supervisors, there need to be some changes in policies and guidelines if we are to help the SDP in Virginia.

In summary and evaluation there are indications that more and more SDAs are [losing] land than ones gaining land. Socially Disadvantaged People are eager to purchase or maintain their farms. Yet in many instances, financial difficulties have prevented them from doing either. A large number need to be taught management skills once they become borrowers.

Maybe the existing situation is due to over-priced appraisals at the initial phase of the borrower's purchase. Allowing loans for the purchase of excess machinery, equipment, and supplies (chemicals, *etc.*) are other symptoms of financial disaster. A majority of borrowers were faced with the problem of making management decisions. They have the technique and ability to perform the farm chores, but they lack the ability of deciding what to do when. This is the result of being a share-cropper where the landlord made the decisions and the cropper did the work. When Fm.H.A. grants a loan to a tenant farmer to purchase a farm and operate same, he is being placed in a somewhat different situation. He has to make the decisions and perform the farming activities. Making the wrong decision has been the failure of many borrowers.

Approximately six hundred (600) people have been contacted in group meetings, churches, NAACP meetings, farm visits, and by telephone. During the state of being in communication with people, program initiatives were outlined and questions answered according to established guidelines. A list of NAACP State Chapter Presidents, and meeting dates have been obtained.

In response to program efforts, sixteen (16) telephone calls were received requesting more information. In the designated counties, seven conferences were held with County Farmers Home Administration Supervisors. By special request, conferences and visits to SD Borrowers were made in September. To date there are six socially disadvantaged people who are potential land buyers who plan to make applications for Fm.H.A. loans.

Based on past experience, knowledge of the Fm.H.A., S.D.A.'s situation, policies and guidelines of Farmers Home Administration and the brief period of direct exposure to the system, I am recommending for consideration the following:

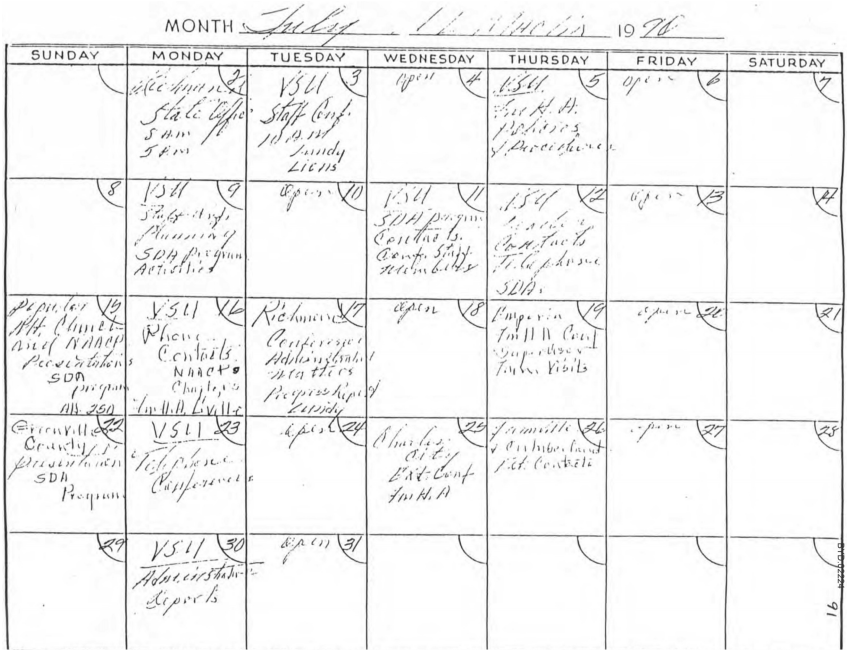
- Establish different guidelines for the Socially Disadvantaged Applicants (S.D.A.)
- Provide for on-farm management for borrowers (Farm Management Specialist)

a. Cost of capital (land, equipment) is not in access of market value.
b. Variable cost of production per acre is complementary to area.
c. Crop enterprises selected on the basis of land capabilities and use. (Livestock and poultry if feasible.)

- Define justifiable machinery and equipment needed for maximizing farm profits. (Too many "borrowers" can't justify equipment.)
- Keep a closer check on maintenance (machinery, buildings, equipment).
- Require complete recordkeeping for each enterprise (to determine profitability).
- Organize a special program to rescue 51–S borrowers (a large number of SDA's fall in this category).
- Change guidelines for foreclosure borrowers (more family participation, if agreed upon).

Farmers Home Administration
Management Specialist
(Visiting Professor)
Farm Family Information Sheet

Name_____
Address_____
_____
Telephone Number_____
Family Size_____ Family Health_____ Age of Operator_____
Formal Education_____
Type of Farm_____
Number of Acres_____ Open Farm Land_____
Pasture Acres_____ Forest Land_____
Timber_____ Cutover_____
Homestead Acres_____
Farming Experience (Number of Years)_____
Organization Affiliation(s)_____
Farming—Part-Time_____ Or Full-Time_____
Workforce (Number) Family_____ Hired_____
Crops Grown_____
_____
Livestock Raised (Number):
Cattle_____ Swine_____ Other_____
Poultry (Number):
Kind_____
Children In:
4–H Clubs_____ High School_____ College_____
Program Participation (County, State, National)_____
_____
CES_____ FmHA_____ S.C.S._____
ASCS_____ Other_____
Management Problems:
1._____
2._____
3._____
4._____
5._____
Credit Available:
1._____
2._____
3._____
Credit Needs To Be Used For:
1. Farm Operations_____
2. Real Estate_____ Indebtedness_____ Purchases_____
3. Others: (List Below)
_____
_____
Management Specialist Comments:



July 1990

Farmers Home Administration

Progress Report

Management Specialist

H.L. MACLIN
(Visiting Professor)

The agent (representative) spent a large amount of time studying *Farmers Home Administration Policies and Guidelines.* Orientation was accomplished through staff meetings and staff member conferences.

We have collected a list of socially disadvantaged applicants (SDAs) from Brunswick and Greensville Counties. So far three on-farm contacts have been made to discuss the management system. The SDA's present farm management system will be the main component in making recommendation for change in the farming and administrative systems.

A list of community organizations have been obtained from the "Target Counties". From this list, three program presentations were made in July.

Dialogue between the agent and from Fm.H.A., County, and District Supervisors have been encouraging. The agent has received several calls from prospective clients for more information about the SDA program activities.

Overall the program is challenging. It gives the agent an opportunity to "pick-upon" and analyze some of the major issues confronting the socially disadvantaged applicants.

A Farm Family Information Sheet was prepared to be used when interviewing SDAs (copy enclosed). When completed, it will provide some basic information.

Visiting Professors Program

July 8, 1983

Purpose: To establish closer rapport with the 1890 institutions. During the first year, this summer, the visiting professor will study agency programs and operations to determine methods for improving Black-owned farms in Alabama through greater understanding and adaptation of financial programs available through the Farmers Home Administration.

Authorization: Un-numbered memorandum, dated May 22, 1983, directed selected states to employ visiting professors from 1890 Land-Grant Institutions. Alice

Oakley Byrd of EEO Staff, National Office, has advised that Alabama should limit hiring to one professor from either Alabama A&M or Tuskegee Institute.

Employment Data: Appointment is under Schedule A—noncompetitive. Salary will depend on qualifications of selected professor; GS–11 ($11.78 per hour) or GS–12 ($14.12 per hour). The appointment is limited to 130 working days per year. Tour of duty may be full-time or part-time (interpreted as 130 part or whole days). Duty hours can be changed from month-to-month, but there must be definite duty hours and a duty station.

Applicants: Three (3) professors have expressed interest in the Visiting Professors Program and have been scheduled to be interviewed for the position allocated to Alabama this year. They are:

1.* Dr. Joseph Befecudu (pronounced Befecartre)—Department of Agri-Business—Alabama A&M. Appointment: 9:00 a.m., July 15, 1983.

2.* Dr. Jones, Department of Agri-Business, Alabama A&M. Appointment: 9:00 a.m., July 15, 1983

3. Professor Voncile Hale—Tuskegee Institute Appointment: 3:00 p.m., July 14, 1983

*The above professors will be accompanied by Dr. Preyer who is the Dean of the Agri-Business Department at Alabama A&M. Dr. Preyer would like to meet the State Director.

Contact at Alabama A&M:
Dr. Aytch (pronounced H)
Telephone 859–7302

Agricultural Mgmt. Specialist

GS–475–12

A. Introduction

This position is located in the Farmers Home Administration, District Office. The incumbent of this position serves as an advisor to the State Director in matters concerning Black-owned farms. The incumbent will strive to improve operation of the Black-owned farms and will strive to establish a closer rapport with the 1890 Land-Grant Institutions.

B. Major Duties and Responsibilities

- Explores alternatives and prepares analytical materials and collects documentation necessary for final action by State Director.
- Identifies and evaluates options to increase income on small farm operations and identifies and evaluates current enterprise combinations and practices utilized by small farm operators.
- Determines the level of knowledge and utilization of services of selected public and private farm-related organizations and attitudes toward use of these services by small farmers.
- Identifies resources—their availability and accessibility to small farmers.
- Conducts studies to determine the extent off-farm income among small farmers that contributes to the total family income and farming operations.
- Evaluates and describes marketing channels utilized by small farm operators and reports to State Director facts found.
- Analyzes field program activity reports to determine trends or detect weaknesses and recommends measures or prepares materials to remedy conditions noted and informs State Director of same.
- Informs and advises the general public and special interest groups about available agricultural and other rural credit assistance.
- Formulates the quality and level of available labor and the timing of off-farm employment on the selection of farming enterprises.
- Prepares reports and submits to State Director on items such as:

  1. Recommend program changes or new programs which would accomplish the objective of saving the Black-owned farm.
  2. Identify steps which could be taken to reduce the loss of Black-owned farms under existing FmHA and other USDA programs.
  3. Compare the loss of Black farmers to the situation in other states with significant Black population and Black ownership of farms.

4. Investigate and analyze the farming operations of Black-owned farms in Alabama.

Factor 1. *Knowledge Required of the Position*

Position requires a comprehensive knowledge of problems related to farming practices in the rural areas. Must have a basic knowledge of FmHA program objectives, regulations, and policies, and an understanding of financial practices, tax laws, and legal structures, and the state and local realty laws. Must have the ability to evaluate and analyze techniques to effectively assess small farming operations.

Factor 2. *Supervisory Controls*

Incumbent works under the general supervision of the State Director, working closely with other State Office program officials and direct day-to-day supervision of the District Director. The employee is assigned duties in terms of objectives, general ground rules, but must plan and carry out specific duties on personal initiative. The broad scope of duties requires an ability to determine the proper priority of each of the tasks to be performed. Because of constant travel and type of work to be done, supervision is extremely limited.

Factor 3. *Guidelines*

Guidelines in the form of FmHA Instruction and policy are available (also assistance of District Director or other FmHA employees), but considerable judgment is required in applying them to a variety of financial entities—no two of which are comparable—involving loans for farming. Follows National and State Office administration and management instructions in assessing rural needs and operations and regulating corrective procedures.

Factor 4. *Complexity*

Complexity of this position rests with developing program objectives, and for exercising broad program evaluation. Extensive coordination and joint planning contacts with other governmental agencies and public groups to develop program activities are required.

Factor 5. *Scope and Effect*

Programs administered involve the physical and economic well being of a substantial population of the small community and rural segment of the State.

Factor 6. *Personal Contacts*

Contacts are with borrowers, prospective borrowers, attorneys, representatives of other lending organizations, and with management officials of Farmers Home Administration, *etc.*

Factor 7. *Purpose of Contacts*

Contacts are for the purpose of amassing data and/or explaining program requirements; to assess rural needs, to report deficiencies or problems encountered; and to ascertain or give information concerning FmHA function.

Factor 8. *Physical Demands*

The work requires some physical exertion; walking over uneven, rough, maybe rocky surfaces, but mostly work can be accomplished in an office setting. No special physical demands are required to do the job.

Factor 9.

The work environment involves everyday risks or discomforts which require normal safety precautions typical of such places as office, meeting rooms, and residences or commercial vehicles. The office area is adequately lighted, heated, and ventilated.

Fact Sheet

Visiting Professors Program

In our letter to Tuskegee and Alabama A&M we stated that the visiting professor would report on "methods to improve Black-operated farms and increase survival of Black-owned farms in Alabama through greater understanding and adaptation of the financial programs available through the Farmers Home Administration".

To prepare such a report we would expect the individual employed to work as follows:

1. Thoroughly research FmHA farm programs and procedures in order to obtain an in-depth understanding of the Agency's farm programs.

2. To investigate and analyze the farming operations of Black-owned farms in Alabama.
3. Compare the loss of Black farmers in Alabama to the situation in other states with significant Black population and Black ownership of farms.
4. Identify steps which could be taken to reduce the loss of Black-owned farms in Alabama under existing FmHA and other USDA programs.
5. Recommend program changes or new programs which would accomplish the objective of saving the Black-owned farm.

Note

The visiting professor program is not a contract program requiring a specific product. The visiting professor will be an employee of the Farmers Home Administration under the general supervision of the State Director and immediate supervision of the District Director in the duty station area. As an employee the visiting professor will be expected to report to his or her duty station and work toward the above objectives which my be expanded or refined during the terms of employment.

GEORGE S. KENNARD,
Administrative Officer.

July 14, 1983

[December 19, 1983]

Subject: Reaffirmation and Survey of FmHA's Visiting Professor's Program
To: State Directors, FmHA*

On May 23, 1983, in response to President Reagan's Executive Order 12320 instructing Federal Agencies to increase the percentage share of program funds allocated to Historically Black Colleges and Universities, I issued a memorandum establishing a program for the participation of 1890 Land-Grant Institutions in FmHA-sponsored programs. Our first effort in this regard was to implement a visiting professor's program in selected States by seeking to employ an 1890 institution faculty member commencing with the summer of 1983. I wish to reaffirm this effort.

We need to continue our commitment to the visiting professor's program. Our objectives, as described in my memorandum of May 23, 1983, will not be attained with last summer's effort alone. Our effort last summer was merely the first step in reaching our objectives, not the program's beginning and end. In this regard, some States—inadvertently misinterpreting the scope of the program—limited their effort to the summer months of 1983. What we are striving to accomplish, however, is a dynamic and substantive program continuing from year-to-year on a year-long basis having mutual benefit to FmHA and the institutions because of our close rapport and improved relationship. Our visiting professor's program, therefore, is a continuing effort, and you should gauge your involvement in the program with the broader scope in mind.

A survey of States, taken in the second week of November, revealed that only one State had a visiting professor on its employment roles. There were four States, however, which were making plans to hire a professor during the school year 1983–84. The remaining 10 States had appointed no visiting professor, and moreover, their intentions were unclear at the time of the survey. I therefore urge those States having employment plans to follow through with them, and those States having no activity to initiate contact with the 1890 institutions without delay. A sample position description, which you should tailor to your State, is attached to facilitate the hiring process. For additional assistance, you may get in touch with Steve Klink, National Office Personnel Division on FTS–382–1071.

Further, we have learned that success with these institutions is more likely to occur when the dean of agriculture is the person in the institution who is contacted. This approach is recommended, even though the attachment to my memorandum of May 23, 1983, lists the names and addresses of the Presidents of the 1890 institutions.

[December 15, 1983]

Subject: Support of Historically Black Colleges and Universities—Community Facilities

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*Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia

To: State Directors, FmHA: AL, AR, DE, FL, GA, KY, LA, MD, MA, MS, MO, NC, OH, OK, PA, SC, TN, TX, VA, WV

This is a follow-up to two previous memoranda concerning Farmers Home Administration's (FmHA) commitment to implement the President's EO 12320, supporting Historically Black Colleges and Universities (HBCU). In response to EO 12320, I established a program for the participation of HBCU's in FmHA programs.

My memorandum of May 11, 1983, requested each State Director to submit a report on actions taken to implement the FmHA policy regarding HBCU's. As of this date we have not received all of the reports. Please review your records and promptly submit your report if you have not done so.

All of the listed HBCU's in your State should have been contacted. If the HBCU's have not been contacted plans should be made to do so. It may be appropriate to schedule a follow-up on previously contacted HBCU's.

It is important that you express FmHA's sincere desire to assist the HBCU's in any manner possible consistent with our program regulations. It is imperative that in your contacts the appropriate officials are made aware of FmHA programs. The Deans or Chairpersons of the various departments as well as Board members and Presidents should be furnished information that explains FmHA programs.

We must continue our commitment to the policy as exemplified in EO 12320. Our efforts to date have only been the beginning of a continuing emphasis. We are striving to develop a dynamic, substantive, ongoing program that will have mutual benefit to the HBCU's and FmHA. Your support and actions are vital and I am sure that your contribution will be substantial.



CHARLES W. SHUMAN,
Administrator.

Visiting Professor Program

I. Hiring Authority

A. One temporary part-time employee
B. Period is for 1 year
C. Workday equivalent—120 days
D. Salary—$30,549 annually (Full-Time Figure) paid bi-weekly
E. Headquartered at Petersburg County Office
F. Appointment non-competitive

II. Work Requirements

A. Major Duties and Responsibilities (*Exhibit A*)
B. Normal weekly Tour of Duty will be Monday thru Friday, 8:00 a.m. to 4:30 p.m.
C. Exception will be made for specific scheduling of Night Meetings as well as weekend meetings with farmers.
D. Specific duties will be assigned upon entrance on duty.

III. Job Criteria

A. Employed by an 1890 Land-Grant Institution
B. Teaching experience in Agriculture. Preference given to Agri-Business and Agri-Finance.
C. Must acquire basic knowledge of FmHA program objectives, regulations and policies.
D. Understanding of financial practices, tax laws, legal structure, realty laws and record keeping.

IV. Supervisory Controls

A. General supervision of State Director.
B. Day-to-day supervision of District Director.

V. Resources for Job Performance

A. Essential supplies available in headquarters office.
B. Telephone service
C. Travel
    1. Reimbursement at rate of 20.5¢ per mile

2. Use of GSA vehicle
3. Overnight per diem reimbursement

VI. Previous Contact With VSU

A. April 1983 with Dr. B.B. Archer—School of Agriculture
B. February 7, 1984 with Dr. Archer
C. Letter dated February 23, 1984 (*Exhibit B*)

VII. Specific Duties

A. Thoroughly research FmHA farm programs and procedures in order to obtain an in-depth understanding of the Agency.
B. To investigate and analyze the farming operations of Black owned farms in Virginia.
C. Compare the loss of Black farmers in Virginia to other states with significant Black population and ownership of farms.
D. Identify steps which could be taken to reduce the loss of Black owned farms in Virginia under existing FmHA and other USDA programs.
E. Determine the extent that Limited Resource Loans are made by FmHA to deter the loss of Black farm ownership.
F. Recommend program changes or new programs which would accomplish the objective of saving Black owned farms.

Agricultural Mgmt. Specialist

GS–475–12

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Factor 2. *Supervisory Controls*

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Factor 4. *Complexity*

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Factor 9.

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February 23, 1984

Dr. B.B. ARCHER,
Dean, School of Agriculture & Applied Sciences,
Virginia State University,
Petersburg, Virginia

Dear Dr. Archer:

I have been advised that you met with Mr. Herman Lundy, Farmer Programs Specialist of my staff on Tuesday, February 7, 1984 to discuss President Reagan's Executive Order #12320 instructing Federal Agencies to increase the percentage share of program funds allocated to Historically Black Colleges and Universities. As a result of this order, the administrator of our agency subsequently established the visiting Professor's Program of which we are very much interested. We highly appreciate your interest in this program and encourage your school to participate. Mr.

Lundy is currently working on the expected major duties and responsibilities for this job position. As soon as this is completed, we will be interested in employing on a temporary part-time basis one of your professors.

Please continue to consider our program in search for a professor with a strong agricultural background that could spend a few hours on a weekly basis to serve us in an advisory capacity. Mr. Lundy will be contacting you on a regular basis to carry out our employment goal.

If you have questions or comments concerning this, please feel free to contact Herman directly at [**Redacted**].

Sincerley yours,

ROIE M. GODSEY,
State Director.

CC:

Dr. WILLBERT GREENFIELD
Mr. STEVE KLINK

SUBMISSION NO. 4

United States Department of Agriculture

Settlement Agreement

Discrimination Complaint of John W. Boyd, Jr.

This settlement agreement is made by and between the complainant, John W. Boyd, Jr., and the United States Department of Agriculture ("USDA"). This agreement constitutes a full, complete, and final settlement of all claims for relief in connection with the complaint of racial discrimination submitted by the complainant on February 18, 1992, and USDA's final decision on such complaint dated October 11, 1996, (attached to this agreement)).

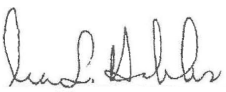
I. USDA agrees to:

1. Pay the complainant the sum of [**Redacted**] in compensatory damages. A check in this amount payable to the complainant and Clarence N. Jenkins, Jr., Esq., will be issued as soon as practicable but no later than 60 days after this agreement has been signed by all parties.
2. Pay any and all of John W. Boyd, Jr.'s unpaid outstanding debt owed to the Farm Service Agency, former Farmers Home Administration, and the Rural Housing Service. USDA, the Farm Service Agency, and Rural Housing Service, will forever discharge, hold harmless, and indemnify John W. Boyd, Jr. from any liability for such debt.

II. Complainant agrees to:

1. Accept the above payment of compensatory damages, and debt forgiveness as a full, final, and complete settlement of all claims in connection with his February 18, 1992, discrimination complaint and USDA's final decision dated October 11, 1996.
2. Waive and release any and all claims or complaints of any kind arising out of the events that were the subject of the complainant's February 18, 1992, discrimination complaint and USDA's final decision dated October 11, 1996, against USDA, the United States of America, and any other agency of the United States of America, or any officer, employee, or agent of the United States of America, in either his or her official or individual capacity.

III. Both parties agree that the fact that this complaint was resolved by this agreement may be disclosed by either party to any person not a party. However, except as otherwise required by law, terms of this agreement set out in paragraphs I and II will not be disclosed by either party, without the consent of the other party, to any person not a party except as necessary for that person to perform his official governmental duties.



5/20/97

IRA L. HOBBS,
Director, Office of Operations,
United States Department of Agriculture

5/20/97
Date

5/20/97

JOHN W. BOYD, JR., 5/20/97
Complainant Date

5/20/97

CLARENCE N. JENKINS, JR., 5/20/97
Attorney for the Complainant Date

SUBMISSION NO. 5

United States Department of Agriculture

Office of Civil Rights

Statute of Limitations

Program Complaint Division

Complainant: John W. Boyd, Jr., [**Redacted**], Baskerville, VA, [**Redacted**]
Representative: Darlene Smith, [**Redacted**]
County: Mecklenburg County, Virginia
Docket Number: 27
Basis: Race (Black) and Age (24)
Issue(s): Treatment and denial of loan
Agency(ies): Farm Service Agency (FSA), Rural Housing Service (RS)
Date of Complaint: April 20, 1990

Summary of Facts

Letter from John Boyd to Otis Daily, FSA District Director, dated April 20, 1990 stated he was a 24 year old African-American male that had been discriminated against by James Garnett, FSA County Supervisor. Boyd stated that the previous week before the dated letter. Garnett threw his applications for a home repair loan and farm ownership loan (300 acres and nursery swine operation) into the trash can and told him that was too much operation for a boy his age. Boyd also stated that Garnett told him to apply for government subsidized housing in South Hill, Virginia because it would be cheaper than making repairs to his old house.

Ava Marshall, RHS employee in the Virginia State Office who initially investigated Boyd's discrimination complaint made the following statements via telephone on July 14, 1999 at 10:00 a.m.: Marshall stated that Boyd had filed his complaint timely and had continued to complain about discrimination by Garnett. Marshall stated that Boyd filed a complaint and made mention of the fact that he had been complaining with no result. Marshall stated Boyd had kept a copy of the letter that he had given Daily pertaining to the way Garnett had treated him. Marshall stated while conducting the investigation she found out that Daily had the complaint that Boyd had filed, but failed to forward the complaint to the state office. Marshall stated the complaints were treated as one, not two complaints.

Boyd stated he had made numerous telephone calls to the Chief of Programs Complaints Adjudication Division about his two complaints and had not received any response (*referenced from letter on file, dated Sep1ember 16. 1996*).

There were no copies of the 1990 loan request in the file and the agencies were not able to provide any explanation (*referenced from the Background of the complainant*).

Garnett stated he did not get paid to do outreach, he got paid to make loans and that's was what be did. Garnett also stated that there were not many minority farmers, because agriculture does not appeal to them; and that they were mainly looking for a job with a pay check every Friday (*referenced from statement Garnett provided during the investigation*).

Four out of five Black farmers interviewed stated that the county supervisor was biased to Blacks (*referenced from interviews of Black farmers during the investigation*).

On February 18, 1993 the State Civil Right's Coordinator found that the County Supervisor had a bias toward Blacks (*referenced from the Chronology of Events—John W. Boyd, Jr.*).

Garnett was asked to accept an early retirement rather than be disciplined for his failure to promote EO activities and the fact that other similar discrimination cases had been discovered in the County Office (*referenced from the summary of file review*).

The Farm Program Chief determined Boyd's case had not been properly handled (*referenced from Exhibit G of a loan review report conducted by the Chief of Farm Program*).

County Supervisor documented information pertaining to Boyd obtaining a Carroll's Food Contract (*referenced from a field visit report conducted by the county supervisor*).

Reference List *

John W. Boyd, Jr.

Statute of Limitations

Docket Number 27

1	Letter from complainant, dated April 20, 1990 establishing date of complaint
2	Letter from complainant, dated September 16, [1]996 inquiring about two complaints
3	*Background of complaint*
4	*Statement of County Supervisor, Garnett*
5	*Interviews of Black farmers conducted during the investigation*
6	*Chronology of Events—John W. Boyd, Jr.*
7	*Summary of file review*
8	*Exhibit G of a loan review report conducted by the Chief of Farm Programs*
9	*Field visit report conducted by the county supervisor*

X Denotes the applicable section of the referenced document.

* **Editor's note:** the entries that are italicized were not included in the submission received from Mr. Boyd. The document has reproduced herein as received.

James M Garnett
P.O. Box 369
Chase City VA 23924

April 2 1990

Discrimination Complaint Against Farmers Home Administration

Dear MR Dail

My Name is John W. Boyd JR. I am an African American male who is 24 years old. I have been farming all of my adult life. This discrimination complaint is against Farmers Home and James Garnett County Supervisor, last week I met with MR Garnett to turn in an application to make home repairs, to purchase hogs and a nursery swine operation (by contract with Carroll's Foods) During the meeting with MR. Garnett, before the application in behalf. And How it in the stock pen and said this is to much operation for a boy your age. I then asked MR Garnett about the housing repair he said I should apply for government subsidized housing in South Hill it would be cheaper than making repairs to that old house.

I then left his office used the rest room came back in his office and asked MR Garnett again about processing my application, he said he was not going to process it. And I should try again next year. MR Garnett has repeatedly steered me away to Federal programs and discouraged me from farming he does not do this to white Farmers in the community many white Farmers in the county commun. date with me and my father about how much credit Farmers has extended them Based on the above facts I have clearly been discriminated based on age and race.

Yours truly,
John W. Boyd Jr.

REFERENCE NUMBER 1 DOCKET NUMBER 27 JOHN W. BOYD, JR.

BYD.02337

Thomas Beaumont
Cheif Of Programs Complaints ADJU Div.
USDA Office Of Operations CREA
14th Independence AVe SW
Washington D.C. 20250
1371-S

Sept. 16 1996

Dear Mr. Beaumont:

I have made numerous phone calls to you, and your staff In reference to two complaints InFeb. 1992. I have not received any response from your office.

Discrimination is degrading, when another person denies you the same opportunity because of the color of your skin; as Mr. Garnett did by stating all black farmers wantis a pay check. Also stated he did not participate in any black outreach programs. Took it upon himself to throw my application in the trash can. Turned down 8 housing applications, because you are black.

I recently made a visit to your division and spoke with Mrs. Sanders. She indicated youroffice could not locate one of the complaints, nor did she have any information on Betty Jenkins investigation.

Mr. Beaumont the discrimination is not going to stop by itself I am asking that you take special interest in this case to help stop discrimination in Mecklenburg Co. VA. Please respond in writing. Your cooperation is greatly appreciated.

Yours truly,

John W. Boyd, Jr.

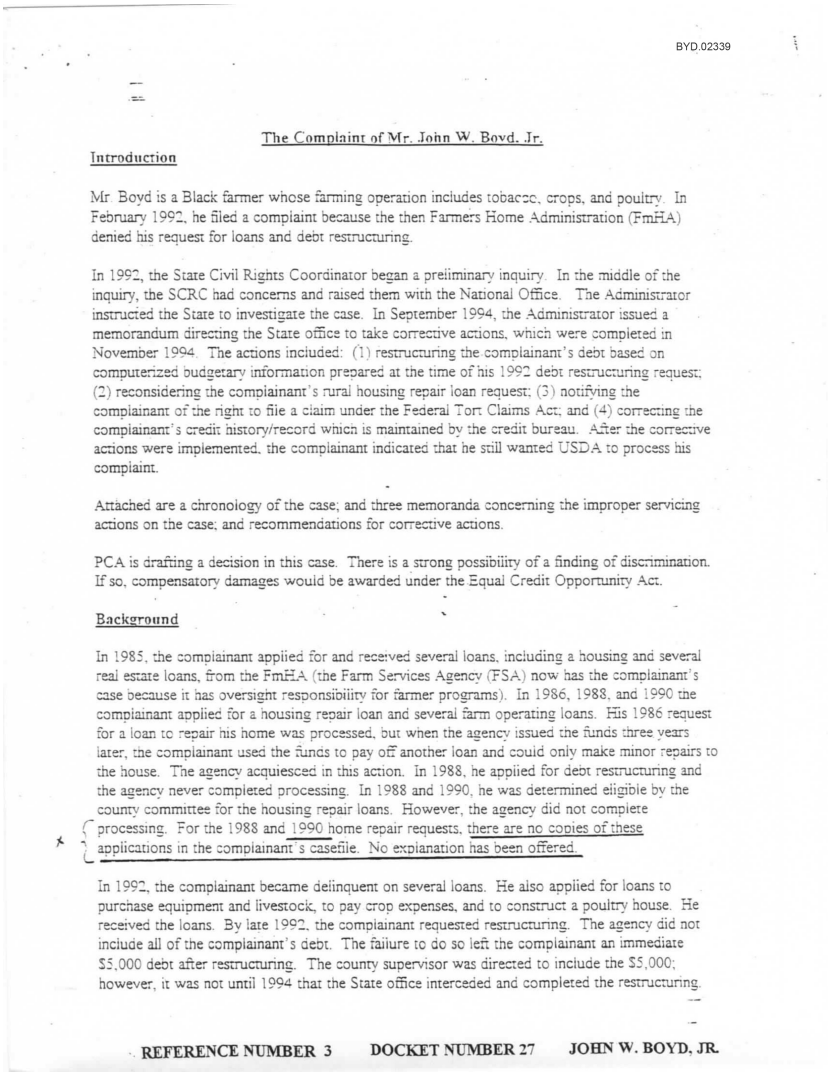
REFERENCE NUMBER 2 DOCKET NUMBER 27 JOHN W. BOYD, JR.

BYD.02338

John Boyd
68 Wind Rd.
Baskerville VA 23915

SEP

Thomas Beamish, Chief
Program Complaints and Adjudication Div.
USDA Office of Operations, CRBA
14th Independence Ave. S.W.
Washington D.C. 20250



BYD.02339

The Complaint of Mr. John W. Boyd, Jr.

Introduction

Mr. Boyd is a Black farmer whose farming operation includes tobacco, crops, and poultry. In February 1992, he filed a complaint because the then Farmers Home Administration (FmHA) denied his request for loans and debt restructuring.

In 1992, the State Civil Rights Coordinator began a preliminary inquiry. In the middle of the inquiry, the SCRC had concerns and raised them with the National Office. The Administrator instructed the State to investigate the case. In September 1994, the Administrator issued a memorandum directing the State office to take corrective actions, which were completed in November 1994. The actions included: (1) restructuring the complainant's debt based on computerized budgetary information prepared at the time of his 1992 debt restructuring request; (2) reconsidering the complainant's rural housing repair loan request; (3) notifying the complainant of the right to file a claim under the Federal Tort Claims Act; and (4) correcting the complainant's credit history/record which is maintained by the credit bureau. After the corrective actions were implemented, the complainant indicated that he still wanted USDA to process his complaint.

Attached are a chronology of the case; and three memoranda concerning the improper servicing actions on the case; and recommendations for corrective actions.

PCA is drafting a decision in this case. There is a strong possibility of a finding of discrimination. If so, compensatory damages would be awarded under the Equal Credit Opportunity Act.

Background

In 1985, the complainant applied for and received several loans, including a housing and several real estate loans, from the FmHA (the Farm Services Agency (FSA) now has the complainant's case because it has oversight responsibility for farmer programs). In 1986, 1988, and 1990 the complainant applied for a housing repair loan and several farm operating loans. His 1986 request for a loan to repair his home was processed, but when the agency issued the funds three years later, the complainant used the funds to pay off another loan and could only make minor repairs to the house. The agency acquiesced in this action. In 1988, he applied for debt restructuring and the agency never completed processing. In 1988 and 1990, he was determined eligible by the county committee for the housing repair loans. However, the agency did not complete processing. For the 1988 and 1990 home repair requests, there are no copies of these applications in the complainant's casefile. No explanation has been offered.

In 1992, the complainant became delinquent on several loans. He also applied for loans to purchase equipment and livestock, to pay crop expenses, and to construct a poultry house. He received the loans. By late 1992, the complainant requested restructuring. The agency did not include all of the complainant's debt. The failure to do so left the complainant an immediate $5,000 debt after restructuring. The county supervisor was directed to include the $5,000; however, it was not until 1994 that the State office interceded and completed the restructuring.

REFERENCE NUMBER 3 DOCKET NUMBER 27 JOHN W. BOYD, JR.

SUBMISSION NO. 6

February 27, 2019

U.S. Department of Agriculture
Attention: Deputy Assistant Secretary Naomi Earp
Office of the Assistant Secretary for Civil Rights
Washington, DC

RE: Formal Complaint of Discrimination Based on African American Race

Dear Ms. Earp:

I am writing an official letter of complaint in response to the failure of the United States Department of Agriculture (USDA) to comply with the terms of debt forgiveness as stated in my USDA Settlement Agreement dated May 20, 1997 which was approved and signed by Ira Hobbs, Director, Office of Operations, United States De-

partment of Agriculture; John W. Boyd, Jr., Complainant and Clarence Jenkins, Attorney for the Complainant.

On February 25, 2019, I received an email from Mrs. Ruby L. Martin at Hawthorne & Hawthorne Law Firm detailing numerous current USDA liens filed against me and my farm property. She stated that all USDA liens would need to be paid and removed prior to my March 22, 2019 closing date to purchase a $3,000,000 farm in Mecklenburg County, VA. On February 27, 2019, I visited the Mecklenburg County USDA Service Center in Boydton, VA. My wife Kara D. Boyd and I met with Evan Harver in the USDA Farm Service Agency (FSA) Loan Office as evidenced by my receipt of service. Mr. Harver researched my farm loan files and in those files he found six (6) Certificates of Satisfaction pertaining to USDA liens that had been prepared but never signed, dated, notarized and/or filed by USDA with the Clerk of Court, Mecklenburg County, Virginia. I believe those certificates were prepared in 1997 in accordance to the aforementioned USDA Settlement Agreement based upon the fact all the certificates have the identical language as follows: "AUTHORIZED FSA OFFICIAL (Note Holder) ANNE J. RICKMAN, Agriculture Credit Manager", "Subscribed, sworn to and acknowledged before me by Anne J. Rickman this ___ day of _____, 1997." and "My commission expires: 5/31/1998." In addition, the USDA failed to provide a farm in inventory as stipulated in my USDA Statue of Limitations Agreement.

I believe that this is a clear case of retaliation, breach of agreement and racial discrimination against an African American farmer for the following reasons:

1. My racial discrimination complaint and case against the USDA was one of the 1st in US History. At that time many of the African American and other minority farmers' racial discrimination cases were barred by the two (2) year statue of limitations. Also during that time there was not functioning USDA Office of Civil Rights. I advocated in Congress for the position—Assistant Secretary Office of Civil Rights. I worked to put those things in place.
2. I led the fight for African American Farmers as well as helped with Native American, Women and Hispanic farmers' complaints and cases of racial discrimination filed against USDA.
3. On Dec. 8, 2010, President Obama signed into law a bill that I authored paving the way for the largest civil rights settlement in history for African Americans $1.25 Billion.

Now 22 years later (1997–2019), I have been notified of the liens the USDA failed to remove as stipulated in Section II paragraph 2 of the aforementioned USDA Settlement Agreement.

I am requesting an immediate investigation and speedy resolution in this matter. Thank you in advance for your assistance.

Sincerely,



JOHN W. BOYD, JR.

SUBMISSION NO. 7

Farmers Home Administration
Washington D.C. 20250

SEP 1 2 1994

SUBJECT: Correcting Improper Servicing Actions under FmHA Instruction 1951-S
John W. Boyd, Jr.
Account No. 54-070-0227236891
EOS Case Number: VA-92-64

TO: Lloyd A. Jones
State Director, FmHA
Richmond, Virginia

ATTN: Farmer Programs

The subject borrower filed a discrimination complaint against James Garnett, County Supervisor, on February 18, 1992. As a result of the complaint, State and National Office staffs have completed a thorough review of FmHA's loan making and servicing actions. The following problems have been identified:

1. Mr. Boyd applied for loan servicing in 1992. His loan servicing request has not been processed to completion. A Farm and Home Plan was completed and DALR$ run, which resulted in restructuring with a writedown and deferral. However, the County Supervisor failed to add an additional $5,000 annual operating loan. The County Supervisor was instructed to complete the servicing process by the State Director in a letter dated May 12, 1993. This task has not been completed.

2. The borrower's 1986 housing application has not been processed.

3. Approximately $3,000 may have been misapplied to another borrower's account from Mr. Boyd's poultry assignment.

4. The borrower's account has been referred to a credit bureau as delinquent even though DALR$ showed that the debt may be restructured under FmHA Instruction 1951-S.

5. In 1992, Mr. Boyd entered into a contract with Perdue to raise chickens. He subsequently lost his chicken contract. Without the chicken contract, the borrower's chance of success is poor. The County Supervisor's

FmHA Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

(7)

actions may have contributed to the borrower's financial difficulty which in turn may have contributed to the loss of the chicken contract.

In order to correct the problems identified above, please take the following action:

1. You are hereby authorized to restructure Mr. Boyd's account using information obtained from the loan servicing application submitted on July 1, 1992. The discount rate and net recovery inputs used in DALR$ should be those which existed at the time the application was submitted. The loans received in 1992 should also be restructured using the 1992 cash-flow. If necessary, the term for the 1992 Farm Ownership loan used to construct chicken houses should be extended beyond the original 15-year term, but not beyond 20 years from the original date of the note.

2. If the borrower's 1992 cash-flow will support additional debt (with or without a writedown), the borrower may be considered for a rural housing loan of up to $10,000. A 504 repair loan should be considered before a 502 loan. Look at 1992 Income for Loan Check How 10/17/95

3. You should continue your audit of payments applied against the account. If you confirm that an underpayment has been made, and the account can be restructured, the payment should be reapplied AFTER the account has been restructured.

4. You should take immediate action to clear up the borrower's credit history. Letter Can be sent out to your [illegible]

5. The borrower should be informed of his right to file a tort claim under the Federal Tort Claims Act (FmHA Instruction 2042-A). A copy of FmHA Instruction 2042-A will be provided to the borrower. You will not assume liability for damages on behalf of the Government or advance any opinion as to the merits of the borrower's claim.

6. You should provide assistance to the borrower in his attempt to obtain a new contract from Perdue.

7. If you are unable to restructure the borrower's account using the 1992 cash-flow, you should provide the borrower with the opportunity to update financial information. Using the updated financial information, DALR$ should be rerun, using the discount rate in effect on July 1, 1992, and current net recovery inputs.

Try w/k Time 10/25 To be sent 93 - or 94

(8)

Negotiations with Perdue should be concluded before the new information is obtained.

8. Servicing of the account should be tracked on the 1990 AGCREDIT as a borrower who is 180 days delinquent. Tracking in AGCREDIT should be completed down to "CSR301 - Determine Eligibility & Run DALR$ to Determine Feasibility" and continue, in accordance with this letter and FmHA Instruction 1951-S through to completion.

9. You should personally schedule a meeting with the borrower to discuss the items noted above. The new County Supervisor should attend the meeting. The meeting should be documented in the County Office case file. After the meeting, you should send the borrower a letter reviewing the items discussed at the meeting.

10. Because of the problems involved in this case, you should file a monthly report concerning your efforts to service the Boyd account with Farmer Programs Loan Servicing and Property Management Division. Each report should be sent to the attention of Bruce Mair. The Division's FAX number is 202-690-0949. The Agbox number is 0774. The first report should be submitted by October 31, 1994. Farmer Programs will provide a copy of each report to the Equal Opportunity Staff.

If you have questions, please contact Bruce Mair, Farmer Programs Loan Servicing and Property Management Division, at 202-690-4009.

260 5715

MICHAEL V. DUNN
Administrator

SUBMISSION NO. 8

United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights

JOHN W. BOYD, JR., *Complainant* v. SONNY PERDUE, *Secretary,* Department of Agriculture Agency	Program Complaint No.: FSA–19–8204

Final Agency Decision on Allegations of Noncompliance

I. Introduction

Pursuant to the Alternative Dispute Resolution Act of 1996 (Public Law 104–320), and the United States Department of Agriculture (USDA) implementing regulation, Departmental Regulation (DR) 4330–003,[1] the Office of the Assistant Secretary for Civil Rights (OASCR) hereby renders the following determination on the Complainant's allegation of noncompliance with his Settlement Agreement (SA) dated November 19, 1999.

[1] DR 4330–003, paragraphs 7(j) and 7(j)(2) states that OASCR is responsible for monitoring implementation of SAs and ensuring compliance with their terms and conditions. If the complainant believes that an agency has failed to comply with the terms of the SA, the complainant shall notify OASCR, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged non-compliance.

II. Issue Presented

Whether Farm Service Agency (FSA) officials violated the SA when they failed to provide Complainant a farm in USDA inventory property from July 18, 2018 to February 1, 2019.

III. Procedural History

Date of Settlement Agreement: November 19, 1999
Date(s) of Alleged Noncompliance: July 18, 2018–February 1, 2019
Date of Complaint: February 27, 2019
Date of Acceptance: April 15, 2019
Dates of Investigation: July 29, 2019–August 1, 2019
Date of Report of Investigation: October 9, 2019

IV. Statement of Facts

The USDA Rural Development/Farm Services Agency (USDA–RD/FSA) resale web site provides current information about single-family homes, multifamily homes, farms, and ranches for sale by the U.S. Federal Government. The website was designed to provide information regarding properties owned by the government for public sale. These previously owned properties are for sale by public auction or other method depending on the property. The properties are located throughout the United States including our Commonwealths and Territories in the Pacific and the Caribbean. After finding a USDA–RD/FSA home or farm property of interest on the resale web site, individuals are to contact their local RD or FSA servicing office to obtain the most current and accurate information regarding the status of the home/farm property, and to determine eligibility for potential program benefits. Depending on individual's circumstances and the status of the property listed, the method of bidding and ultimate purchase of property may vary.[2]

Complainant resides in and is a farmer in Mecklenburg County, Virginia. Since 1984, Complainant has participated in FSA's Farm Loan Programs and has been approved for and received farm ownership and operating loans. A review of Complainant's complaint history shows, he has filed several program discrimination complaints related to his FSA loans over the years, which eventually resulted in two Settlement Agreements (SA) which were executed on May 20, 1997, and November 19, 1999. (ROI, pg. 5)

On November 19, 1999, Complainant and USDA entered into a SA based on all claims of Complainant's 1990 discrimination complaints.[3] The SA required USDA provide Complainant with priority consideration, on a one-time basis for the purchase, lease, or other acquisition of inventory property located in the Commonwealth of Virginia. The SA also stated Complainant must exercise his right to such priority consideration in writing and within 5 years of the date the SA was signed. (ROI, pgs. 214–216)

On July 18, 2018, Complainant emailed the Farm Loan Manager (FLM) (race: White) in FSA's Siskiyou County, California office, requesting additional information on a property listed on FSA's inventory property website. (ROI, pg. 326)

On July 24, 2018, the FLM responded to Complainant's email inquiry with a phone call. During the call, the FLM provided Complainant with general information on the property in Lassen County, California and a general outline of the sale process. Also, the FLM added Complainant's name and email address to the distribution list to ensure he received the notice of sale of property once it was published. (ROI, pgs. 325, 306–307)

On the same day, Complainant emailed the FLM requesting physical address and name of previous owner for the California property he was interested in. (ROI, pg. 324)

On July 27, 2018, the FLM responded to Complainant's email by stating she did not have access to a physical address. The FLM recommended Complainant contact the County Assessor. Also, the FLM expressed she would try and find out information and let Complainant know if she could locate the physical address. (ROI, pg. 324)

On February 26, 2019, Complainant visited the Mecklenburg County FSA office and received assistance from the Farm Loan Officer (FLO) on outstanding Farmers Home Administration liens on his properties. (ROI, pgs. 239–240)

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[2] For more information about USDA–RD/FSA properties, see: *https://properties.sc.egov.usda.gov/resales/public/home*.

[3] Due to age, we do not have access to Complainant's complaints filed in the 1990's against USDA.

On February 27, 2019, Complainant filed a program discrimination complaint against FSA.[4] (ROI, pgs. 13–17)

On March 11, 2019, Complainant emailed the FLM to see if she had found any additional information regarding the property of interest. (ROI, pg. 323)

On August 25, 2019, Complainant emailed the FLM again to see if she had found any additional information regarding the property of interest. (ROI, pg. 331)

On September 6, 2019, the FLM responded to Complainant's email by informing him that property he was interested in was still in the FSA inventory. According to the FLM, FSA was still working through the steps to prepare the property for sale as a surplus property. (ROI, pg. 323)

V. Applicable Legal Standards

A settlement agreement is a contract, and its construction is a question of law. *See Lary* v. *U.S. Postal Serv.,* 472 F.3d 1363, 1367 (Fed. Cir. 2006). As such, the formation, construction, and enforceability of a settlement agreement are governed by contract law. *Carr* v. *Runyan,* 89 F.3d 327, 331 (7th Cir. 1996). Therefore, in order for a complainant to prevail, he/she must show material noncompliance with the terms of the settlement agreement. *See Gilbert* v. *Dep't of Justice,* 334 F.3d 1065, 1071 (Fed. Cir. 2003) ("A party breaches a contract when it is in material noncompliance with the terms of the contract.")

"A breach is material when it relates to a matter of vital importance, or goes to the essence of the contract." *Thomas* v. *Dep't of Housing & Urban Dev.,* 124 F.3d 1439, 1442 (Fed. Cir. 1997); Restatement (2d) of Contracts § 241 (1981) (A material breach is one that will, or may, defeat the object or underlying purpose of the contract.). A purely technical and immaterial breach of a contractual obligation will generally be insufficient to warrant contract rescission. *See, e.g., Sahadi* v. *Continental Illinois Nat. Bank and Trust Co. of Chicago,* 706 F.2d 193, 196–198 & n. 2 (7th Cir. 1983) Restatement (2d) of Contracts §§ 231–60 (1981) (A minor breach will not generally give rise to a cause of action on the entire contract).

A determination as to whether a breach is material "is a complicated question of fact, involving an inquiry into such matters as whether the breach worked to defeat the bargained-for objective of the parties or caused disproportionate prejudice to the nonbreaching party, [and] whether custom and usage considers such a breach to be material." *Sahadi,* 706 F.2d at 196. These factors, however, do not detract from the fundamental materiality inquiry: whether the parties would have entered into the contract without the particular provision at issue. *Id.* at 714; *see also Francorp, Inc.* v. *Siebert,* 126 F. Supp. 2d 543, 547 (N.D. Ill. 2000) ("The materiality of a breach depends on the 'inherent justice of the matter,' and on whether the matter, in respect to which the failure of performance occurs, is of such a nature and of such importance that the contract would not have been made without it.") In cases involving allegations of breach of a settlement agreement, the burden is always placed on the party alleging breach to establish that a breach has occurred. *Porter* v. *United States Postal Service,* EEOC Appeal No. 01A54699 (December 20, 2005).

A breach of contract claim requires two components: (1) an obligation or duty arising out of the contract and (2) factual allegations sufficient to support the conclusion that there has been a breach of the identified contractual duty. *San Antonio Housing Auth.* v. *United States,* 143 Fed. Cl. 425, 470 (2019)[.]

VI. Findings and Conclusion

Priority Consideration for Inventory Property

On November 19, 1999, USDA and Complainant entered into a SA for the purpose of resolving Complainant's program discrimination claims through a mutually acceptable voluntary agreement. Per the SA, USDA agreed to provide Complainant with priority consideration, on a *one-time basis* for the purchase, lease, or other acquisition of inventory property in the Commonwealth of Virginia. The SA required Complainant to exercise this right to such priority consideration in writing and *within 5 years of the date* of the signed SA.

Complainant asserts he searched FSA's property inventory website, but the information available was always out of date. Also, Complainant states he emailed FSA's Outreach Director and the point of contact for FSA's inventory property. However, Complainant noted his emails were never responded to in a timely manner. Complainant asserts he requested an extension from USDA officials of the 5 year priority property consideration stipulated in the SA. Complainant noted USDA's Assistant Secretary for Civil Rights advised him to continue his ongoing efforts to request a farm out of the inventory and contact FSA. (ROI, pg. 103) We note Com-

[4] Complaint # 19–8204.

plainant did not provide any specific details or evidence regarding his efforts to exercise his right to priority consideration for an FSA inventory property. Despite his assertions, Complainant's current allegation does not support a finding of FSA's material noncompliance with the terms of the SA.

According to the FLM, Complainant contacted her about a Lassen County, California property listed in FSA's inventory website on July 18, 2018. On July 24, 2018, the FLM responded to Complainant by providing him with general information about the property and an outline of the sale process. In addition, the FLM emailed Complainant maps of the property location and added him to FSA's distribution list to ensure he received the Notice of Sale once published. On the same day, Complainant sent a subsequent email requesting the physical address of the property. On July 27, 2018, the FLM informed Complainant she was unable to locate a specific address for property and referred him to the County Assessor's office for additional information. The FLM explained the property remained in FSA's inventory, and Complainant was to be notified once a Notice of Sale was prepared and published. (ROI, pgs. 118, 313, 323–324)

The Mecklenburg County FLO stated he had no knowledge of Complainant's request for inventory property and was not aware of any other FSA personnel who may have assisted Complainant with his request. According to the FLO, the process for requesting or purchasing FSA inventory property can be found in Part 21 of the FSA Handbook 5–FLP. Additionally, the FLO indicated no real estate inventory property was available between July 18, 2018 and February 2019 for the Mecklenburg FSA Farm Loan Program office. (ROI, pgs. 242–243)

FSA Handbook 5–FLP Part 21 states when FSA acquires inventory property and the authorized agency official confirms that the property satisfies the applicable general policies, the authorized agency official initiates the sale of the property. For most inventory property, the authorized agency official must begin advertising the property for sale within 15 calendar days of title acquisition. FSA offers inventory property to beginning farmers or socially disadvantaged farmers before considering sale of the property to the general public.[5]

While we agree Complainant was entitled to priority consideration to USDA's property inventory, he did not utilize the benefit within the timeframe and region covered by the SA. According to the SA, Complainant was required to exercise his right to such priority consideration in the Commonwealth of Virginia within 5 years of the date the SA was signed. The SA between USDA and Complainant was signed on November 19, 1999. As such, Complainant would have had until November 19, 2004, to exercise his entitlement to priority consideration. However, Complainant was seeking priority consideration on July 18, 2018, well outside of the allotted timeframe set by the SA. Complainant noted he attempted to obtain an extension of the 5 year timeframe. However, nothing in the record shows the Agency approved his extension request. Additionally, the SA stipulated Complainant would have priority consideration for FSA properties in Virginia. The property in question associated with the instant allegation of breach of settlement was in California.

The compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy. *Weade* v. *Weade,* 153 Va. 540, 150 S.E. 238 (1929) Here, after the agreement was executed, the Agency was under no obligation to enlarge the timeframes or geographic areas because Complainant did not exercise his priority consideration as specified in the SA. Therefore, we find there was no material breach of contract.

Conclusion

Based on our review of the record and the documentation submitted by FSA and the Complainant, we conclude that the FSA complied with the terms of the Settlement Agreement.

No person shall be subject to reprisal or harassment for filing a discrimination complaint against USDA; participating in or contributing to the identification, investigation, prosecution, or resolution of civil rights violations by an agency of USDA or by a recipient of Federal financial assistance from USDA; or otherwise aiding or supporting the enforcement of civil rights laws, rules, regulations or policies applicable to USDA programs.



[5] For more information on the sale of FSA's inventory property, see: *https://www.fsa.usda.gov/Internet/FSA_File/5-flp.pdf.*

CINNAMON L. BUTLER,
Director, Program Adjudication Division
Center for Civil Rights Enforcement

2/3/20
Date

SUBMISSION NO. 9

United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights

JOHN W. BOYD, JR., *Complainant* v. SONNY PERDUE, *Secretary,* Department of Agriculture Agency	Program Complaint No.: FSA–19–8204

Final Agency Decision

I. Introduction

In accordance with 7 CFR Part 15d, this is the final determination of the United States Department of Agriculture (USDA) on this complaint.

II. Issue Presented

Whether Farm Service Agency (FSA) officials discriminated against Complainant on the bases of race (African American) and retaliation (prior civil rights activity) when on February 25, 2019:

1. They informed Complainant that USDA liens remained on his property;[1]
2. They failed to forgive all Complainant's USDA farm debt;[2] and
3. From July 18, 2018 to February 1, 2019, they failed to provide Complainant a farm in USDA inventory property as stipulated in his settlement agreement.

III. Procedural History

Date of Alleged Discriminatory Act: February 25, 2019, July 18, 2018, February 1, 2019
Date Complaint Filed: February 27, 2019
Date of Acceptance: April 15, 2019
Dates of Investigation: July 29, 2019–August 1, 2019
Date of Report of Investigation: October 9, 2019

IV. Statement of Facts

The U.S. Department of Agriculture's Farm Service Agency (FSA) offers direct and guaranteed loans to farmers and ranchers to promote, build, and sustain family farms for a thriving agricultural economy. FSA offers a variety of loans to provide additional resources farmers need to establish and maintain profitable farming operations. FSA's Direct Loan Program is designed to help farmers start, purchase, or expand their farming operation. From beginning farmers who have limited financial history to qualify for commercial credit to farmers who have suffered financial setbacks from natural disasters, FSA's Farm Ownership Loans may be used to purchase a farm, enlarge an existing farm, construct new farm buildings and/or improve structures, pay closing costs, and promote soil and water conservation and protection.[3]

Complainant resides and farms in Mecklenburg County, VA. Beginning in 1984, Complainant has participated in FSA's Farm Loan programs. During this period, Complainant was approved for and received several farm ownership and operating loans. In reviewing Complainant's complaint history, it shows he has filed numerous program complaints related to his FSA loans over the years, which eventually resulted in a finding of discrimination. As a result, Settlement Agreements (SAs) were

[1] We note the accepted issue is misstated. The record reveals Complainant discovered the alleged remaining FSA liens from a third-party, not FSA officials.

[2] Issue #2 was not originally a part of the issues established by the complaint and/or OASCR's acceptance letter. However, due to an email clarifying Complainant's claims, issue #2 has been added to the instant discrimination complaint. (ROI, pg. 35–36)

[3] For more information on FSA's Farm Loan Programs, see: *https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/farm-loans-overview.pdf.*

executed on May 20, 1997, and November 19, 1999.[4] Complainant also participated in the Black Farmers class action lawsuit, otherwise known as *Pigford*.[5] The 1997 SA ordered forgiveness of all Complainant's FSA loan debt. Complainant thus currently does not have any outstanding USDA farm loan program debt. The 1999 SA also ordered Complainant be provided priority consideration in obtaining FSA farm inventory property. (ROI, pgs. 5, 31–32, 214–216)

On July 17, 1997, a Farm Loan Manager (FLM #1) (race: White) sent Complainant's attorney six Certificates of Satisfaction and Promissory Notes for release. Additionally, FSA forwarded documentation to Complainant's attorney which included a Termination Statement for the release of the financing statements that were on record with the Mecklenburg Clerk's Office. (ROI, pgs. 128, 131–179)

On July 18, 2018, Complainant emailed FLM #2 (race: White) requesting additional information on specific property listed on FSA's inventory property website. (ROI, pgs. 325–326)

On July 24, 2018, FLM #2 responded to Complainant's email inquiry with a phone call. During the call, FLM #2 provided Complainant with general information on the property he was interested in and a general outline of the sale process. Also, FLM #2 added Complainant's name and email address to the distribution list to ensure he received the notice of sale of the property once it was published. (ROI, pgs. 325, 306–307)

On the same day, Complainant emailed FLM #2 requesting the physical address and name of the previous owner for the subject property. (ROI, pg. 324)

On July 27, 2018, FLM #2 responded to Complainant's email by stating she did not have access to the physical address. FLM #2 recommended Complainant contact the County Assessor. Additionally, FLM #2 expressed she would attempt to locate the address and let Complainant know the results. (ROI, pg. 324)

In February 2019, Complainant met with a closing company to make final preparation for the purchase of a property.[6] During the meeting, the closing company performed a title search and found outstanding liens remained on Complainant's farm. As a result of the outstanding liens, Complainant was not able to immediately secure the loan he needed to purchase the property at that time. (ROI, pgs. 97–98)

On February 26, 2019, Complainant called and visited the Mecklenburg County FSA office seeking assistance with outstanding Farmers Home Administration liens presumed to be on his property. During the visit, the Farm Loan Officer (FLO) (race: White) informed Complainant he had located copies of satisfaction documents and could reissue them since they were not filed after being provided to Complainant's attorney. Additionally, the FLO informed Complainant the documents would need to be signed by the Farm Loan Manager and then notarized. The FLO informed Complainant that the documents could be completed and sent to the closing company within 2 days. (ROI, pgs. 239–240)

On the same day, Complainant emailed the FLO requesting copies of the promissory notes associated with the satisfaction of deeds of trust for his properties. (ROI, pg. 240)

On February 27, 2019, Complainant filed a complaint with the Office of the Assistant Secretary for Civil Rights (OASCR). (ROI, pgs. 13–17)

On March 11, 2019, Complainant emailed FLM #2 to see if she had found anyadditional information on the farm of interest. (ROI, pg. 323)

On the same day, Complainant emailed FSA's Riverside-San Diego County, California County Executive Director (CED) requesting additional information on a property in FSA's inventory and the next steps in the process. (ROI, pg. 121)

On April 2, 2019, the CED responded to Complainant's email and referred him to two additional FSA contacts for details on the property. (ROI, pg. 120)

On September 6, 2019, FLM #2 responded to Complainant's email by informing him that the property of interest was still in the FSA inventory. According to FLM #2, FSA was still working through the steps to prepare the property for sale as a surplus property. (ROI, pg. 323)

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[4] The 1997 SA was based on a discrimination complaint submitted by Complainant on February 18, 1992 and USDA's related Final Agency Decision issued on October 11, 1996. The 1999 SA applied to all of Complainant's 1990 discrimination complaints submitted to USDA. (ROI, pgs. 31–32, 214–216)

[5] African American farmers successfully sued the USDA alleging years of systematic discrimination in administering farm programs in violation of the Equal Opportunity Act (ECOA). *See Pigford* v. *Glickman,* 185 F.R.D. 82 (D.D.C. 1999), *aff'd,* 206 F.3d 1212 (D.C. Cir. 2000).

[6] We note this was not the initial FSA property in which the Complainant previously inquired.

V. Applicable Legal Standards

Discrimination Based on Membership in a Protected Class in Programs Conducted by USDA

USDA regulation 7 CFR § 15d.3(a) provides:

> No agency, officer, or employee of the United States Department of Agriculture shall, on the ground of **race,** color, religion, sex, age, national origin, marital status, familial status, sexual orientation, or disability, or because all of part of an individual's income is derived from any public assistance program, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the United States Department of Agriculture.

Reprisal—7 CFR § 15d.3(b)

> USDA regulation 7 CFR § 15d.3(b) prohibits discrimination on the basis of retaliation in any program or activity conducted by USDA. It is the policy of USDA to follow the framework provided by Title VII of the Civil Rights Act of 1964 to determine a *prima facie* case of retaliation.

Dismissal

USDA will close a complaint under the following circumstances:

a. Voluntary withdrawal;
b. Settlement or voluntary resolution;
c. Lack of jurisdiction;
d. ***Failure to state a claim;***
e. Failure to pursue;
f. Failure to file timely;
g. Filing in court on the same or essentially similar claims;
h. Lack of any further remedies;
i. Any other authority provided in law;
j. Failure to seek remedy available under the statues, regulation, or court decision;
k. Continuation of a pattern of complaints previously filed by the complainant, or someone other than the complainant, that the Office of the Assistant Secretary for Civil Rights or a court of competent jurisdiction already have found to be without merit;
l. Dissatisfaction with the processing of a previously filed complaint.[7]

Issue #2—Failure to State a Claim

A dismissal for failure to state a claim is intended to address a dispositive issue of law. Under this procedural disposition, the trier-of-fact does not assess the merit or truthfulness of the allegations or the legal theories advanced by Complainant. Rather, the trier-of-fact assumes that all facts advanced by Complainant are true. If, under this assumption, it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations, the complaint must be dismissed for failure to state a claim. *See Bell Atl. Corp.* v. *Twombly,* 550 U.S. 544, 555, 127 S. Ct. 1955, 1964–65, 167 L. Ed. 2d 929 (2007) (Factual allegations must be enough to raise a right to relief above the speculative level.)

In issue #2, Complainant alleges FSA officials discriminated against him based on race, from July 18, 2018 to February 1, 2019, when they failed to provide Complainant a farm from FSA's inventory property, as stipulated in the terms of the November 19, 1999 SA. We find Complainant fails to state a claim because issue #2 is concerned solely with what he perceived as FSA's failure to satisfy the terms of the SA—not a new adverse action based on race. The SA stipulated Complainant be allowed priority consideration for obtaining an FSA farm inventory property. Even though this issue will be reviewed under a separate breach of SA analysis, we note the terms of the SA established a 5 year timeframe for providing priority consideration. The period in which Complainant alleges issue #2 occurred is 15 years after the terms of the SA expired.

Furthermore, Complainant does not articulate how his race related to his inability to obtain FSA inventory property. According to the record, at the time the instant complaint was investigated, the property at issue remained in FSA's inventory prop-

[7] *See* Departmental Regulation 4330–003.

erty and was still being prepared for the sale process. As a result, there was not an opportunity for Complainant to purchase property. Complainant does not allege that the property was unreasonably delayed for sale due to discriminatory animus or that other similarly situated buyers of a different protected class were given priority, notice, or more favorable treatment. Therefore, this issue is dismissed for failure to state a claim upon which relief may be granted. (Requirement that pleading contain a short or plain statement of claim showing the pleader is entitled to relief does not require detailed factual allegations but demands more than unadorned the defendant unlawfully harmed me accusation.) *Ashcroft* v. *Iqbal,* 556, U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)[.]

VI. Discussion and Analysis

A. Disparate Treatment (Race)

In evaluating a claim of disparate treatment based on membership in a protected class, it is USDA policy to use the shifting analytic framework established by the Supreme Court in *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973). The Court has defined disparate treatment as situations where an Agency "simply treats some people less favorably than others because of their race, color, religion, sex, or other protected characteristic." *See International Brotherhood of Teamsters* v. *U.S.,* 431 U.S. 358, 335, n. 15 (1977). Applying the *McDonnell Douglas* principles, the investigating agency must first determine if a complainant can raise an inference of discrimination by establishing a *prima facie* case. The elements of a *prima facie* case may vary depending on the facts of the complaint, but often include the following:

(1) Complainant is a member of a protected class;

(2) Complainant applied for and was eligible to receive the benefit sought;

(3) Despite Complainant's eligibility, he/she was rejected, referred elsewhere, or otherwise treated differently; and

(4) The Agency/Respondent accepted or treated more favorably similarly situated applicants who were not members of the protected class or classes.

See Lawson v. *CSX Transp., Inc.,* 245 F.3d 916 (7th Cir. 2001); *McDonnell Douglas Corp.,* 411 *U.S.* at 802.

Once a complainant has established a *prima facie* case for discrimination, a rebuttable presumption exists that discrimination has occurred, the burden shifts to the Agency to articulate a legitimate nondiscriminatory reason for its action(s). *See Texas Dept. of Community Affairs* v. *Burdine,* 450 U.S. 248, 254 (1981). Once the Agency has satisfactorily articulated a legitimate nondiscriminatory reason for its actions, the burden shifts back to the complainant to prove, that the Agency's legitimate, nondiscriminatory reason is a pretext for discrimination. *See McDonnell Douglas* at 804–05. At all times, complainant retains the burden of persuasion that unlawful discrimination has occurred. *See Burdine* at 256.

In disparate treatment cases, the established order of analysis requires a complainant establish a *prima facie* case of discrimination. However, determining the existence of a *prima facie* case need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the action at issue, the factual inquiry can proceed directly to the ultimate issue whether Complainant has shown by a preponderance of the evidence that discrimination motivated the Agency's actions. *See U.S. Postal Service Board of Governors* v. *Aikens,* 460 U.S. 711, 713–714 (1983). Here, we will assume, without finding, for purposes of analysis, that Complainant established a *prima facie* case of disparate treatment based on race.

Accordingly, the burden shifts to the Agency to articulate a legitimate, nondiscriminatory reason for the actions grieved by Complainant.

B. Agency's Legitimate, Nondiscriminatory Reasons

The only inquiry to determine whether or not the Agency has produced evidence to sufficiently articulate a legitimate, nondiscriminatory reason is whether the Agency's evidence has frame[d] the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext."* *See Texas Department of Community Affairs* v. *Burdine,* 450 U.S. 255–56 (1981). As described below, we find that FSA has articulated a legitimate, nondiscriminatory reason for its actions.

FLM #1 stated FSA took proper steps to remove the liens. FLM #1 asserted she, along with her staff, prepared all the necessary documents to remove Complainant's

*__Editor's note:__ there is no corresponding open quote mark (") for this quotation. It has been reproduced herein as submitted.

FSA liens. Then, officials sent the Certificates of Satisfaction and the Promissory Notes via certified mail to Complainant's attorney to have FSA liens removed from the record. (ROI, pgs. 231, 234)

According to the FLM #1, USDA officials did not always go to the County Clerk's Office to file or release liens. FLM #1 asserted when borrower's loans were closed by attorneys, USDA would send the lien to the attorney to file in the County Clerk's Office. FLM #1 further explained when Complainant received his USDA loan to purchase the farm, the attorney who closed the loan filed the USDA lien in the County Clerk's Office. (ROI, pg. 234)

We find the above is sufficient and the Agency has articulated a legitimate, nondiscriminatory reason for its actions. Therefore, the burden now shifts to the Complainant to prove, by a preponderance of the evidence that these reasons are a mere pretext for unlawful discrimination.

C. Pretext

As the Agency has articulated legitimate, nondiscriminatory reasons for its actions, to prevail, the complainant must now prove, but a preponderance of the evidence, why these proffered reasons are untrue or a more pretext for unlawful discrimination. *Burdine* at 253. The complainant can "succeed in this either directly by persuading the trier of facts that a discriminatory reason more likely motivated the agency or indirectly by showing that the agency's proffered explanation is unworthy of credence." *Burdine* 256. A complainant can demonstrate pretext by exposing such weakness, implausibility, inconsistencies, incoherencies, contradictions" ** in the Agency's reasoning that a fact finder could find the Agency's articulated explanation unworthy of credence. *See Richmond* v. *ONEOK, Inc.* 120 F.3d 205,209 (10th Cir.1997)[.]

Complainant alleges FSA officials failed to forgive all of his USDA farm debt. However, we are not persuaded by Complainant's assertions, as he has not shown by a preponderance of the evidence that discriminatory *animus* motivated or caused the alleged adverse action.

It is reasonable to assume that if FSA had not forgiven all of Complainant's farm loan debt as indicated in the SA, FSA would have made attempts to collect the debt from Complainant at some interval over the course of 20 years. Under normal processes, delinquent borrowers receive various notifications (*i.e.,* notice of intent to accelerate, notice of foreclosure) and demands for payment when they are delinquent on their loans. However, USDA's last contact with Complainant regarding the subject loans was on July 17, 1997, when FSA sent Complainant's attorney the Certificates of Satisfaction and the Promissory Notes to release USDA's liens.

Although 20 years passed before Complainant discovered any issues associated with the documentation of the debt forgiveness, the 1997 SA clearly established USDA would forever discharge, hold harmless, and indemnify Complainant from any liability for his debt at that time. (ROI, pgs. 31, 131) We find Complainant's debt had been forgiven by USDA, and he has not provided any evidence which demonstrates FSA did not forgive his debt based on his race.

Additionally, the record evidence confirms that Agency officials supplied Complainant's attorney with the requisite documentation to release USDA liens on Complainant's properties after loans where satisfied. The trier of fact is unpersuaded that FLM #1 had intentions of not releasing liens based upon race. Rather, it was Complainant's responsibility to ensure his representative had filed the appropriate paperwork with the County Clerk's Office. Contrary to Complainant's assertions, FLM #1's response suggests that she took meaningful steps to ensure Complainant's attorney received the documentation needed to release liens from public record. Complainant did not provide any evidence to substantiate claim of discrimination by FSA officials. Absent any operative facts that would lend credence to Complainant's allegations, his mere conjecture is insufficient to demonstrate pretext. *Reed* v. *Amax Coal Co.,* 971 F.2d 1295, 1299 (7th Cir. 1992) (plaintiff cannot make showing of discrimination through bare allegations). *Miller* v. *Auto. Club of KM, Inc.,* 420 F.3d 1098 (10th Cir. 2005) (recognizing unsupported suspicions are insufficient to establish discrimination).

Retaliation

To establish a *prima facie* case of reprisal discrimination, a plaintiff must prove that:

(1) Complainant engaged in a protected activity;

** **Editor's note:** there is no corresponding open quote mark (") for this quotation. It has been reproduced herein as submitted.

(2) Agency had knowledge of the protected activity;

(3) Complainant subsequently suffered an adverse action; and

(4) But for the prior protected activity, the adverse action would not have occurred. *University of Texas Southwestern Medical Center* v. *Nassar,* 133 S. Ct. 2517 (2013)[.]

For the first prong, Complainant must show he engaged in prior protected activity. The record shows Complainant filed several civil rights complaints regarding his FSA farm loans. Complainant satisfies prong #1. (ROI, pg. 5)

For the second prong, the record sufficiently establishes FSA officials had knowledge of Complainant's prior civil rights activities. Therefore, Complainant meets the requirements of prong #2.

Regarding the third prong, Complainant must show he suffered an adverse action.[8] Complainant claims he was retaliated against by FSA officials when they failed to remove liens on his farms. In February 2019, Complainant attempted to purchase a farm. The closing company performed a title search on Complainant's properties and informed him that FSA liens remained on his farms. As a result, Complainant contends he had to negotiate an extension agreement for an additional 30 days to secure the prospective loan and purchase the property. The extension agreement required Complainant to deposit an additional $25,000 to his original deposit of $50,000. As such, Complainant meets the requirements of prong #3.

Finally, for prong #4, Complainant must show the adverse action suffered would not have taken place if it were not for his prior protected civil rights activities. The record shows in accordance with the May 20, 1997 SA, all of Complainant's debt owed to the Agency was forgiven. However, to a reasonable person, the record does not support an inference that the recordation of FSA liens on Complainant's farms in 2019 was caused by the negotiated SA from 1997.

It is unclear to the trier of fact who had the ultimate responsibility of filing the appropriate paperwork regarding FSA liens on Complainant's farms to the Mecklenburg Clerk's Office. The available records show delivery of certified mail to Complainant's attorney containing six Certificates of Satisfaction and Promissory Notes for the release of FSA liens. (ROI, pg. 131). Under the common law of agency, the signature of a disclosed, authorized agent has the same legal force as the signature of his principal.

We acknowledge it was a financial burden for Complainant to provide additional funding to secure loan because FSA liens remained erroneously recorded on his land though the obligation to pay was extinguished. However, the Agency's related actions regarding Complainant, *i.e.,* discharge of debt, not sending notices of debt owed, and immediate assistance when the recording error was discovered, weighs against the perception of wrongdoing, negligence, or retaliatory motives on the Agency's part. Complainant and/or his attorney bore some responsibility to conduct due diligence and ensure the liens were released with the Mecklenburg County Clerk's Office. This inaction resulted in Complainant having to provide additional funding to secure the prospective loan. Considering the above, we conclude Complainant does not meet the requirements of prong #4.

To establish retaliation based on temporal proximity, Complainant would have to demonstrate the adverse action was followed closely after his protected activity. If we construe his prior protected activity in the light most favorable to Complainant, his protected activities occurred on May 20, 1997 and November 19, 1999 when the SAs were executed. However, Complainant did not discover that liens remained on his property until February 2019. Here, almost 20 years elapsed between the last protected activity (November 19, 1999) and the alleged adverse action (February 2019). In general, a complainant can demonstrate a causal connection using temporal proximity alone when the separation between the Agency's knowledge of the protected activity and the adverse action are very close. Twenty years is a substantial amount of time to show a correlation between protected activity and adverse action. Additionally, there have been no new allegations of retaliation regarding these loans since the November 19, 1999 SA was executed. Complainant has not offered any other evidence that would establish temporal proximity in his claim of retaliation. *See Nguyen* v. *City of Cleveland,* 229 F.3d 559 (6th Cir. 2000) (holding that temporal proximity alone may be insufficient to raise an inference of retaliation in the absence of other evidence of causation).

We find Complainant has not established a *prima facie* case of retaliation.

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[8] In the context of a retaliation claim, an action is "adverse" if it would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington N & Santa Fe Ry. Co.* v. *White,* 548 U.S. 53, 54 (2006).

VII. Conclusion

After careful review, and for the reasons set forth previously, USDA finds the record does not support a finding of discrimination based on retaliation.

No person shall be subject to reprisal or harassment for filing a discrimination complaint against USDA; participating in or contributing to the identification, investigation, prosecution, or resolution of civil rights violations by an agency of USDA or by a recipient of Federal financial assistance from USDA; or otherwise aiding or supporting the enforcement of civil rights laws, rules, regulations or policies applicable to USDA programs.

2/3/20

CINNAMON L. BUTLER, 2/3/20
Director, Program Adjudication Division Date
Center for Civil Rights Enforcement

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
Complaint of Program Discrimination

Complainant: John W. Boyd, Jr.
Complaint No.: FSA-19-8204
Agency: Farm Service Agency

Certificate of Service

I certify that the document listed was sent on this date by certified mail (unless otherwise specified) to:

Complainant: John W. Boyd, Jr.
[**Redacted**]
[**Redacted**], Virginia 23915

Agency Head: Richard Fordyce (*interoffice mail*)
Administrator
Farm Service Agency
Room 3096S, South Building

Agency Liaison: Emily Su (*interoffice mail*)
Director, Civil Rights
Farm Production and Conservation
PP III, 12th floor

2/4/2020

Certified by: Date
7012 3460 0003 3832 6288

The CHAIRMAN. Thank you so much, Mr. Boyd, for your excellent testimony.

And next, we have Mr. Blanding. Please begin your testimony.

STATEMENT OF CORNELIUS BLANDING, EXECUTIVE DIRECTOR, FEDERATION OF SOUTHERN COOPERATIVES/ LAND ASSISTANCE FUND, EAST POINT, GA

Mr. BLANDING. Good afternoon, Mr. Chairman, Madam Vice Chair, Mr. Ranking Member, and Members of the Committee. My name is Cornelius Blanding, and I am the Executive Director of the Federation of Southern Cooperatives/Land Assistance Fund, a 54

year old cooperative association of Black farmers, landowners, and cooperatives from all across the South.

Founded directly out of the civil rights movement in 1967, the Federation is the oldest and largest Black farmer-owned and -serving institution in the country. It is also the only cooperatively-owned organization of Black farmers, landowners, and cooperatives focusing primarily on Black land loss and the use of cooperatives as a tool to increase income and build wealth in the South, where 80 percent of all Black farmers are located.

I am honored to be before this Committee today, testifying on the realities, struggles, and perseverance of Black farmers and landowners in the U.S. South. I have submitted my full statement to the Committee, which I ask to be made part of the hearing record.

As part of my brief opening statement, I would like to thank this Committee again for this opportunity to testify before as part of this historic hearing on Black farmers. I have served the Federation of Southern Cooperatives and Black Farmers for the past 24 years, and as the executive of the Federation for the past 6 years.

We, the Federation of Southern Cooperatives, based on a study we did 41 years ago in 1980, entitled, *The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States,* that was commissioned by Congress and funded by the United States Department of Agriculture, and based on over 50 years of work, we estimate that approximately 60 percent of all Black-owned land is heirs property—land that lacks a clear title and that the landowner dies without a will or estate plan, and is passed down informally to the heirs of deceased landowners. It is the reason that I and thousands of others in the Black community are not Black landowners or still farming today.

So, you see, this work is personal for me, just like it is for other folks testifying on this hearing today, like it is for thousands of Black farmers and advocates across this country. Heirs property is a civil rights issue. All the citizens of our country should have access to government services, but because of heirs property, many don't, and for decades Black farmers haven't, and this has resulted in Black land loss. These are all things that could have been addressed with good and reasonable legislation, including the $1.9 trillion American Rescue Plan of 2021 recently passed by the Senate and the House, and signed into law by the President.

As I mentioned in my opening statement, Mr. Chairman, I am here to testify on the realities, struggles, and perseverance of Black farmers and landowners. The reality is that Black farmers are going out of business and lost the highest percentage of land than any other group in this country over the past century.

In 1910, there were 218,000 Black farmers owning roughly 15 million acres of land. According to the U.S. Census Bureau in 1992, there were only 18,000 Black farmers owning 2.3 million acres of land. That is over a 90 percent loss of Black farmers, as well as almost a 90 percent loss of Black-owned land.

Another reality is that the majority of Black farmers get their credit from USDA's Farm Service Agency, the lender of last resort, which they are expected to graduate out of that system in 7 years, and after that, they are supposed to qualify for credit in the traditional market. However, that date never comes for most Black

farmers. Instead, they are relegated to predatory-style lenders at best, and farming out of their pockets at worst. No business, especially farming, can survive in this reality. The reality is also that Black farmers have historically been discriminated against in various ways—including at USDA, as shown in the historic lawsuit, *Pigford* v. *Glickman.* These realities have led to the struggles of Black farmers, the struggles to hold on to land for generations because of unsecure or cloudy titles and discrimination. The realities of Black farmers have also led to the struggle to successfully operate farms in a sector where they buy in the retail market and sell in the wholesale market, primarily because of lack of scale. Eighty percent of Black farmers operate on 100 acres or less.

These realities have also led to the struggles to access enough fair and equitable credit for farmers to grow their business and become part-time—beyond part-time subsistence farms. However, these struggles and realities have forced Black farmers and landowners to be some of the most resilient people in their communities and in this country. Black farmers have persevered through the difficult days of sharecropping and the long nights of racism and discrimination, and continue to persevere in spite of the issues of heirs property, the lack of access to fair and equitable credit, and they continue to be on the front lines of feeding families, anchoring rural communities, and protecting our environment, regardless of these realities and struggles.

The Black farmer's story is of perseverance, and it is about time this story is told. It is about time for a hearing such as this. It is about time for our country to support those that have given so much but receive so little in exchange.

In closing, Mr. Chairman, I reiterate the Black farmer's story is one of struggle and perseverance, and so I end with that, Mr. Chairman, but our air, our water, our soil, and our lives depend on Black farmers.

Thank you, Mr. Chairman and Members of this Committee for this opportunity to appear before you today. I stand ready for any questions you may have.

Thank you.

[The prepared statement of Mr. Blanding follows:]

PREPARED STATEMENT OF CORNELIUS BLANDING, EXECUTIVE DIRECTOR, FEDERATION OF SOUTHERN COOPERATIVES/LAND ASSISTANCE FUND, EAST POINT, GA

Good afternoon, Mr Chairman, Madam Vice Chair, Mr. Ranking Member, and Members of the Committee.

My name is Cornelius Blanding and I'm the Executive Director of the Federation of Southern Cooperatives/Land Assistance Fund, a 54 year old cooperative association of Black farmers, landowners and cooperatives from all across the South.

Founded directly out of the civil rights movement in 1967, the Federation is the oldest and largest Black farmer owned and serving institution in the country. It is also the only cooperatively owned organization of Black farmers, landowners and cooperatives focusing primarily on Black land loss and the use of cooperatives as a tool to increase income and build wealth in the South, where 80% of all Black farmers are located.

I am honored to be before this Committee today, testifying on the realities, struggles and perseverance of Black farmers & landowners in the U.S. South. I have submitted my full statement to the Committee, which I ask to be made part of the hearing record.

As part of my brief opening statement, I would like to thank this Committee for this opportunity to testify as part of this historical hearing on Black farmers.

I am not a Black farmer nor do I pretend to speak on behalf of ***all*** Black farmers. I am merely a servant of the Federation of Southern Cooperatives as well as the Black farmer and cooperative movements; thus I testify on behalf of our membership, Board of Directors and all those who came before me. It is my hope that my testimony is a reflection and adequate representation of all those giants who couldn't be here today, but are the reasons that I am here.

I have served the Federation of Southern Cooperatives and Black farmers for the past 24 years and as the Executive Director of the Federation for the past 6 years.

I am a son of the South. I was born and raised in the South. I was educated in the South. I live and work in the South and I am raising my family in the South.

I am also a product of public housing and public assistance in Montgomery, Alabama, the cradle of the Civil Rights Movement. I was raised by a single mother in public housing and on public assistance. A single mother who was also one of seven heirs to over 40 acres of land in rural Lowndes County, Alabama.

My family was targeted by an unscrupulous lawyer and one of the heirs was bought out for pennies on the dollar, which resulted in a forced partition sale. Unfortunately, my story is not unique. I am part of a common story in the Black community.

We, the Federation of Southern Cooperatives—based on a study we did 41 years ago in 1980, entitled "The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States" that was commissioned by Congress and funded by USDA . . . . and based on over 50 years of work—estimate that approximately 60% of ***all*** Black owned land is heirs' property; land that lacks a clear title—in that the landowner dies without a will or estate plan and the land is informally passed down to the heirs of the deceased land owner.

With this cloudy or unclear title, called heirs property, the heirs or landowners lack the ability to access USDA programs, resources or credit; thus putting the land in a vulnerable position. In fact, heirs' property is one the major reasons for Black land loss.

It is the reason my mother and her siblings lost 40 acres of land in rural Lowndes County, Alabama, and it is part of the reason my mother was forced to raise me, my brother and sister in public housing on public assistance about 30 miles east in the more urban city of Montgomery, Alabama.

It is the reason that I and thousands of others in the Black community are not Black landowners or still farming today. So you see, this work is personal for me, just like it is for the other folks testifying here today; and like it is for thousands of Black farmers and advocates across this country.

Heirs' property is a Civil Rights issue. All of the citizens of our country should have access to government services; but because of heirs' property, many don't. For decades, Black farmers haven't . . . and this has resulted in Black Land Loss. The other major reasons for Back Land Loss are discrimination and access to fair & equitable credit.

These are **all** things that could have been addressed with good and reasonable legislation. These are things that are just now starting to be addressed with the introduction of the Justice for Black Farmers Act, the Emergency Relief for Farmers of Color Act, the Reconciliation Bill passed by this Committee and the $1.9 Trillion American Rescue Plan recently passed by the Senate and the House; and signed into law by the President.

We applaud Senators Booker, Warren, Gillibrand, Smith, Leahy, Warnock, Lujan and Stabenow. We applaud the House Agriculture Committee and its leadership. We applaud the House and Senate for getting this historical legislation passed. We applaud the Administration for its vision and USDA leadership for its support. We also applaud the many foot soldiers out there whom have tilled the soil, advocated for these issues, followed the stories, researched and wrote legislation as well as **all** those that dreamed of and struggled for this day to come.

But Black farmers are not out of the woods yet. It is not time for celebration just yet. This is not the beginning of the story of Black farmers nor is it the end. It is merely one of the many chapters of Black farmers & landowners; one of the many chapters of our rural communities; of urban migration and of our nation.

As I mentioned in my opening statement, Mr. Chairman, I am here to testify on the realities, struggles and perseverance of Black Farmers & Landowners.

The reality is that Black farmers have gone out of business and lost the highest percentage of land than any other group in this country over the past century.

In 1910, there were 218,000 Black farmers owning roughly 15 million acres of land. According to the U.S. Census; in 1992, there were only 18,000 Black farmers owning 2.3 million acres of land. That's over a 90% loss of Black farmers as well as almost a 90% loss of land.

Another reality is that the majority of Black farmers get their credit from USDA's Farm Service Agency—the lender of last resort. This in itself is risky because farmers are expected to graduate out of the system in 7 years. After that, they are supposed to qualify for credit in the traditional market; however that date never comes for most Black farmers. Instead they are relegated to predatory style lenders at best and farming out of their pockets at worst. No business—especially farming—can survive in this reality. Credit is the life line of any business and is crucial in farming.

The reality is also that Black farmers have historically been discriminated against in various ways—including at USDA—as shown in the historical Black farmer lawsuit (*Pigford 1* and *Pigford 2*) . . . . Discriminated against at FSA, the lender of last resort. Thus, the Black farmers' reality is bleak even as it relates to credit.

These realities have led to the struggles of Black farmers. The struggle to hold onto land for generations because of unsecure or cloudy titles . . . when the problem of heirs property could be solved with some simple steps, such as uniform heirs' property legislation; adequate funding for the existing heirs' property relending program that was approved as part of the 2018 Farm Bill; and targeted resources for awareness, education and direct legal & technical assistance to heirs' property landowners.

The realities of Black farmers have also led to the struggle to successfully operate their farm business in a sector where they buy in a retail market, but sell in a wholesale market—primarily because of their lack of scale. 75–80% of Black farmers operate on 100 acres or less and primarily grow perishable products. A reality that begs for cooperative solutions that aggregate producers; and which could be addressed with more resources for cooperative developmentvia programs throughout all of USDA.

And the realities of Black farmers have led to the struggle to access enough fair & equitable credit to grow their farms and businesses beyond part-time and/or subsistence farms. And this could readily be addressed with the creation of a cooperatively owned Black Farmer Financial Institution, owned and controlled by Black farmers.

However, these struggles and these realities have forced Black farmers and landowners to be some of the most resilient people in their communities and in this country.

Black farmers and landowners have persevered through the difficult days of share-cropping and the long nights of racism and discrimination. They continue to persevere in spite of the issues of heirs' property and the lack of access to fair & equitable credit.

Black farmers and landowners continue to be on the front lines of feeding families, anchoring rural communities and protecting our environment regardless of their realities and struggles.

The Black farmer story is a story of perseverance. It is about time for this story to be told. It is about time for this kind of hearing. It is about time for our country to support those that have given so much, but received so little in exchange.

The Black farmer story is the American story. The realities & struggles of Black farmers are woven into the fabric of this country. Black farmers are a part of and vital to our food system, the environment and our nation. But far too often Black farmers are losing their land.

As my late predecessor and mentor, Mr. Ralph Paige, was quoted in a *New York Times* article in 2018, "when a Black farmer loses his land, it's our community losing a piece of this country." Now, I would take that a step further and say, "it is also this country losing a piece of our community . . . and thus a part of itself."

Discrimination and land loss is all to prevalent in the lives of Black farmers and the Black community, which makes it difficult for many to see themselves in this great nation and as part of the solution to many of its challenges.

So in closing, Mr. Chairman, I must reiterate that the Black farmer story is one of struggle and perseverance. A reality of land loss, discrimination, and lack of access to credit and resources . . . And yet, a reality of feeding families, anchoring communities and protecting our environment.

The solutions to the challenges of our nation rest in the hands of our government, our organizations and corporations, as well as our citizens—including and especially our farmers & landowners; and this must include Black farmers & landowners.

But we must first make them whole, in order for them to be the most effective contributors that they can be.

Our air, our water, our soils and our lives depend on it!

Thank you, Mr. Chairman and Members of the Committee, for the opportunity to appear before you today during this most historic hearing on Black farmers. I stand ready to answer any questions you might have.

The CHAIRMAN. Thank you so much. I appreciate your excellent testimony.

Mr. Haynie, please begin now.

STATEMENT OF PHILIP J. HAYNIE III, CHAIRMAN, NATIONAL BLACK GROWERS COUNCIL, BURGESS, VA

Mr. HAYNIE. Mr. Chairman, Secretary Vilsack, Members of the Committee, staff of the Committee, and to the many others that have worked tirelessly in making this hearing possible, I would like to say thank you. Thank you on behalf of the Black farmers and landowners who have been asking, praying, and waiting so long for relief. I would also like to say thank you on behalf of the Black farmers who have passed on without personally being able to witness this day.

Mr. Chairman, I come before you today on behalf of the National Black Growers Council, an organization that consists of multigenerational farmers who advocate for the interest of Black farmers in their local communities, in their states, and to the Federal Government. An organization whose mission is to improve the efficiency, productivity, and sustainability of Black row crop farmers.

Mr. Chairman, I think we all know the statistics that two percent of the U.S. population of farmers, and that Black farmers represent less than two percent of the entire 100 percent of farmers in the United States. What I would like the Committee to truly recognize is that Black row crop farmers represent less than eight percent of the entire Black farm population. Mr. Chairman, Black farmers that grow corn, cotton, soybeans, peanuts, and rice are on the verge of extinction. Mr. Chairman, it is imperative that we support the remaining Black farmers that exist. It is imperative that we address the disparities and inequities that exist between Black farmers and their White neighbors, and it is imperative that we put programs in place that remove the economic knee that is on the neck of a lot of Black farmers and landowners.

As we at the National Black Growers Council have said before, land is a farmer's most valuable and productive asset. As you canvass the country, you will often find Black farmers on non-irrigated land trying to compete with their White farmer neighbors who have used USDA programs to put irrigation on their land. You will also find Black farmers who have not been able to participate in land leveling and drainage, and other USDA programs to improve their farms like their White neighbors. These inequities place Black farmers at a significant disadvantage to producing higher yields and being profitable.

Mr. Chairman, on a trip to the local USDA office to inquire about a beginning farmer loan, the county executive director brandished a loaded handgun at my father and I and told me that I did not need to get involved in farming and go get a job. My father, like many other Black farmers across this nation, was a victim of discrimination by USDA. After settling his case for 25 percent of his economic losses, they barred him from ever borrowing money from USDA.

These issues are discriminatory, and if not addressed, you and I will witness the extinction of Black row crop farmers.

In 2020 the world changed, and we were and still are in what is called a pandemic. Unfortunately, Black farmers have been going through a pandemic for years. We have watched our fellow Black farmers be forced out of business and lose their land at far greater rates than our White neighbors.

Mr. Chairman, the National Black Growers Council is committed to the cause, and is working with our corporate partners, fellow farm advocacy groups, and the Department of Agriculture to reverse the declining trend of Black farmers and landowners across these United States.

Mr. Chairman, I was a college student in 1997, and watched my father, John Boyd, and other Black farmers from across this nation sit before legislators and policymakers to explain these disparities that exist between Black and White farmers. Twenty-four years later, I am sitting before you, echoing the same tones and explaining to lawmakers about the inequities that still exist. Too many Black farmers have died with their cry for help falling on deaf ears. Mr. Chairman, I would hope and pray that my children do not have to sit at this table 24 years from now, still asking for you to right the wrongs on behalf of Black farmers.

Mr. Chairman, for all the people who have been working on policy and legislation to help right the wrongs for Black farmers, I would like to leave them with these words of faith found in *Galatians* 6:9: "Let us not become weary of doing good, for at the proper time, we will reap a harvest if we do not give up."

Thank you, Mr. Chairman.

[The prepared statement of Mr. Haynie follows:]

PREPARED STATEMENT OF PHILIP J. HAYNIE III, CHAIRMAN, NATIONAL BLACK GROWERS COUNCIL, BURGESS, VA

Chairman Scott, Ranking Member Thompson, and distinguished Members of the Committee:

On behalf of the National Black Growers Council, thank you for the opportunity to testify at this important hearing today.

The National Black Growers Council consists of multigenerational producers who advocate for the interests of Black farmers in their local communities, their states, and to the Federal Government. NBGC's mission is simple: to improve the efficiency productivity and sustainability of Black row crop farmers.

As members of NBGC, we own our farms and seek opportunities to expand our operations. We strive to teach young men and women about the virtues of farming, the importance of agriculture, and the commitment it takes to be successful in the global business of agriculture.

The NBGC was organized to represent the unique needs of full-time Black row crop farmers. We have formed partnerships with each other, with majority farmers, with land-grant universities, with agricultural companies and with USDA, because together, we all contribute to global food security.

I am a fifth-generation farmer. I grew up working my family land with my father and grandfather in eastern Virginia where we grow corn, wheat and soybeans. I had a childhood dream of wanting to be a farmer. I finished high school and studied agriculture in college. I graduated with a Bachelor's of Science degree in Agricultural Economics from Virginia Tech and chose to return to my family farming business.

While growing up on my family farm, as a kid I experienced two fires, the first one burned up our farrowing barn and our sow herd was lost. The second fire, burned up our equipment and a finishing barn. After my father rented the largest tract of land in the county, he experienced his equipment being shot up on that farm. We had to sleep in the truck with a shotgun whenever we left equipment on that farm. No convictions resulted from these cowardly acts; but I don't think the perpetrators were Black.

The discrimination at USDA caused my parents to have an unbelievable amount of stress when they were denied loans or were late receiving operating money. This unnecessary stress was created by the uncertainty of farming in that era, fueled by racism, and ultimately caused the divorce of my parents. The discrimination by USDA caused a lot of young Black people to not want to be a part of their family's farms.

The discrimination caused irrevocable damage to Black families.

While in college, I learned from one of my white friends about the beginning farmer loan program at USDA. My father and I went into my local county office to inquire about the beginning farmer loan. The county executive director in my local county office asked me why did I want to farm. He told me that I was a bright young man with a good head on my shoulders and that I should focus on finding a good job after college. When I questioned why he didn't encourage my white high school friend to get a job and offered him a farm loan but not me he got upset. He asked me if I knew how much money my father owed the USDA? When I replied no I did not he opened my father's file and showed me all of my father's USDA loans. After doing that, he brandished my father and I with a loaded hand gun that he had in his desk. This incident has caused me to have nightmares about being shot in that FSA office. He also told my father; he should sell his land to a white farmer in the county and get a job at the local lumber company driving a forklift. Mr. Chairman, this is not something that happened to my forefathers, or something that I read in the history books. This happened to me.

If I had not gone through that experience, I may not be able to relate to other Black farmers and their stories of discrimination. But this is my story. And this is why I am here to make sure no other young Black man or woman has to go through that experience again. Mr. Chairman some scars in life are irreversible and that is one that time cannot fade away.

Today's hearing is an important step towards addressing a number of long-standing problems that continue to plague Black farmers. These chronic problems formulate the cumulative effects of being historically denied and impact three critical areas of farm sustainability: income, access to credit, and risk management.

With regard to income, annual subsidies paid to Black farmers are significantly less than subsidies received by their White farming neighbors. Current subsidy options, Agricultural Risk Coverage (ARC) and Price Loss Coverage (PLC), are based primarily on the crops and yields grown on from 1981–1985, a period of admitted racial discrimination by USDA. Studies have shown that Black farmers receive less than 20% of the per acre amounts paid to their White farming neighbors. These inequities ultimately result in Black farmers being less profitable, which impacts the second critical area, access to credit.

This is especially true when commodity prices are low and subsidies comprise a larger portion of farmers' income. The combined effects of these inequities often result in Black farms being less productive and having to rely on low-risk, low-reward enterprises. For example, planting less profitable crops like soybeans, right beside our white neighbors, because we lack the improvements like irrigation, land-leveling and drainage that our white neighbors have who plant cotton, rice and corn. Even when we can make improvements needed to break this cycle, we face higher risks by only being able to obtain crop insurance at average production histories that span 10 years. To address these disparities, NBGC supports the following:

1. Provide credit needed to make improvements that would bring Black farmers' land on par with the production potential of their White neighbors;
2. Adjust Black farmers' subsidies to a level comparable to their neighbors; and
3. Automatically adjust Black farmers' production history and insurance coverage to an amount comparable to the farm's potential after improvements are completed.

Finally, Mr. Chairman, I wanted to highlight the ongoing issue of heirs' property rights impacting Black farmers. I mention this because Heirs' property, land owned by two or more people, often with a common ancestor who died without leaving a will, is the leading cause of involuntary land loss among Black farmers.

As we at NBGC have said before, land is a farmer's most valuable and productive asset. And yet, 60 percent of Black farmers today produce on property that has been passed through their families for generations without secure title. Without secure title, Black farmers are unable to leverage the full value of their land, including accessing Title I USDA programs. Black farmers have gone into local USDA offices and have been told they cannot sign a farm up for program participation because the farmer cannot provide all the signatures of heirs on the property. They offer the white farmer the option to provide a cash rent statement and not have to go through

these obstacles. We need a system where USDA will work with us where the property is protected and benefits can be passed on to the operator.

In order to help address these outstanding issues, we and our partners at John Deere and the Thurgood Marshall College Fund launched the Legislation, Education, Advocacy, and Production Systems (or LEAP) Coalition in September 2020. In cooperation with the Federation of Southern Cooperatives and my colleague on this panel Mr. Blanding, the LEAP Coalition brings awareness, expertise, and legal resources to help Black and traditionally under-represented farmers gain clear title to their land.

Specific activities the LEAP Coalition will support include:

- Supporting legislation on Heirs' Property reform
- Partnering in efforts to clearing title for Black farmers
- Investing in Fellowships, Internships, and Agribusiness career paths
- Engaging in estate planning to prevent the further proliferation of Heir's Property
- Amplifying the work of The Federation of Southern Cooperatives
- Raising awareness regarding the issues and challenges experienced by Black farmers
- Providing education and training to support Long-term Sustainability and Economic viability

After heir's property issues are cleared, NBGC plans to continue working within our networks to bring this land to maximum productivity. I want to thank our sustaining members for their support of this legislation and their continued commitment to help us achieve this goal.

In closing, it is clear that much work remains to address longstanding issues impacting Black farmers. We look forward to working with you and the Committee to address these issues moving forward, and I look forward to your questions.

The CHAIRMAN. Thank you very much, Mr. Haynie, for your excellent, excellent report to us.

And now, I recognize Mr. Rowe. Please begin your testimony.

STATEMENT OF SEDRICK ROWE, OWNER/OPERATOR, ROWE ORGANIC FARMS LLC, ALBANY, GA

Mr. ROWE. Thank you for the opportunity to be able to be on this call and be able to share my testimony. My name is Sedrick Rowe. I am a young farmer from south Georgia. I do row crop and I do also organic farming. I am a first generation farmer. I have been farming for 4 years on my own. I had the opportunity to graduate from a land-grant institution that also taught me a little bit more about farming, and my experience of it, nothing has changed since the past. Hearing my granddaddy and older people talk about farming back in the day and how they weren't able to access land and equipment. I am going through that personally myself.

I applied for beginning farmer programs, micro loans. The reason I didn't get funded, I don't know. I have a legit reason why I need the assistance, and also, the red flags are still there because I'm giving them all of my information, all of my life, just for them to tell me no again. It holds me back as a farmer.

I see the effort we are doing to allocate monies for those programs, but are those programs actually funding these farmers or not? Are these farmers taking advantage of those programs? We are not able to, because when you look at a Black farmer, you are thinking small. That is why we are on that one percent, two percent level. Speaking from my personal experience, it has just been hard to even get into the market with peanuts. As you know, peanuts are a commodity, and in order for you to grow peanut—a commodity sells itself. So, as a Black farmer, I can't just take my pea-

nuts to any peanut mill, because they will say oh, we are full. They will give me some excuse of why they can't take my peanuts.

As a young farmer, I created my own avenue to create my own market, organic peanuts. Something that I know large farmers can't compete with. That is why I stepped into another market like hemp. I started doing more organic and start work focusing on the soil and the land, something that we always focused on growing up. Take care of the land, the land will take care of you. Coming from that era and having that mentality, even my little small piece of land, it matters just like a larger farmer.

I see, to this day, monies being allocated to help out young and Black farmers, and socially disadvantaged farmers, but, it comes with so much just for that farmer to access that money. You look on the other hand, it is easy for them to access money. They will tell you I qualify for it, but when I get there, it is a whole other story. We need to change up who qualifies and who doesn't. A lot of the Black farmers miss out on the opportunity to keep the land in their family name, so they are forced to go get a loan from the government, which nine times out of ten, brings them into more debt, because everyone knows farming is a risk. Every year is not a profitable year. Farmers like me will look, in order for me to feel like the government is giving me the right assistance, it is funny how we have a pandemic, and during the pandemic you have other banks and all that that have forgiveness on their loans, but government, USDA had loans out allocated for these farmers, but you never gave them the option for forgiveness so their family can keep their land in their name. Something to be able to show—with forgiveness, you have to show what you are doing, show how you—at this one step, how it bettered you—to the next step. I feel like we need to take more steps and the people at the top need to focus more on the people at the bottom.

Just to lead with a scenario that—something that I always used to tell people. The important person in the building is the janitor. We as Black farmers are janitors. The top person can be the principal or the President. If the President is not too attentive, it is not a good structure. We need to make sure we build that structure from the top all the way to the bottom to the farmers. The people that are allocating this money need to know exactly who is using it, why they are using it, who really needs it. And I think there is a separation in between there, because it is different saying, "Yes, we put money out there for you," but when we are not able to access it, it is more like saying, "Well, we put it there. It is up to you to get it." That is not hope. That is not giving a farmer or a Black farmer any hope to be able to continue to hold on to what they had in their family.

So, that was just some personal stuff that I have been through that I can still see that hasn't changed within the system.

[The prepared statement of Mr. Rowe follows:]

PREPARED STATEMENT OF SEDRICK ROWE, OWNER/OPERATOR, ROWE ORGANIC FARMS LLC, ALBANY, GA

My name is Sedrick Rowe. I am a young Black first generation farmer. I have a Bachelors Degree in Plant Science with a concentration Horticulture and a Masters of Public Health with a concentration in Environmental Health. I own a 30 acre organic farm where I grow peanuts, watermelons, sunflowers, and hemp. I was one

of the first three farmers in my area to establish a market for organic peanuts and I am a founding member of the Georgia Organic Peanut Association. I have been involved in agriculture all of my life and that experience continues to show me what it takes to develop a successful farm business. Unfortunately, I did not inherit land, so I built my farm from the ground up by purchasing land. I have seen and experienced racism and discrimination within the agricultural system, as have so many other Black seasoned as well as young farmers. My experience has allowed me to witness firsthand, the difficulties Black farmers have when attempting to access funds from the United States Department of Agriculture. I personally have been unable to access those funds while watching my white counterparts having little, if any, problem doing so. I have applied for micro-loans as well as Beginning Farmers Assistance and was denied: reasons given included insufficient collateral, market contracts were insufficient and tax returns for the previous year did not show enough income to pay the loan. It is extremely difficult for a beginning farmer to meet these criteria. Loan criteria has to be more flexible and equitable—and should include a combination of loans and grants.

Even when funds are supposedly put in place to assist Socially Disadvantaged Farmers and Ranchers, the rules, regulations and paperwork make them difficult to access, for example, farming history and matching funds. Although FSA is supposed to be the "go to" agency for farmers who are having difficulty securing loans from commercial or other sources, it falls way short when it comes to Black farmers—again this comes from personal experience.

Although I consider myself to be a successful young Black farmer, it is difficult for me to convince others to join me if I cannot assure them that if they do all of the right things, they will have the backing of the USDA.

Although Black farmers make up a small percentage of all farmers, they play a critical role in making sure that marginalized people and communities throughout the Black Belt Region have access to healthy and affordable food. We need to make sure they not only remain in business but that their number increases.

Community organizations also need support as they are often the only thing standing in the way to keep people like me from losing their farms. I once worked with one organization (The Southwest Georgia Project). I saw how these organizations advocated on behalf of farmers of color and worked through the red tape when farmers could not do so themselves. In many instances they helped mitigate the lack of trust between the USDA and farmers of color. So their continued existence and sustainability is critical.

In the end, it is the responsibility of the USDA to level the playing field so that Black and other minority farmers can not only survive, but also prosper.

Thank you.

The CHAIRMAN. All right. Thank you very much, Mr. Rowe, for your very good and very informative testimony. Thank you.

And now, Mrs. Sherrod, we recognize you. Please begin now.

STATEMENT OF SHIRLEY SHERROD, EXECUTIVE DIRECTOR, SOUTHWEST GEORGIA PROJECT FOR COMMUNITY EDUCATION, INC., ALBANY, GA

Mrs. SHERROD. Thank you, Chairman Scott—can you hear—and the Committee for inviting me to speak today.

I grew up on a farm and my life's work has been with farmers and people in rural communities in the South. On a more personal note, though, today, March 25, marks the 56th anniversary of the death of my father, a farmer who was murdered by a White farmer that the racist system failed to prosecute. It is within this context that I dedicated my life to help make this world more just and equitable for everyone.

For over 5 decades, I have worked with and on behalf of farmers, especially Black farmers and the rural communities in which they live. Although Black farmers share many of the problems faced by all small farmers, their situation is compounded by systemic racism within the USDA and other public and private institutions that are supposed to serve all farmers, no matter their race or agenda.

The USDA is assumed to be the source of last resort when the private-sector falls short. Unfortunately, since its inception, USDA itself has fallen short and failed to meet its obligations to Black farmers. Regrettably, the USDA has been the driving force behind the steady decline in the number of Black farmers and Black-owned farmland. This loss has and continues to have a domino effect throughout the Black Belt region of America and beyond. Without productive land that supports economic development, the region suffers from inadequate education, lack of access to healthy and affordable food, poor health outcomes, and brain drain, among other things.

Now, the USDA did admit in the *Pigford* case that it has a history of discrimination against Black farmers. That admission and subsequent settlement did not bring about any systemic changes and left in place many of the individuals who perpetrated the racism and discrimination. In fact, to my knowledge, I, a Black woman, am the only person ever fired by the USDA for discrimination, a claim that was later disproven. Although *Pigford* itself was historic and exposed the real USDA, unfortunately because the government was so incalcitrant, over 90 percent of the farmers who prevailed in the lawsuit were not made whole.

So, where do we go from here? We need to restore Section 2501. This policy was the brainchild of the Federation of Southern Cooperatives nearly 3 decades ago. I was a staff member of the Federation, and therefore, very familiar with all the work and documentation that led to its passing as a permanent part of the farm bill. Its original intent was to provide farmers of color, especially Black farmers with outreach and technical assistance, so they could better access USDA services.

The second one, eliminate burdensome matching requirements. Many USDA programs require a match that is out of reach for most Black farmers. This is akin to a poll tax. It keeps the benefit out of our hands.

Three, engage in real problem solving. Use the Georgia Strike Force example as a model, and fully fund it. Invest in 1890s. 1890 universities are key to Black farmers' success. Ensure that they are funded adequately—equitably, let's say. Launch infrastructure fund, provide funds for Black farmers to develop or improve processing facilities, secure transportation, organize cooperatives, and more. Diversify the staff. Mandate increasing diversity in USDA staff makeup. And last, culture change. Staff culture flows from the culture of the leaders. Secretary Vilsack should invest significant time and effort into building a culture in which discrimination is not tolerated, and is with the end in which dismantling of systemic racism is rewarded.

Thank you so much for giving me this opportunity. These are but a few things that we can begin to put in place today while we wait on the fate of policies currently under consideration. We must also understand that even if these policies are approved, they only represent a down payment on what is owed to Black farmers and their communities after more than a century of neglect and discrimination.

Thank you.

[The prepared statement of Mrs. Sherrod follows:]

PREPARED STATEMENT OF SHIRLEY SHERROD, EXECUTIVE DIRECTOR, SOUTHWEST GEORGIA PROJECT FOR COMMUNITY EDUCATION, INC., ALBANY, GA

My name is Shirley Sherrod; I live in Albany, Georgia and currently serve as the Executive Director of the Southwest Georgia Project for Community Education, Inc. (SWGP). SWGP is a nonprofit organization that was born out of the civil rights movement with a mission to educate, engage and empower communities through grassroots organizing and technical assistance.

On a more personal note, today March 25, marks the 56th anniversary of the death of my father, a farmer who was murdered by a white farmer that the racist system failed to prosecute. It is within this context that I dedicated my life to help make this world more just and equitable for everyone.

For over 5 decades, I have worked with and on behalf of farmers—especially Black farmers—and the rural communities in which they live. I also served under the Obama Administration as the first Black State Director of Rural Development. My work has afforded me the opportunity to help build coalitions that cross both state and international borders. I have learned that small farmers throughout the world are struggling to survive in an environment that overwhelmingly favors large scale and corporate farms.

Although Black farmers share many of the problems faced by all small farmers, their situation is compounded by systemic racism within the USDA and other public and private institutions, that are supposed to provide services to all farmers no matter their race or gender. The USDA is assumed to be the source of last resort when the private-sector falls short of its duties and responsibilities. Unfortunately, since its inception, the USDA itself has fallen short and failed to meet its obligations to Black farmers; regrettably, the USDA has been the driving force behind the steady decline in the number of Black farmers and Black owned farm land. This loss has and continues to have a domino effect throughout the Black Belt Region of America and beyond. Without productive land that supports economic development, the region suffers from inadequate education, lack of access to healthy and affordable food, poor health outcomes and brain drain among other things.

The USDA has been called the last plantation and for the most part has worked relentlessly to live up to that reputation. Its efforts to try and remedy the problem it caused, has generally fallen way short. Those efforts are usually under-funded, short-lived, at the mercy of changing Administrations and opposition from employees.

There has to be a long-term, well-resourced commitment at all levels of the USDA if Black farmers are to remain part of America's production agriculture system.

Although the USDA did admit in the *Pigford* case that it has a history of discrimination against Black farmers, that admission and subsequent settlement did not bring about any systemic changes and left in place many of the individuals who perpetuated the racism and discrimination. In fact, to my knowledge, I (a Back woman) am the only person ever fired by the USDA for discrimination, a claim that was later disproven. Although *Pigford* itself was historic and exposed the "real USDA", unfortunately because the government was so incalcitrant, over 90 percent of the farmers who prevailed in the lawsuit were not made whole.

The question is "where do we go from here?"

There are two game changing policies (Justice for Black Farmers Act and the recently passed Emergency Relief for Farmers of Color Act) that could address some of the past and current problems faced by Black farmers and the communities in which they live. History has shown that good legislation often dies or is weakened in the regulatory and implementation process. While we wait for the outcome of the two policies, there are things that can be done now to help struggling Black farmers and communities.

Following are a few commonsense examples:

- Too often USDA uses regulations to hinder rather than help Black farmers such as the Value-Added Producer Program which requires matching funds as well as certain NRCS grants. Also constant changes in the Section 2501 program—changes that are making it less [accessible] for the groups it was originally intended for.
- Return section 2501 to its original intent. This policy was the brainchild of the Federation of Southern Cooperatives/Land Assistance Fund (FSC/LAF) nearly 3 decades ago. I was a staff member of the FSC/LAF and therefore very familiar with all the work and documentation that led to its passing as a permanent part of the farm bill. Its original intent was to provide farmers of color (especially Black farmers) with outreach and technical assistance so that they could better access USDA and other services as they work to develop successful farm

businesses. That assistance would be provided by experienced community organization and minority serving universities. Unfortunately, 2501 has become a catchall for almost any small farm program such as beginning farmers and veteran farmers. These farmers are important and deserve a separate program to meet their needs while 2501 should return to its original intent and be fully funded.

- Many of the resources within the USDA cannot be accessed by Black farmers and community-based organizations; the reason being that they cannot meet the matching requirement or other restrictive rules such as having to collaborate and work with other community-based organizations across state lines. These requirements should be eliminated and funds provided solely on the merits of the farmers or CBO's business plan or program respectively.
- The USDA's now dormant Strike Force program was based on a program I instituted while serving as Georgia State Director of Rural Development. It brought together all agencies within the USDA to analyze problems and employed a holistic approach to solving those problems. The program enjoyed mild success and could have had tremendous success had funds been earmarked especially for it. That program should be revisited by the Secretary of Agriculture.
- While I cannot speak for 1890 Universities, I will say that they play a key role in the survival of Black farmers and rural communities. There needs to be more equitable funding for these universities.
- Black farmers need to be able to market their products and not be limited to any one market; they have to be able to diversify their markets. To do this, they need the necessary infrastructure. There needs to be a Black farmer infrastructure fund that will allow farmers to develop and/or improve processing facilities, secure appropriate transportation, organize cooperatives, *etc.*
- There has to be diversity within the various USDA state offices and everyone in those offices should be held accountable.
- The USDA can only stop being the "last plantation" when the culture within the Department changes.

These are but a few of the things we can begin to put in place today while we wait on the fate of policies currently under consideration. We must also understand that even if these policies are approved, they only represent a down payment of what is owed to Black farmers and their communities after more than a century of neglect and discrimination.

The CHAIRMAN. Thank you so much for your testimony, Mrs. Sherrod. We are learning so much here, and the purpose of this hearing is we are putting together a bill, a piece of legislation to address and come out. Rest assured that your testimony, your ideas are not in vain, because we are putting together Black farmers and a piece of legislation to bring this. So, this is just the beginning. Thank you all so very much.

And now, we have, I believe, Mrs. Cotton. Mrs. Cotton, would you begin your testimony?

Mrs. Cotton, you may want to unmute.

Mrs. COTTON. Chairman Scott?

The CHAIRMAN. Yes.

STATEMENT OF ARNETTA COTTON, CO-OWNER AND PROGRAM FACILITATOR, KINGDOM COMMUNITY DEVELOPMENT SERVICES, WAGONER, OK; ACCOMPANIED BY EARRAK COTTON, OWNER, CATTLE FOR THE KINGDOM

Mrs. COTTON. Chairman Scott, Ranking Member Thompson, and distinguished Members of the Committee, we would like to begin—can you see me? Can you hear me?

The CHAIRMAN. Yes, go right ahead. We can hear and see you.

Mrs. COTTON. Okay.

Chairman Scott, Ranking Member Thompson, and distinguished Members of the Committee, we would like to begin by thanking you

and God for the privilege and honor of testifying in this hearing. It is our hope that something said or done will result in greater understanding, reconciliation, and change.

Thank you, Representative Tracey Mann, for our introduction.

Little children across the United States who grew up watching their parents passionately work the land through torrential rains, incessant droughts, troublesome pestilence, and extreme poverty were often consumed by the idea that one day, this land will be mine. Somewhere between working behind the plow for several hours at a time in the blazing sun for days on end to get the crops in and out, and the rare opportunities to reward themselves with a soda or an ice cream, they developed an insatiable obsession with nature. However, to be Black and possess that type of intensity towards the Earth in the United States at a young age can accurately be compared to someone laboring under the sweltering sun in a desert towards something that appears to be real, but in fact, is an optical illusion. Over time, as the mirage steadily relocates, the child matures to adulthood. What remains is a diminutive essence of potential. Yet, despite years of imagining, the slightest scent of possibility is all that is required to stimulate hope in the heart of a Black farmer.

We felt that hope. So, when at the age of 24 and married less than 5 years with two baby girls, we were advised that the then-FmHA was an agency that existed to assist young and beginning farmers, especially minorities. We thought we would be welcomed with open arms. Instead, when we stepped into our county FmHA office in 1984, the secretary looked up and continued working without ever acknowledging our presence. "Ma'am, is this the FmHA," we asked. "Yes," she answered, never moving from her desk. An unwelcoming aura and overwhelming strangeness filled the room. Without ever a word spoken, its presence seemed to demand that we simply turn around and leave. But we didn't. The county supervisor's tenure could not be denied, but neither could his unorthodox practices and forgetfulness. We had meetings at his home. Our file was lost and misplaced several times. Some years later, our initial contact transitioned out of his role, and we were buried under the transition of powers. For example, on several occasions, the FmHA contractor and Langston University representatives reworked our farm plan on the same application, and they concluded we had good records. Our cattle were in excellent condition, and that was an average production and some non-farm income, the plan was feasible. Yet despite their findings, the county committee rebutted that they were not comfortable with our abilities, that the entire application should be changed. And since we could not effectively explain the reworked plan, we could not possibly implement them with any degree of success. All of our alternative plans were repeatedly denied, but no viable plan for success was ever offered.

Were it not for the elders who had a keen eye for identifying those whose work ethics and moral compass and instinctive cunning were perfectly suited for the land, they would have become extinct. Thankfully, one such elder offered her wisdom and trust to us, so we appealed the decision of the county supervisor. We appealed, and the decision was overturned.

But despite it overturning, the FSA office said maybe we should go ahead and let the applicant know that further information is needed. The county supervisor told us that we needed to get our property appraised, and he selected the appraiser. Coincidentally, that appraiser appraised our property for less than it was valued for a year earlier. And despite winning our appeal, we lost the denial of our application.

It was not our county office who told us about the designation and how language was expressly written to extend help to socially disadvantaged people. A friend helped us to navigate through this system. We went to USDA in Washington, D.C., and met with several officials. These consultations resulted in our first community meeting. There were over 100 people there in 4″ of rain. We partnered with Langston University.

Let me just skip down to this, if you would, please, Mr. Chairman.

One of the reasons that local churches and faith-based organizations are the backbone in communities and the F2F Program is because people trust them. We serve from hearts of love with boots on the ground. It is the same spirit that we really—we humbly ask this Committee——

The CHAIRMAN. I am sorry.

Mrs. COTTON. Let me say this. May I please? May I say this?

The CHAIRMAN. I am going to——

Mrs. COTTON. We have faith in God who created one race of people, the human race, and who created the Earth, the one on which we exist together, and the heavens, the ones that we continue to explore. We believe that He gave us the ability in Him to equitably dwell together in peace, harmony, and love, to preserve this beautiful land.

[The prepared statement of Mrs. Cotton follows:]

PREPARED STATEMENT OF ARNETTA COTTON, CO-OWNER AND PROGRAM FACILITATOR, KINGDOM COMMUNITY DEVELOPMENT SERVICES, WAGONER, OK

Chairman Scott, Ranking Member Thompson, and distinguished Members of the Committee, we would like to begin by thanking you and God for the privilege and honor of testifying in this hearing. It is our hope that something said or done will result in greater understanding, reconciliation, and change.

We are Earrak and Arnetta Cotton of Oklahoma, and we have more than 54 years of farm and ranch experience and 39 years of farm and ranch management experience as the owners of Cattle For The Kingdom (CFTK). Earrak is retired from a 30 year career service with State Farm Insurance and now serves as the head pastor of Unity Temple Family Church in Inola, Oklahoma—a body of Believers that started more than 100 years ago. He also serves on the U.S. Department of Agriculture Natural Resources Conservation Services (NRCS) State Technical Committee in Oklahoma. Arnetta currently serves as the Program Facilitator for Kingdom Community Development Services, the Rural Impact Food Pantry, and the Agricultural in Action Program which includes a market gardening school and farm training program in conjunction with Langston University—the 1890 Land-Grant University in Oklahoma, and Oklahoma State University—the 1862 land-grant in the state. She was also appointed by Secretary Sonny Perdue to serve on the USDA Minority Farmers Advisory Committee.

Little children across the United States who grew up watching their parents passionately work the land through torrential rains, incessant droughts, troublesome pestilence, and extreme poverty were often consumed by the idea, *"One day this land will be mine."* Somewhere between working behind a plow for several hours at a time in the blazing sun for days on end to get the crops in and out, and the rare opportunities to reward themselves with a soda or ice cream, they developed an insatiable obsession with nature.

However, to be Black and possess that type of intensity towards the [E]arth in the United States at a young age can accurately be compared to somebody laboring under the sweltering sun in a desert towards something that appears to be real; but, in fact, is nothing more than an optical illusion. Over time, as the mirage steadily relocates, the child matures to adulthood. What remains is the diminutive essence of potential. Yet despite years of imagining, the slightest scent of possibility is all that is required to stimulate hope in the heart of a Black farmer.

We felt that hope. So, when at the age of 24 and married less than 5 years with two baby girls, we were advised that the then Farmers Home Administration (FmHA) was an agency that existed to assist young and beginning farmers, especially minorities, we thought we would be welcomed with open arms. Instead, when we first stepped in our county FmHA office in 1984, the secretary looked up then continued working without ever acknowledging our presence.

"Ma'am, is this the FmHA?" We asked.

"Yes," she answered, never moving from her desk.

An unwelcoming aura and overwhelming strangeness filled the room. Without a word ever spoken, its presence seemed to demand that we simply turn around and leave; but we didn't.

The County Supervisor's tenure could not be denied, but neither could his unorthodox practices and forgetfulness. We had meetings at his home, and our file was lost and misplaced several times. Some years later, as our initial contact transitioned out of his role, we were buried under the transition of powers. For example, on separate occasions an FmHA contractor and Langston University representative reworked our farm plan on the same application and concluded we had good records, our cattle were in excellent condition, and that with an average production and some nonfarm income, our plan was feasible. Yet despite their findings, the County Committee rebutted that they were not comfortable with our abilities, that the entire application should be changed, and that since we could not effectively explain the reworked plans, we could not possibly implement them with any degree of success. All our alternative plans and approaches were repeatedly denied, but no viable plan for success was ever offered.

Our calls were avoided, refused, or forwarded to oblivion; we were required to travel to various USDA offices, restaurants and even ball parks for any chance to discuss the issue; our meetings were canceled and rescheduled without notice; and unofficial County Committee meetings took place where official decisions were made on our application without having a completed application to review.

Often, these experiences were witnessed by our four children.

Were it not for the *Elders* who had a keen eye for identifying those whose work ethics, moral compass, and instinctive cunning were perfectly suited for survival, far more Black farmers would have become extinct. Thankfully, these strategic leaders (though few in number) persevered through insurmountable odds and outlasted personal assaults to maintain some semblance of dignity as they paid for their land one penny at a time.

Often, when the stage was properly set and everything was synchronized for change, they would test the waters by leasing a portion of their land to a competent, but less experienced person of color whom they could mentor through the process. The eventual glimmer in their eyes served as witness of their approval. While their wisdom was readily available, they understood for the fledgling farmer to establish a faithful relationship with the land, they had to learn about her incalculable nuances for themselves. This search for intimacy would inevitably rekindle a desire in the Black farmer to own their own property. One such Elder offered her wisdom to and trust in us.

So, we appealed the decision of the County Supervisor. We appealed because of the unjustifiable dragging out of our application process; the deteriorated condition of our home; and the intentional and persistent prodding and provocation we experienced. In 1994, the decision to deny us was overturned, and the state Farm Service Agency (FSA) office advised that the best course of action would be to proceed with the application and to let the applicant know what further information was needed.

The County Supervisor told us we only needed to have the property appraised, and he secured an appraisal service. Conveniently, the appraiser the County Supervisor secured valued the property for far less than its original worth only a year earlier. Despite winning our appeal, our request was ultimately denied based on the appraisal.

You may not know this, but the term "underserved farmer" originated from eight Black farmers in West Central Oklahoma who submitted a court brief in *Pigford* v. *Glickman.* The designation is meant to address the unique circumstances and concerns of underserved farmers, including Black farmers, and focus on equity in

accessing USDA programs and services. The term has been used to initiate a wide variety of programs and resources at USDA, including grants and loans and scholarship opportunities for students studying agriculture at 1890 and 1994 land-grant universities.

It was not our county office who told us about this designation and how the language was expressly written to extend help to socially disadvantaged farmers like us. They did not tell us this when we were initially denied, when we were denied for the second time, or even after we were instructed to get an appraisal. It was a friend, who like us had experienced more than 35 years of extreme racial and programmatic discrimination at the hands of others.

That friend helped us navigate the system. He introduced us to key contacts at USDA including then Oklahoma state directors, Gary O'Neill at NRCS, Dr. Lee Denny at Rural Development, and Scott Biggs at FSA as well as Mike Beatty and Jacqueline Davis-Slay at USDA's Office of Partnerships of Public Engagement (OPPE). In fact, it was at a USDA OPPE Faith Fellows Training in Washington, D.C. where we learned about developing and maintaining partnerships focused on solutions to challenges facing rural and underserved communities like ours. Our friend also helped us learn that we could utilize programs from all USDA arms to solve the issues that have plagued us for nearly 40 years and other Black farmers for centuries. In fact, we could utilize community facility loans for our nonprofit community organization; farm labor housing programs; water and sewer grants; and more.

Those consultations resulted in our first community outreach meeting at the church we lead. We were able to share the information we had learned with more than 100 people who came to learn about USDA resources during a deluge of 4″ of rain.

Because of our new knowledge of USDA programs and partnerships stemming from our various community outreaches, we have also:

- *Partnered with Langston University to host an 8 month Marketing Garden School including an active garden throughout the growing season that supported our local Farmers Market;*
- *Distributed Farmers to Families Food Boxes to more than a million people through all five phases in Oklahoma, Kansas, Missouri, Texas, and Arkansas;*
- *Distributed 500 turkeys at Thanksgiving last year thanks to our partnership with IRUSA;*
- *Purchase equipment, supplies, and materials necessary to bring our pantry up to code thanks to Cherokee Nation;*
- *Earrak became Oklahoma's first African Native American by card to serve on the NRCS Oklahoma State Technical Committee; and*
- *Arnetta was selected by then Secretary Sonny Perdue to serve on the USDA Minority Farmers Advisory Committee.*

One of the reasons local churches and faith-based organizations are the backbone in communities and the F2F program is because people trust them. We serve from hearts of love with boots on the ground. It is in this same [spirit] that we rally the cause for other Black farmers. We forward information we receive to area farmers and other interested parties. We take calls. We provide information. We instruct and advocate. That mentality should prevail when working with and conducting outreach to Black farmers.

We can no longer afford to shroud the lack of follow-through business with Black Farmers in the busyness of meetings about Black Farmers. We should not only come with business cards, but also with applications prepared to give our time not just our contact information. We should go to whatever lengths necessary to provide thorough and complete information and assistance. There is still much work to be done, and we are committed to helping achieve this goal.

We humbly ask this Committee to consider implementing a Pilot Program with HBCU's Outreach Programs in cooperation with active Black Community Based Organizations to implement comprehensive training programs on behalf of USDA to underserved farmers in how to complete a Whole Farm Plan with subsequent technical and practical support. Additionally, we ask that you consider offer training and compensation for non-governmental Black farmers to conduct community outreach meetings for USDA, FSA, NRCS and RD. This would, in turn, bolster confidence, participation and stimulate new interest in USDA programs.

Just as we have faith in God who created one race of people—the human race; one [E]arth—the one on which we dwell together; and the heavens, which we continue to explore, we earnestly believe He gave us the ability in Him to equitably dwell together in peace, harmony and love in order to preserve it all.

Thank you again, and we look forward to your questions.

The CHAIRMAN. Thank you, thank you, thank you.

I tell you what, fantastic and very informative, and very impressive testimony that we have heard from our distinguished panelists, all of our Black farmers here. It has been tremendous and very helpful. And from our Secretary as well.

And now, we are going to now proceed to getting questions from us Members. I am going to start, then the Ranking Member, and then we are going to go with each of our Members on the Committee, alternating between Democrats and Republicans.

And first of all, let me start with this question, if I may. I recognize myself for 5 minutes, and I will be held to that to be sure to set the proper example. I hope everybody heard me there.

Secretary Vilsack, again, let me thank you for coming. But I want you to clear up for us, if we have this—can you hear me, Secretary?

Secretary VILSACK. Yes, sir.

The CHAIRMAN. Good. We have just passed the American Rescue Plan Act of 2021 in which we had a total of right at $5 billion to get to our Black farmers.

First of all, $4 billion of it was for the loan forgiveness. Now, tell me what are the instructions for how our farmers can make sure they get access to that money? How long will it take, and will there be some cumbersome bureaucracy in the way of them getting it, first of all?

Second of all, is it true that this money for the loan forgiveness that our Black farmers will be getting will be subject to taxation, that the IRS will count it as income, and then they got another bill to pay? Clear up the entire disposition, and let's get it plain how we can make sure that this big hit we are giving to help our farmers get right to them quickly, immediately.

Secretary VILSACK. Mr. Chairman, the instructions, first and foremost, is to do this as quickly, as thoughtfully, and carefully as possible. Two types of loans we are dealing with, direct loans and guaranteed loans.

Let me deal with the direct loans first. To the extent that it is a relatively simple, straightforward loan, we are going to try to get this—these done sort of in a tiered circumstance situation as quickly as possible. One hundred twenty percent, basically, the loan gets paid off. Twenty percent goes to the farmer. Now, farmers are going to have to think about this because to your question on taxation——

The CHAIRMAN. Well, wait just a minute. You say of the amount, 20 percent goes to the farmer?

Secretary VILSACK. Twenty percent goes to the farmer for the purpose of paying the tax.

The CHAIRMAN. Good. Thank you.

Secretary VILSACK. But, farmers need to think about this, Mr. Chairman, because depending upon the size of the loan, the tax issue may be so that you may want to divide potentially the forgiveness of the loan over more than 1 tax year in order to minimize your tax liability. That is why it is going to be necessary for us to use a portion of the money from Section 1006 to provide outreach, technical assistance, and advice so the people can make the best

decision for their farm so they don't find themselves in a deeper hole when this is all said and done.

On the guaranteed loan side, remember, we are dealing with banks where we have essentially guaranteed the loan. And we have sent a letter today to those banks, basically indicating that they are to take no further action whatsoever to foreclose on farmers; that we are going to work with them to get these loans paid off. Now, a question is going to come up if there is a prepayment penalty. There may be a prepayment penalty in that loan. We are going to ask for documentation of that prepayment penalty, and we are going to try to figure out how to deal with that. I don't have an answer today. I just know that it is an issue that we are going to have to confront and think about.

And some of these guaranteed loans themselves have been sold by the bank, which makes a bit of a complication. But at the end of the day, this whole purpose is to try to get this done as quickly as possible, as effectively as possible, and to provide farmers enough information and outreach so they can make informed decisions about their direct loan and the tax implications, and we can settle up their guaranteed loan without any further disruption.

The CHAIRMAN. Now, very quickly, Mr. Secretary, how much of your time personally will be devoted to getting the full $5 billion out to our Black farmers? How much time will you be putting in to that, because I believe if you have that as your top agenda, it will speed the process down the line. Because you are working it out. There are problems here. Go ahead.

Secretary VILSACK. I don't have any doubt that my staff understands that this is the top of my list in terms of priorities. The whole equity issue, the whole equity effort is at the top of the list in terms of time that we will spend collectively as a team focused on all of these issues, and specifically with the debt relief portion of it.

The CHAIRMAN. All right, thank you. I will bring the gavel down on myself here.

I now recognize the distinguished Ranking Member, the gentleman from Pennsylvania, Mr. Thompson, for 5 minutes.

Mr. THOMPSON. Mr. Chairman, thank you so much.

First of all, thank you. Thank you for the compelling testimony, to each of the witnesses today, your verbal testimony, and quite frankly, your written testimony that you provided us.

I want to reach out to Pastor and Mrs. Cotton, and say thank you so much for your ministry and how you have really focused all aspects of your ministry, as I have gone through your testimony. What a blessing. What a blessing. All the work that you do, really, and now you are bringing glory and honor to God in your work. It is much appreciated.

In your testimony, you mentioned USDA's Office of Partnerships and Public Engagement. Can you elaborate more on your experience with the Faith Fellows training that you attended in Washington, and how that experience contributed to your interactions with the USDA?

Mrs. COTTON. Absolutely. It was during that Faith Fellows training, and it was the inaugural training that nearly every department within the USDA was present. Not only did they give indi-

vidual presentations to the entire group, but by the end of the 5th day, we all gathered into an auditorium in sections, and we could go to those different departments individually to ask questions, and they were able to answer those questions. As a result, we stayed in contact with them. As we began to implement the instructions that they had given us and the different suggestions that they had given, we began to implement it. We became a 501(c)(3) for a community outreach organization. We partnered with land-grant universities, both Langston University and OSU. We partnered with Convoy of Hope, and other things. But this was as a result. Even Islamic Relief USA, we were able to partner with them as a result.

When we had questions that could not be answered on the local level, we could reach out to those people in D.C. And all of that was as a result of OPPE.

Even when information conflicted from here to there, they would get involved and help us to resolve. We began to have community outreach meetings. We have had, I believe, six to date. We partnered with NRCS. We entered into the Conservation Program. And everyone who attends our program, as information is forwarded to us, we forward that information on to them. We field telephone calls, answer questions. And then we attend every single meeting that we can on our local, district, state, and national level regarding all of these different entities. So, we are busy beavers.

Mr. THOMPSON. Yes, you are very busy. Thank you for what you do. It sounds like it is very successful, those partnerships, that collaboration.

Based on your experience so far into this, we always look for opportunities, even when we are getting things right. We always try to do better, right? I think we are called to do that.

Mrs. COTTON. Yes, sir.

Mr. THOMPSON. Are there any lessons you have learned so far on improvements you would recommend on how we could continue to develop and maintain those partnerships with Black farmers and other socially disadvantaged farmers?

Mrs. COTTON. Definitely. In most of the community outreach meetings, they are conducted by governmental employees and they are basically saying the same thing. They come in—I have likened it to a USDA infomercial group, because they say basically the same thing.

If other non-governmental employees with organizations who have proven records, who maybe possibly could even be trained by the government to have—they have a certain trust level that is garnered with communities of color and people of color. If those outreaches could be conducted by them in partnership with land-grant universities, in partnership with active Black organizations, farming organizations such as the Oklahoma Black Historical Society, and even our own group, to put out these community outreach meetings, and then follow through. Because I understand that in the USDA, many of the organizations have been compiled, joined in, so there are less bodies out in the field, and that strain on the local employees is felt with the local farmer. We believe that if some sort of pilot program could be implemented to help us to be your feet on the ground in order to get this information out. We

have proven these organizations that I have named, including USDA—Langston and OSU, they have a good proven record.

Mr. THOMPSON. Very effective.

Well, thank you, Mrs. Cotton and thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. Thank you, Ranking Member Thompson. I appreciate that.

I now recognize the gentleman from California, Mr. Costa, for 5 minutes.

Mr. COSTA. Thank you very much, Mr. Chairman, for this historic hearing with the Agriculture Committee and it is good to see you, Secretary Vilsack, my friend. And for all your years of service to our country and your commitment today to root out racism and discrimination that has been historic, as noted by the testimony. What terrific testimony our witnesses have provided, and suggestions and advice for legislation that, as the Chairman indicated, we will act on.

In preparation for this hearing, I asked a constituent of mine, Mr. Will Scott, President of the African American Farmers of California, to provide some testimony, which, Mr. Chairman, I ask unanimous consent to submit for the record.

[The statement referred to is located on p. 322.]

Mr. COSTA. In his testimony, he details a history of discrimination from loan denials, as has been stated in the testimony earlier, to unequal access to markets, which is a problem. But I wanted to realign what really stood out to me. Mr. Will Scott, a third-generation farmer like myself and our family, he said "Members of the African American Farmers of California are fearful to apply for any loans from the USDA and do not want to deal with government, as they fear they will lose everything they have." That is a sad commentary.

We all know that farmers are risk takers, but when you have to deal with the discrimination that African American farmers and other minority farmers have had to deal with, it makes the risk taking all that greater. It is clear today from the history of discrimination at the USDA that there is still an impact.

I remember Secretary Vilsack talking to President Obama—and I shared this with John Boyd the other day—that I told him—President Obama, I said, "Farmers are risk takers, but they are also price takers, not price makers." And President Obama is a very smart guy, but he is from the city. He said, "Price takers, not price makers. What do you mean?" I said, "When you put all this investment every year into your crop, and then at the end of the year you get whatever the price is." He says, "I never thought about it that way. Price takers, not price makers."

Mr. Secretary, it is critical that you work to provide and rebuild trust with Black and other socially disadvantaged farmers so that American agriculture can better reflect the diversity in our country, and our minority populations. In my own district, USDA has indicated that we have 14 African American farmers, over 76 Native American farmers, 771 Asian farmers, many Pacific Asian farmers, over 1,000 Hispanic farmers, and over 5,600 Caucasian White farmers. It is important to note that out because discrimination is not only for African American farmers, but Southeast Asian farm-

ers in my district. It is estimated that approximately over the 1,000 Southeast Asian farmers in the Central Valley, many of them Hmong that settled after the Vietnam War, the USDA aid has not been there for them. I would like to submit testimony from the Asian Pacific Institute of Resources in Fresno, Blong Xiong is the Chair of that, detailing the shortcomings on providing support for those farmers. And I ask unanimous consent to submit that testimony as well, Mr. Chairman.

[The statement referred to is located on p. 323.]

Mr. COSTA. Mr. Secretary, one of the barriers to access at the USDA programs by Black farmers and Southeast Asian farmers, Latino farmers in my district seems to be complicated and burdensome applications to requirements and the backlog of the local Farm Service Agency offices, FSA. Sanford Bishop, my colleague—and he is a cardinal and chairs the Subcommittee on this—and I have talked about it.

As part of your efforts to get more aid to socially disadvantaged farmers, can you commit to ensuring that local FSA offices are properly staffed with the diversity reflected by the farmers they serve and have language capabilities?

Secretary VILSACK. Yes.

Mr. COSTA. That is so important. The previous Administration, we complained that there wasn't sufficient support in these FSA offices. The testimony we have heard already today has indicated that as such. You are going to have to focus that, not only for the American Rescue Plan, but to really expedite the support for this. We have a backlog in CFAP 1 of over 4 months already in my own district.

Secretary VILSACK. Representative, I think there are several things to this.

First, we have to cast a wider net for people to work in these local offices. Second, as has been mentioned earlier, we need more partnerships and more connections with community building organizations that can assist us. As has been indicated, there is a trust issue that needs to be addressed.

Mr. COSTA. My time is going to expire, but Mr. Chairman, I want to submit a third level of testimony. A staff member, Major Henry Muñoz, who has just retired and is going to go to work for me, dedicated outreach to listen to stories needed for socially disadvantaged farmers in my district. I would like to submit his report for the record.

[The report referred to is located on p. 318.]

The CHAIRMAN. The time of the gentleman has expired there. Thank you.

Mr. COSTA. I want to submit the testimony. Is that possible?

The CHAIRMAN. Yes, that is possible. Thank you. We will take it.

Mr. COSTA. Mr. Chairman, I would like you to look at it and I will share it with you. Thank you very much, Mr. Chairman.

The CHAIRMAN. You are quite welcome. Thank you, Mr. Costa.

And now, I recognize the gentleman from Georgia, Mr. Austin Scott, for 5 minutes.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman, and Mrs. Sherrod, Mr. Blanding, and Mr. Rowe are from right down the road from where I am. I actually live in Tifton, Georgia.

Mrs. Sherrod, I don't have a question for you, but I am very familiar with what happened to you where somebody changed the context of what you said and you lost your job because of that, in 2010, and I am glad you won that suit against that news organization that ran that false article. I heard what you said and I saw what they reported, and I thought they very much changed the context.

Mr. Blanding, I think you are very much right about the heirs-related issue. I think that is something that we can work on together that has happened, and I hope that some of the money that has come through the recent legislation will help with that.

Mr. Rowe, you are obviously a young farmer in Albany, Georgia, and I am right down the road in Tifton. If I can ever help you please feel free to reach out to us.

Mr. Boyd, I certainly enjoyed my conversation with you and your wife the other day, and as I mentioned to you, to me, some of the challenges of the African American farmers, they are not limited to African American farmers. It is pretty much all of our small farmers, beginning farmers, and I hope as we go forward, we are able to look at young, beginning, small, regardless of race with regard to how we handle things at the USDA, because there are a lot of people out there that need help, and we need more farmers, not fewer farmers in the United States.

I told you this, Mr. Boyd. I don't have a question for you, but I do have an issue with the language in Section 1005, Secretary Vilsack. Can you tell me, Secretary Vilsack, were all of the socially disadvantaged farmers included in the relief provided in Section 1005?

Secretary VILSACK. If you are defining *socially disadvantaged farmers* as consistent with the 1990 Act, yes, which is based on race and ethnicity. There are other definitions——

Mr. AUSTIN SCOTT of Georgia. The current definition of a *socially disadvantaged farmer,* can you tell me who is excluded from Section 1005 *versus* the current definition of a *socially disadvantaged-farmer?*

Secretary VILSACK. I want to make sure I understand your question, Congressman. Are you asking me does the provisions of the American Rescue Plan Act of 2021 define *socially disadvantaged,* or are you referring to some other definition of *socially disadvantaged?*

Mr. AUSTIN SCOTT of Georgia. Secretary Vilsack, the current definition, what I am getting at. You are wasting time. The current definition of a *socially disadvantaged farmer,* which farmers that are currently eligible for the socially disadvantaged farmer loans are not eligible for the relief under Section 1005?

Secretary VILSACK. White women.

Mr. AUSTIN SCOTT of Georgia. Yes, sir, that is correct.

Secretary Vilsack, you are familiar with the case *Love* v. *Vilsack?*

Secretary VILSACK. Yes, sir.

Mr. AUSTIN SCOTT of Georgia. And so, respectfully, you were named not personally, but as Secretary of the USDA, so this is not a personal accusation, but there was a settlement with that case as well, correct?

Secretary VILSACK. There was.

There is a difference. There is a significant difference, Congressman, as I suspect you know, between what we dealt with in *Love* and what we are dealing with here.

Mr. AUSTIN SCOTT of Georgia. There is, yes, sir, but my concern is I think there are a lot of socially disadvantaged farmers. I think there are a lot of small farmers. I think there are a lot of people that need the help, and my concern is when we start to group certain people out because of the color of their skin, then it becomes harder to get anything done. If it is not equitable and it is not inclusive, then by definition, it is discriminatory. And when it is discrimination based on the color of someone's skin, then it is racist. That is just my personal belief, and I think most people would accept that definition.

So, one last question for you, Secretary Vilsack. Would you commit to me that only American farmers would receive relief under Section 1005, and not foreign nationals?

Secretary VILSACK. I can't commit to that, Congressman, because that is not what the law that has been passed and signed by the President says, as you well know.

Mr. AUSTIN SCOTT of Georgia. So, you are going to——

Secretary VILSACK. Well, let me finish. It is important for people to understand that contained within the definitions covered by the American Rescue Plan Act of 2021 are people that legitimately are entitled to borrow money from the FSA as a result of actions that were taken in 1984 when Jesse Helms was the Chair of the Agriculture Committee and Ronald Reagan was President that opened up the opportunity at USDA to work with folks who were not citizens, but who were legitimately here.

So, to the extent that Congress passing the American Rescue Plan Act of 2021 includes all of those folks, that is what I am mandated to do and that is what we will do. We will follow the law. I would expect that you would want me to do that.

Mr. AUSTIN SCOTT of Georgia. You are going to pay off the loans for foreign nationals, but you will not pay off the loans——

The CHAIRMAN. The time of the gentleman has expired. Thank you very much, Mr. Scott, for your questions.

I now recognize the gentlewoman from North Carolina, Ms. Adams, for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. Thank you, Ranking Member, as well for hosting the hearing today, and to all of our witnesses. Thank you for your personal and compelling testimony.

This is, as our Chairman said, a landmark hearing. The need for Federal support for Black farmers cannot be overstated. I want to just put on the record, I am a proud graduate twice of an 1890, North Carolina A&T. But particularly because the most recent statistics from USDA make it clear that Black producers were not served by the last Administration's COVID relief programs. That is why last month I introduced the House version of the Justice for Black Farmers Act, H.R. 1393, to address discrimination at USDA, to provide debt relief, and to support a new generation of Black farmers. It was good to speak with you, Secretary, and with you as well, Mr. Boyd, just a day or 2 ago.

I am proudly a supporter of the debt forgiveness for farmers of color in the American Rescue Plan Act of 2021. Some of my col-

leagues, though, on the other side have raised questions about the constitutionality of that provision. But we have studied the Constitution. We know that race-based actions by the government are subject to strict scrutiny by the courts. And in its 1995 *Adarand* decision, the Supreme Court held that government may use race-based remedies that are narrowly tailored to respond to the practice and effects of racial discrimination. After the Office of Legal Counsel at the Department of Justice issued a legal memo which noted that Congress may be entitled to deference when it acts on the basis of race to remedy the effects of discrimination.

Mr. Chairman, I ask for unanimous consent to submit for the record a copy of that 1995 memo.

[The memorandum referred to is located on p. 324.]

Ms. ADAMS. And that is what we have—thank you—and that is what we have in the American Rescue Plan Act of 2021: Congress narrowly tailoring legislation to address well-documented racial discrimination against farmers of color.

Mr. Secretary, my question for you—and thank you for your testimony. We have been talking about USDA's discrimination against Black farmers and other farmers of color for decades now. In 1988, Congress tried to address it by requiring USDA to set target participation rates for farmers of color in farm loan programs, but target participation rates and other important programs like the 2501 Program are limited in scope, and haven't fully addressed the barriers faced by our Black farmers. In the past 5 years, the number of direct farm loans to Black producers decreased by nearly 50 percent from 945 to 460.

Mr. Secretary, what do you think might account for this steep drop in direct farm loans to Black producers, and what steps is USDA willing to take to increase that participation?

Secretary VILSACK. Congresswoman, I am not quite sure why during the Trump Administration the number of loans decreased, but what I can tell you is I think it is a combination of factors that we have to focus on. First, we have to have people in the Farm Service Agency offices and in the county committees that reflect the population that they serve. When I was Secretary the last time, I did, for the first time ever, appoint minority members to county committees that did not have minority membership. I think that is important that we take a look at that county committee structure. I think it is important, as I said earlier, to connect with community building organizations to make sure that outreach is taking place.

One of the problems with COVID relief is I don't—we are pretty convinced that the outreach to the socially disadvantaged population was not what it needed to be, which is why we announced yesterday as part of the CFAP announcement an effort to try to expand outreach and to reopen CFAP 2 to give socially disadvantaged farmers greater opportunity to apply. So, it is outreach.

Ms. ADAMS. Okay, go ahead.

Secretary VILSACK. I am sorry. It is outreach, and it is also accountability. Reports to me directly, keeping an eye on precisely how much progress we are making, and if we are not making progress, demanding some accountability and reasoning why. There is a lot more to this, which I will talk to you about offline.

Ms. ADAMS. Right. Let me quickly ask you, in the plan, Congress provided for a new equity commission to address racial discrimination. We do need individuals on the commission who bring fresh eyes to the problems, and so, I wanted you to share your plans to ensure that congressional and stakeholder input would be used in establishing the commission. I am not sure if I am out of time.

Secretary VILSACK. We are going to follow FACA, Congresswoman. We are going to make sure that Congress and everyone else has an understanding of participation. You can be assured that we will follow the rules and regulations of FACA.

Ms. ADAMS. Okay, great. Thank you.

Mr. Chairman, I think I am out of time. I am going to submit my other questions to the other witnesses.

The CHAIRMAN. That will be fine.

I now recognize the gentleman from Tennessee, Mr. DesJarlais, for 5 minutes.

Mr. DESJARLAIS. Thank you, Mr. Chairman. I thank you for holding this important hearing today, and it is always disturbing to hear issues of discrimination. I feel for the people and the stories that I was told today.

I did want to mention, there was a comment about Secretary Perdue. I am sorry, in Tennessee, everything is in bloom, so forgive the voice and the allergies. But Secretary Perdue was a great Agriculture Secretary and great to work with, and I think when he said that you need to go big, that was probably a comment—if you are a mom-and-pop store, it is hard to compete against Walmart. If you are a hardware store, it is hard to compete against Lowes and Home Depot. And I would just say that knowing Secretary Perdue, he did not mean that in any old fashion.

I am also very appreciative to be able to work again with Secretary Vilsack. I am much appreciative for him reaching out to Members of the Agriculture Committee. Not all Secretaries take time to do that, so thank you, Secretary Vilsack, for that.

I think this hearing could have been better today if alongside these witnesses were witnesses that were Hispanic and other people—anyone who has been discriminated against, because farmers of every race, color, national origin, gender, and religion are struggling. The U.S. farmers are saddled with near-record debt. There is high suicide rate among families and farmers who are losing their livelihood.

It is a little troubling with some of the legislation that has been put forth to have to see what is happening, and then come back to my district. I can put the camera out my back door. There is cattle grazing, there are row crops. It is a rural area. There are small farmers, and they are struggling, too. It is hard for me to tell them that there is help on the way, but only if you are a certain skin color. It seems like that is discrimination in itself. And I would think that the panelists and witnesses today didn't like the way they were treated, and wouldn't want other people to be treated that way, either. It seems like what Austin Scott was saying where foreign nationalists can get money under this COVID plan, but not White women. That would bother a lot of people. I know that he didn't get to finish that line of questioning, but discrimination in this country is already illegal, as it should be, and it is the job of

the courts to rule on discrimination and award damages, not Congress.

We saw the $2.3 billion go out to farmers in the *Pigford* settlement with dubious results. Now we have the American Rescue Plan Act of 2021 that includes language for loan forgiveness for socially disadvantaged farmers, except the ones that Austin spoke of, for up to 120 percent of the outstanding debt.

Secretary Vilsack, did you feel that USDA was discriminatory while you were the head of the agency under the Obama Administration?

Secretary VILSACK. Congressman, I am certain that there were times and circumstances where people who were of color, Black producers, Hispanic producers were not treated as fairly or as equitably as they should have been when I was Secretary. We have over 4,000 offices. We have 100,000 folks working at USDA, so I am not surprised if there were circumstances.

What we did do, however, was we began a process which we are going to continue and deepen in cultural transformation so that the number of discriminatory actions was reduced and ultimately got to zero. We are going to keep a record of EEO complaints and program complaints, and make sure that if there was a spike in those complaints, we would find out why and take action to solve.

And I will tell you, sir, with all due respect to this discussion, I think people are losing sight of the fact that the *Pigford* case was designed to respond to specific acts of discrimination and compensate for this. The American Rescue Plan Act of 2021 was designed to do two things: first, to deal with the cumulative impact of discrimination over time where some people had the full range of the suite of programs at USDA and were able to grow and expand, and others did not. Just to give you an example, CFAP 1 and CFAP 2. Of those who have been self-identified Black farmers received $20 million——

Mr. DESJARLAIS. I just wanted to finish with I want us all to be aware, as we try to unite as a nation, that actions like Senator Hirono and Senator Duckworth in the Senate just recently said they wouldn't vote for nominees unless they were diverse. That is discrimination in itself. We need to get rid of all discrimination. We need to come together as a people. I hope our panelists agree. That is what Mr. King would have wanted, and that is where we need to go. And so, we need to be careful of that moving forward.

I am sorry to interrupt you, sir.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you so much there for your testimony.

Let me make this brief announcement before we move to our next Member to be recognized. I want to make all of our Members aware that the Committee will take a short 15 minute recess following this question period with the gentlelady from Connecticut, Mrs. Hayes. Immediately after that, we will take a 15 minute recess, and then we will come back.

I now recognize the gentlewoman from Connecticut, Mrs. Hayes, for her 5 minutes.

Mrs. HAYES. Good afternoon, Mr. Chairman, and thank you, and thank you to all of our witnesses for being here.

I just want to add that no one on this Committee or in Congress woke up and just decided let's send relief only to Black farmers or have this hearing. This is the result of years of pervasive discrimination and a problem that has existed that we in Congress recognize we have an obligation to address. This isn't about what Dr. King would have wanted or we are leaving other groups out. It is about we are addressing an area of need that has gone unaddressed for so many years.

This is a pervasive problem, even in my district in Connecticut, which is not generally seen as an agrarian district. But according to the Northeast Farmers of Color Land Trust, White landowners currently control about 95 to 98 percent of the farmland in the United States, and nearly 100 percent in the Northeast. This stark disparity in land ownership is reflected in the demographics of Connecticut farmers. Non-White farmers represent just two percent of farmers in the state according to our Census Bureau, which is an extremely low number when considering non-White communities represent nearly 35 percent of the state's overall population.

I am happy that we are here today brainstorming solutions to address this, and not taking the ostrich approach and sticking our head in the sand and pretending that the problem does not exist.

My question is for you, Mr. Boyd. Can you speak to the disparities between Black farmers and their White counterparts in accessing subsidies, capital, and land for their farms?

Mr. BOYD. Yes, I can, and thank you very much for the comments.

I also would like to take a step back and address the Sonny Perdue issue, because I was the one that stated that at the meeting I had with him. I do believe that he meant every word of it. He also said if you wanted to know where Blacks are, go to TSA and look at New York City and Atlanta, Georgia. And based on all my experience of meeting with Agriculture Secretaries, going back to the Carter Administration, that was my very first meeting—my worst meeting in history with the Agriculture Secretary.

As it relates to farm subsidies, 90 percent of all subsidies—the top ten percent receive on average $118,000, the bottom 80 percent annually in Mecklenburg County, Virginia receive about $700 annually. When you look at how we participated in the Trump Administration, the $29 billion that was doled out in those payments, Black farmers received 0.05 percent. Those numbers of people are dramatic, and if I can't compete as far as staying in the farm subsidy program and receive farm subsidies the way that my White counterparts do, I can't compete. I can't pay the land rent and so on and so forth.

So, this hasn't just begun, people. This has been going on for decades, for decades. When you hear people say about the relief that is out there now, Congresswoman, that is—it is a new loan program is what I have been watching on the news. This is a new loan program that excludes Whites, White farmers. That is not true. It is debt relief, and as Secretary Vilsack already said, only for those farmers that already have loans on the books. It is not a new loan. It doesn't exclude Whites. We simply are trying to level the playing field, and the way to do that is to have full transparency. By having transparency——

Mrs. HAYES. Thank you.

Mr. BOYD. Yes. By having transparency, we can fix a whole lot of this.

Mrs. HAYES. Thank you. I am happy that you mentioned transparency. The time goes by so quickly, but the disparities that you just highlighted really stress the need for a robust, effective civil rights office within the United States Department of Agriculture due to this long history of civil rights cases being backed up in the USDA.

With the 2008 Farm Bill, it required a report to Congress describing the number of civil rights complaints filed against the USDA, the length of time it took to process those complaints, and any follow up for the resolution. The average complaint was resolved in what amounted to about 6 years. I know we really don't have time to address this, but Secretary Vilsack, I hope that you can really think about plans for improving the process for addressing civil rights cases within the USDA, and making sure that we are providing equitable access to all farmers. Our job here is to help all farmers, but we also have a responsibility to address those areas of greatest concern and need, and right now, Black farmers happens to be one of those areas.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you very much.

The Committee will now stand in recess until 2:15.

[Recess.]

The CHAIRMAN. The Committee will now return to order.

I now recognize the gentlelady from Missouri, Mrs. Hartzler, for 5 minutes.

Mrs. HARTZLER. Thank you, Mr. Chairman, for holding this hearing. Thank you to all our witnesses. I also want to thank Secretary Vilsack for reaching out to us Members of the Agriculture Committee to hear our ideas and concerns in agriculture and where we need to go. I really appreciate that.

Mr. Secretary, I want to follow up on some of your comments in your opening statement about some of the challenges of rolling out this provision, and specifically, I have been hearing from some banks—and you did reference that you don't know how you are going to deal with the prepayment penalty. But I am hearing that banks that originate FSA guaranteed farm loans have raised concerns about the unintended consequences that the prepayment of these loans will have on lenders, including their ability to make and service these loans in the future. Can you go into more detail about what USDA is going to do to work with these banks to mitigate the costs and to provide certainty for our farmers?

Secretary VILSACK. Well, thank you very much for the question. I think the first thing is we need to have a very detailed understanding of precisely what concerns they have and why they have them. I have asked the team to reach out to and to identify those loans that potentially have prepayment issues, reach out to the banks, ask for the documentation of the prepayment penalties, and begin a conversation and discussion in terms of how that is to be handled.

It is going to take, obviously, a little time to do this, but we are going to be focused on making sure we put adequate staff behind

this effort to get it done, and as I said, as quickly as possible, as thoughtfully as possible, and as efficiently as possible.

Mrs. HARTZLER. Right. How many of these loans are there that you will be forgiving?

Secretary VILSACK. Well, I don't think we necessarily know precisely how many we—I am going to give you a range. Our best knowledge and best information today is somewhere between 13,000 and 15,000 loans that are potentially impacted by this. It could be more, it could be less, but I think it is somewhere in that neighborhood.

Mrs. HARTZLER. Okay, very good. Thank you so much.

I wanted to follow up with Philip Haynie. Thank you so much for your passionate testimony.

I was concerned to hear about how you said you can't access USDA irrigation funds and you can't participate in land leveling programs like other farmers. I just wonder, could you share more about what happened or how come you couldn't? What happened there?

Mr. HAYNIE. Yes, ma'am. Thank you for the question.

A lot of Black farmers throughout the Delta where there are common practices in place for land leveling and irrigation. These programs that are issued by USDA NRCS, oftentimes they are told they weren't available to them. They are competing against neighbors side-by-side, and they often find themselves on an island where they are a non-irrigated farm, and they have irrigated farmers on all four sides of them.

So, the practices of putting irrigation on their farms is something that needs to be implemented through the USDA, and there should be cost-shares allowing for that.

Mrs. HARTZLER. Sure. Could you tell me more though—you were told or you know some farmers that were told that these aren't available to you?

Mr. HAYNIE. Yes, oftentimes farmers go in to apply for these programs and they are told that there are no funds available to assist them with that. The cost-share that is available for the EQIP Program for land leveling and irrigation, those funds often dry up, and at the cost of implementing these improvements on their farms, they aren't able to forebear them, unlike their neighbors who were able to get these programs implemented during the crux of discrimination at USDA back in the 1980s.

These farmers are still without, and their neighbors are with irrigation right beside them.

Mrs. HARTZLER. Okay. The problem is that the EQIP funds have run out when you have gone in and asked, and they didn't have the funds available, or the matching requirement was the problem. Is that what I am hearing?

Mr. HAYNIE. Well, oftentimes farmers are told there are funds not available, and that may not be the case. I don't think there is enough oversight in that issuance of those subsidy programs for land leveling and irrigation for improvements on the farm. Oftentimes, that pot runs out of money very soon and farmers have to wait for it to be refilled.

Mrs. HARTZLER. Got you.

Mr. HAYNIE. Thank you.

Mrs. HARTZLER. Yes, thank you. I think that is really helpful we get to the bottom of what is being alleged happened here.

I wanted to ask Mr. Boyd—well, I only have 12 seconds. Okay. I appreciate y'all's testimony.

Thank you. I yield back.

The CHAIRMAN. Thank you very much.

I now recognize the gentlelady from Maine, Ms. Pingree, for 5 minutes.

Ms. PINGREE. Thank you so much, Mr. Chairman, and thank you to the witnesses.

I have actually been in one of my other committees, so I have missed all of your wonderful questions and answers, but I really do appreciate that you are all here, and I certainly appreciated reading your testimony.

Mr. Rowe, I am particularly interested in you being an organic farmer, and I know that you are very focused on soil health and carbon sequestration, which is certainly a topic of this Committee and one moving forward.

As the USDA considers possible initiatives to encourage farmers to adopt climate-friendly practices, what recommendations would you make to Secretary Vilsack or the Members of this Committee to make sure that you and other Black farmers are able to benefit?

Mr. ROWE. Okay. Can you repeat that question one more time? Can you repeat the question one more time?

Ms. PINGREE. Oh, absolutely. As you are an organic farmer, I know you are very focused and you have educational background in soil health, and because this Committee is focused on soil health and carbon sequestration and some interesting new initiatives to encourage farmers to adopt climate-friendly practices, I am wondering what recommendations you would make to the Secretary and to this Committee to make sure that you and other Black farmers are able to benefit from future initiatives?

Mr. ROWE. Okay. In order for you to obtain your certification to be organic certified, you have to follow strict guidelines on how—what you put into your soil, what equipment used and stuff like that. I feel like if you apply that to farming, period, it would help with a lot of the stuff when it comes to, like, climate change, just because the carbon that comes out of the soil, organic practices are a way to make sure we are staying healthy, and also keeping the environment healthy. As you know, conventional farming takes a lot of chemicals and a lot of stuff to make stuff grow. But that affects us as humans, it affects the air, and the pollution, and stuff like that. I would recommend more observing the organic standards and qualifications you need to be organic certified. That is something that I can—if I had something just to say, that would be my opinion on it.

Ms. PINGREE. Great. Thank you. I have spent some time as a certified organic farmer, so I certainly sympathize with the challenges and the expenses of facing that so more support is important.

Secretary Vilsack, I am sorry I have not been able to hear most of the hearing, but I did hear your opening remarks and I do appreciate you returning, particularly at such a challenging time. Welcome back as Secretary, again, for Agriculture.

I know a lot of your agenda will be around some very interesting climate initiatives, soil health, the whole variety of things that you have already talked about. How do you make sure that small to medium-sized farmers, and particularly Black farmers, are able to participate and this doesn't just become another program that only applies to the large farmers or those that have the means to apply for a grant or any of the complications that might get in the way?

Secretary VILSACK. Quickly, I would respond three ways. First, I have Dr. Dewayne Goldmon in my office now as the Senior Advisor on Equity. Part of his responsibility is to put an equity lens on everything that we do, and to encourage those who are developing these programs to make sure that there is an equity lens when the program is being developed.

Second, is to make sure that we are keeping track of the resources that are being allocated in various programs, and how much of it is, in fact, going to socially disadvantaged producers. If we see, as we saw with COVID, some imbalance, we can obviously make corrections. We can ask questions about that.

I think it is also important for us to have partners who can help us with outreach. Sometimes, it is not that people don't want to help, it is that people don't know that they need the help or don't know where to go to get the help. As has been indicated earlier, there is a trust issue. I think we have to build trust, and I think the way to do that is by connecting ourselves with community building organizations that are already trusted to get the word out.

I think it is also making sure that as we put our budgets together, we look at places and programs that we know will be most helpful. One of the purposes of this hearing—I am taking notes right now on the suggestions that people are making. Obviously, that is going to impact and affect as we make future budget decisions. It is a combination of all of those things and basically saying to the folks—and I will end with this. Basically saying to your team this is a priority, and it needs to be reflected in every decision you make. You need to be able to justify and explain how equity has been applied. The President has been very clear about this. It is his expectation that everything we do at USDA is done through an equity lens, and I think that is a fair point and one that we are looking forward to doing.

Ms. PINGREE. Well, I certainly appreciate your answer there, and the importance of all of the points that you have mentioned, particularly around outreach, because we often find that people have no idea that there are programs out there that would benefit them. But also, I think the USDA having that lens, we often write into a program that there should be a set aside for this or a set aside for that, but clearly, it is going to be far more effective if the USDA sees that as their responsibility to make sure that the distribution is fair, and particularly that underserved farmers have those opportunities.

I only have 7 seconds, so I will yield back.

Secretary VILSACK. Congresswoman, we will also get some suggestions from the Equity Commission in terms of overall structure and strategy. That will be helpful as well.

Ms. PINGREE. Great. Well, thank you so much.

The CHAIRMAN. Thank you.

I now recognize the gentleman from Illinois, Mr. Davis, for 5 minutes.

Mr. DAVIS. Thank you, Chairman Scott and Ranking Member Thompson, and thank you to the witnesses and my good friend, Secretary Vilsack, for being here today to discuss the impact of racism in the United States and the work we must continue to do to ensure there is equity across programs at the USDA.

As a former Chair of the Subcommittee on Biotechnology, Horticulture, and Research, I have spent a lot of my time in Congress focused on the importance of our ag research and extension programs, which should help serve farmers across the board, and particularly minority and socially disadvantaged farmers. I appreciate the opportunity to discuss how we can work to bolster extension programs, those that help serve minority and socially disadvantaged farmers, in a way that decreases barriers to access and increases participation in USDA programs.

Mr. Rowe, thank you for being here today and for sharing your experiences as a Black organic farmer. I was particularly interested in your experience in navigating the new hemp program, along with other USDA organic programs, which have proved challenging for so many. Can you please share more regarding the unique challenges you faced trying to navigate the hemp program, specifically in light of the 2018 Farm Bill, and what you need from us and the Department to ensure you have certainty and access to profitable markets?

Mr. ROWE. Okay. It was a challenge doing the hemp because, as you know, Georgia just got, we were just able to grow organic hemp, or hemp in general. And a lot of farmers are uneducated on it. Government assistance doesn't have a lot of research on it also, so working with universities and doing research on this new crop that just, that Georgia is just now growing will also be helpful.

Some of the things that I was—as growing hemp my first year, I knew as far as, like, diseases or what variety would grow. Things like that a farmer didn't know, so having those land-grant and research available for farmers to be able to reach out. I know Fort Valley State University does a lot of field research. Like they will have a field day where they will do a particular crop and explain how to grow it, what it takes, and all of that. If we could get something like that implemented with the hemp program, it would be very helpful because there is less knowledge on this new crop that just came into Georgia.

Mr. DAVIS. Thank you, Mr. Rowe. I would be interested in keeping a working relationship with you as we move forward to identify any other problems that you are experiencing in the organic sector.

Secretary Vilsack, hey, great to see you again. I just wanted to make sure that you and I have chatted about the work across agencies and with the FDA that is needed to ensure that we are providing regulatory certainty for hemp and organic farmers, including Black, minority, and socially disadvantaged farmers.

Secretary VILSACK. Well, Congressman, I think our first order we have to have our own house in order in terms of being able to work effectively with other agencies, which is why it was important for us to get the hemp rule out. It had been stuck for a while. We are doing that. We are now in a position to reach across to HHS and

FDA to make sure that there is a coordination. And frankly, you mentioned biotechnology. There is obviously a need for us to coordinate effectively with both FDA and EPA, and I expect to do that. We have to have a process.

I would say in this day and age, with change rapidly occurring so quickly, our regulatory processes have to keep pace with the pace of change, and frankly, sometimes we basically slow innovation down because our regulatory process is not communicating effectively between agencies. That is something we need to work on.

Mr. DAVIS. Well, thank you, sir, for that, and welcome back. As I told you before, I look forward to working with you again and congratulations on getting back into the USDA one more time.

Secretary VILSACK. Thank you, sir.

Mr. DAVIS. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I now recognize the gentlelady from New Hampshire, Ms. Kuster, for 5 minutes. I think you may be muted.

Ms. KUSTER. I am just trying to get my mute off here. Thank you, Mr. Chairman. And Secretary Vilsack, we appreciate you being here. Thank you for all the work that you are doing, and I am grateful for the farmers and producers on the panel for coming forward to share all of your challenges and insights.

Our country is in the midst of a reckoning on racial justice and addressing systemic racism, and I think that is the difference. This is not a question of simply prejudice or discrimination. We need to go back to the beginning and the racism since slavery that has led to Black farmers not even being able to show title to their land.

This past year has not only brought a global pandemic, but countless painful reminders that we still have so much work ahead of us on equality and justice here in America, and as has been discussed today, we have a glaring problem when it comes to American agriculture. Instead of improving, the number of Black farmers in our country and the amount of land they own has shrunken dramatically and continues to decline, and we need to ask why and make changes that will turn that trend around. It is incumbent on Congress and the USDA to reverse this trend, and ensure that our agriculture sector is diverse, and that every single farmer and producer is treated with fairness and equality.

So, let's make it clear. If Black farmers and socially disadvantaged farmers are systematically driven out of our culture, there would be horrible consequences for consumers and growers across the country. We have to right these wrongs and move forward together.

Mrs. Sherrod, as you noted in your testimony, Black farmers are still impacted by discrimination because government payments are tied to production. Systemic discrimination has resulted in Black-owned farms being smaller than White farms, so Black farmers typically receive smaller government payments. From your experience, how can Congress help level the playing field and make sure that Black farmers with smaller operations aren't penalized when it comes to applying to the USDA?

The CHAIRMAN. You may need to unmute.

Ms. KUSTER. Mrs. Sherrod? Did it go—no, I am sorry. That was for Mrs. Sherrod.

The CHAIRMAN. Is it Sherrod, you mean?

Ms. KUSTER. Mrs. Sherrod, yes, I am sorry.

The CHAIRMAN. All right. You may need to unmute. Okay. You got it, Mrs. Sherrod.

Mrs. SHERROD. Okay. Can you hear me?

The CHAIRMAN. Yes, we can.

Mrs. SHERROD. All right. Let me say that, are we still muted?

The CHAIRMAN. No, you are——

Ms. KUSTER. No, you are good. We can hear you.

The CHAIRMAN. Now you are muted. Go back to where you were.

Mrs. SHERROD. Okay. Okay. Let me say that I have worked on this issue for many, many years, almost 56 years. I have actually gone from a period when I had to go in the office with farmers because they were afraid to go—they couldn't speak up for themselves, and I could speak for them and I could help represent them. What that has done is in addition to farmers trying and being denied, they don't feel there is a place for them to go. We have to go back and try to help farmers understand that this agency is there for them, because so many of them think that is not the case. Many of them think like one of my grandfathers, when he had the opportunity to try to apply for money, he said I have never borrowed money from Farmers Home Administration, because it is just a way to take a Black farmer's land. That has proven to be true.

You were breaking up so I didn't hear all of your question, but let me say, we have to go back and make people feel that this is a place they can come to for help.

Ms. KUSTER. Great. Well, thank you so much.

Mr. Boyd, could you speak to the unique challenges that you have seen Black farmers with smaller farms face when it comes to ensuring that their land can be passed to the next generation?

Mr. BOYD. Yes, this has been a difficult task. One of the challenges is access to credit. Black farmers simply don't have access to credit. USDA has been played into that, and also the top ten banks, and we haven't got to talk about corporate America and the discrimination that Black farmers face there in companies like Monsanto, John Deere, PepsiCo, all have failed to deliver contracts and services to Black farmers. These are things that are coupled all together that has affected us.

USDA certificates of liens that was on my property when I had debt relief at the United States Department of—I was one of the first Black farmers to be offered debt relief in the settlement agreement. Those liens remained——

The CHAIRMAN. The time of the——

Mr. BOYD.—on my farm for over 20 years until we were able to try to purchase another farm. We had to hire a law firm to get those liens off of my farm.

The CHAIRMAN. Yes. The time of the gentlelady has expired.

Ms. KUSTER. Thank you. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you for your comments. I appreciate them, Mr. Boyd and Ms. Kuster.

I know recognize the gentleman from Nebraska, Mr. Bacon, for his 5 minutes.

Mr. BACON. Thank you, Mr. Chairman. I appreciate the panelists today and each of you. We appreciate reaching out across the aisle. I also appreciated the opportunity to meet with John Boyd.

There is no doubt that our African American farmers following reconstruction were faced with discrimination and prejudice extending for over a century.

Mrs. Sherrod, your testimony mentions that the *Pigford* settlement did not bring about systematic change. Deep rooted changes to a system or an agency do take time. Have there been any improvements, to your knowledge, that can lead to the systematic change that you are referencing? Thank you.

Mr. BOYD. Basically, what the lawsuit did was really bring about discrimination issues to the Department of Agriculture, but many of the issues that we were—that was a part of the lawsuit never went to Black farmers, such as injunctive relief such as debt write down, land out of Federal inventory. None of the farmers received those things, and that is why it is vitally important that we have this measure.

So many people think that it is a new issue. It is not a new issue. We asked for debt relief in the actual lawsuit, and also, we need transparency. If we want to fix any of this, we need transparency to see who is getting what, and what programs, such as farm subsidies. If we had those real numbers, this hearing would be a lot clearer today. We would be able to say this race received this amount of subsidies. Black farmers received this amount. We need full transparency, and for those Committee Members that are here today, we should really take a pretty good look at that.

And also, those persons who were found guilty of discrimination were never fired or penalized. As you heard Mrs. Sherrod testify, she was the only one who got fired. How in the world can you have two settlements and all of those people that were investigated that were found guilty of discrimination, and nobody was fired? And that is a shame for the taxpayers who had to pay for that. We need to look at those people who—past and present who are still working at USDA, 30 year bureaucrats who still have their jobs. Black farmers lost their land and farms, but these people still have their jobs.

I would like to work with the Committee to move forward on a transparency measure.

Mr. BACON. Thank you, Mr. Boyd.

I was also asking Mrs. Sherrod if she sees the systematic change that does take a long time to do. Is she seeing progress in the systematic change in the agencies she is working in?

Mrs. SHERROD. Let me say that there, there has been some change, but not nearly enough to make up for what has been done. And if you keep messing with someone and they keep getting hurt, they eventually stop going in that direction. We have so many farmers who need to go to the agency and they can't and don't feel they should go to the agency because they have never been able to get help there. And if it were not for groups like us, even working with Mr. Sedrick Rowe and others to try to help navigate that for them, there is just no way they will ever get help.

The culture there is changing some, because I have been at this 50+ years, but I haven't seen enough change.

Mr. BACON. Well, thank you, Mrs. Sherrod, and I think you have a good point. If your grandfather tells you something and your father tells you something, you learn not to do so.

With my remaining minute, I got another follow-up for Mr. Boyd. You highlighted the need to improve technical assistance and outreach to Black farmers. Are you starting to see that now? Are we making progress there? Thank you.

Mr. BOYD. I believe that—and thank you, Congressman, for the question. I believe that the mechanism that is on the table right now in the Farmers of Color Act, the $1 billion, the Secretary and his team should reach out and work with organizations like the National Black Farmers Association and all of the other panelists that are here today. We have a unique opportunity to fix outreach and technical assistance in this measure, something that has been lacking, as you heard my colleagues testify to, in the Section 2501 Program. This is the opportunity right now to fix that. Where organizations like ours, we need resources. Since this bill has been announced, our phones are ringing off the hook for farmers that are looking for direction. They want to know how this debt relief is going to be paid out, how it is going to apply to them, and we haven't heard enough yet from the Administration. I would like to ask Secretary Vilsack—he mentioned the Commission. Who is going to be on the Commission?

The CHAIRMAN. The gentleman's time has expired.

I now recognize the gentlewoman from Illinois, Mrs. Bustos, for 5 minutes.

Mrs. BUSTOS. Thank you so much, Chairman Scott, and let me just say thank you for holding this very, very important hearing today. I want to thank all of our witnesses. You have all done a wonderful job. Mr. Secretary, thank you for being here.

I want to start out with a question for you, sir, and I actually am going to use some facts that Mr. Boyd shared in his opening statement. Thank you, Mr. Boyd, for laying the picture out for what Black farmers in America have gone through. The numbers have fallen dramatically. As Mr. Boyd pointed out, from 900,000 in 1920 to less than 50,000 today. Mr. Boyd also pointed out that the amount of land that is farmed by Black farmers has fallen from 41 million acres to less than 5 million acres today. So, again, Mr. Boyd, thank you for laying that out. It helps us get an understanding that we got something going wrong here.

Secretary Vilsack, if I may, what steps can Congress take to help you at the Department of Agriculture to ensure that Black farmers get involved in and remain in agriculture?

Secretary VILSACK. Well, I think you have taken a very important and first step with the American Rescue Plan Act of 2021. The debt relief process, as we have talked about, is an important step. The Equity Commission which we will set up pursuant to congressional directive with the FACA, we have to go through that process to get committee members appointed, is going to be very helpful to identify systemic barriers that exist from an external view. We have a working group inside USDA focused on internally examining this.

I think Mr. Boyd is right about the $1 billion. There is tremendous opportunity there, not only to improve outreach, but also to

look at ways in which we can do better marketing assistance for farmers in that local and regional food system that they need to be part of, and also creating opportunities potentially for more market opportunities and more land access. I think Congress could help us by talking to other Federal agencies, in addition to the USDA, that have land ownership. I am thinking of the Department of Defense, for example. They have a lot of land that surrounds a lot of the military installations. A lot of that land is in rural communities. A lot of that land is farmable. Where and who do they have farming that land? Can that be something that could potentially be made available to minority and socially disadvantaged and beginning farmers? That is one thing I think Congress could ask. And certainly to the extent that you would provide the resources for us at USDA, our budgets over the course of the last several years have been cut, which makes it harder for us to have the people and the personnel necessary to do the job. Hopefully we will see some additional support and help on the operations side of the budget.

Mrs. BUSTOS. Thank you, Mr. Secretary, and I appreciate that innovative approach that we could take a look at.

So, we know that obviously—again, this has been spelled out very clearly. We need to do more to level the playing field between Black farmers and White farmers, including greater transparency in subsidy and loan programs. That has been discussed today. We need to improve access to land, as you just talked about, Mr. Secretary, and credit and improve our outreach to Black farmers. You just laid that out very nicely.

I am lucky enough to be Chair of the General Farm Commodities and Risk Management Subcommittee this congressional session, and I know that these are all issues that important to me as we get to work on our agenda this Congress and gear up for the next farm bill.

So, this question is actually to whoever would like to answer it among the panelists, and Mr. Boyd, I am going to ask you to start. But what have your experiences been with the commodity programs at USDA? Again, this falls under the Subcommittee that I will be chairing. And the second part of that is what steps can Congress take to ensure that Black farmers feel welcome at the USDA?

Mr. BOYD. Well, one thing I would do—and I have said this to every Member of Congress—and thank you for taking the time to speak with me the other day——

Mrs. BUSTOS. Thank you.

Mr. BOYD. Is that, Mr. Secretary, Black farmers need to hear from you, that USDA is open for business for Black farmers, open for business for farmers of color, Native American, women, all of these persons of color. Make that announcement and make it with conviction, because we are going to have to get Black farmers reintegrated back into USDA, because as you heard Mrs. Sherrod and my other colleagues say today, Black farmers don't trust the United States Department of Agriculture, which has really hurt us in participation, and it is because of all the discrimination that I and others have faced. And we also need to do more to get new and beginning farmers into farm programs at USDA, and remove the 3 year requirement so that Black farmers and other new and be-

ginning farmers can actually take part into the USDA programs there.

Removing that 3 year barrier has been a big problem, and I would like to work with you guys to remove that.

Mrs. BUSTOS. I wish I had time to listen to everybody, but my time has expired.

Secretary Vilsack, I do want to follow up on your idea with the Department of Defense.

Thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. Absolutely.

I now recognize the gentleman from Indiana, Mr. Baird, for 5 minutes.

Mr. BAIRD. Thank you, Mr. Chairman, and thank you Ranking Member Thompson for putting on this informative hearing.

I am going to start with the Office of Partnerships and Public Engagement, and mention that they hosted last year 50 statewide community prosperity summits to folks on solutions to challenges facing rural and underserved communities, and connect them to the education, tools, and resources available to them through the USDA programs and initiatives.

In 2020, as an example, they connected hundreds of faith-based as well as youth as well as military and community organizations to distributors to form partnerships through the Farmers to Families Food Box Program during COVID–19.

I guess my first question is going to go Mr. and Mrs. Cotton. In your testimony, you mentioned USDA's Office of Partnerships and Public Engagement. Can you elaborate more on your experience with the Faith Fellows training you attended in Washington, D.C., and how that experience contributed to your interactions with the USDA, Mr. and Mrs. Cotton?

Mrs. COTTON. Well, thank you, sir, for this opportunity and the question.

By being at the Faith Fellows inaugural training, we met the Convoy of Hope. We also met City Serve. We also met Islamic Relief USA. We met those various organizations. When we came back to Oklahoma, we reached out to Convoy of Hope and then subsequently had meetings with them. After those meetings, then we rented us a big semi-truck and we drove to Missouri to pick up our first food.

In the interim, as we began to distribute food, we learned that there was a hub here in Oklahoma called NorthStar Bridge for Convoy of Hope, and from NorthStar Bridge, we began to pick up food. First in a car, then a truck, then a horse trailer, 14′, then a 20′ horse trailer. After the Farmers to Families Food Box Program started, NorthStar Bridge saw that we were serious about helping our community. They began to distribute trucks to us. We were receiving up to four semi-trucks a week in our small rural area.

The people come because we have been consistent. They come because they trust. There has not been any training in what we do. We have been in the service of the Lord for most of our lives. It is just reaching people, helping people, being humble servants.

And so, because the government realized that faith-based entities are the bottom kind of rung of the ladder for individuals who have their trust in someone, they began to use the Faith Fellows as a

pinpoint for these activities. The thing of it is, is that it was a truck to trunk program, and often, the vendors across the U.S., as they received these fundings to distribute the food, were sending it out but that last mile delivery, the people were not realizing any financial help from it.

Today, as a matter of fact, we canceled two semi-trucks so that we can be here today, all right? Tomorrow, we will have a once-a-month senior program that we will distribute food there. But this has created great opportunities for us to continue to figure out how in the world we can get from busyness to actual business in reaching our communities. My husband just said community togetherness. In our community, the testimonies are a mile long. That is basically what we have to offer on that.

Mr. BAIRD. Thank you.

Secretary Vilsack, would you care to comment about the Office of Partnerships and Public Engagement? I think you made reference to that earlier. I can give you an opportunity to—we have about 37 seconds, so——

Secretary VILSACK. Well, it is an important integral part of our effort to improve outreach, but I think we have to do more in that area and we have to basically cast a much wider net in terms of the partnerships that we are developing. I think the opportunity for us at USDA starts with historically Black colleges and minority-serving institutions, because they have an incredible network and I think we need to tap into that network more effectively and more efficiently than we have in the past. That is where I would start.

Mr. BAIRD. I have about 4 seconds left, and I just have to put a plug in for the land-grant universities and the cooperative extension service, because they played a vital role over the years in making sure we got the research information out to these rural communities.

And I know, Mr. Chairman, you are ready to put the hammer on because I have reached my time, so thank you. I yield back.

The CHAIRMAN. I appreciate the gentleman realizing his time had expired.

I now recognize the gentlelady from the United States Virgin Islands, Ms. Plaskett, for 5 minutes.

Ms. PLASKETT. Thank you very much, Mr. Chairman, and thank you to all of our witnesses for being here today, and particularly, thank you, Secretary Vilsack, for your commitment to the issues that we are addressing in this hearing, which has long been overdue at the full Committee level. I want to also just applaud my colleagues for their patience and their steadfastness, and getting to the meat of the issues here in this hearing.

Secretary Vilsack, one of the questions that I have is related to the Coronavirus Food Assistance Program and CFAP 2 payments, which have been successfully compensated all producers, at least partially, who have experienced unexpected economic loss of costs due to the COVID–19 during the second through fourth quarters of 2020. Are we aware or what are the mechanisms and data that we have for—to know if CFAP 2 funds have been distributed in a fair manner to every producer and for every commodity sector that experienced COVID–19 related costs? I ask that question in par-

ticular as you have shown through your quick appointment to agriculture the disparity in distribution to Black farmers in the other funding.

Secretary VILSACK. If you take a look at the payments that have been made to those who have self-identified as White, Black, and other socially disadvantaged categories, in CFAP 1 and CFAP 2, Black farmers would have received approximately $20 to $21 million. White men and women farmers would have received $5.6 billion. That is why I think that one of the things that you did in the American Rescue Plan was to essentially understand and appreciate the disparity in terms of how the COVID relief was distributed in terms of how much went to White farmers and how much went to socially disadvantaged farmers. And part of what you have done is you basically created a better sense of balance, if you will, in the COVID relief efforts. We tried to complement that recently with the announcement that we are going to additional outreach on CFAP 2 to make sure that those socially disadvantaged producers that have not yet applied for the ability to participate in the program are given a 60 day opportunity to do so. And the hope is with additional outreach, that we will see more applications from socially disadvantaged producers.

Ms. PLASKETT. Thank you.

As follow-up to that question, sir, Mr. Secretary, with this debt relief that has been provided for Black farmers, is there an assumption or shouldn't there be an assumption that other tacit forms of discrimination at the Department need to be corrected, and what is being done to identify what those other areas might have been, and how they can be rectified and monitored?

Secretary VILSACK. Well, there are three parts to the American Rescue Plan Act of 2021. We talked about debt relief and we have also talked about the billion dollars that could potentially increase outreach, land access, and financial marketing.

The third element is the Equity Commission, and this Commission is going to be an external commission that is going to take a detailed look at every single aspect of USDA's activities to determine and to identify those systemic barriers that may exist and the way in which programs are operated.

At the same time that that is going on, we are also going to have, pursuant to President Biden's Executive Order, an internal review. We already have a working group that has been established. They have already begun the process of assessing our benefits, our services, our contracts, and our procurements. I would put particular emphasis in response to your question on the issue of contracts and procurements as we are looking at ways of increasing marketing opportunities, especially for small and mid-sized operators, for socially disadvantaged farmers, for beginning farmers, the opportunity to use Federal purchasing power, the procurement power of the Federal Government may be a strategy that will provide some quick wins, if you will, in terms of market access. And that is something I hope our team will be taking a very close look at.

Ms. PLASKETT. Thank you.

And as a final thought, in having conversations with some of the witnesses prior to the hearing today, I am particularly moved by and concerned with regard to discussions with Mr. Boyd where he

talked about not necessarily just at the Department of Agriculture, but in the whole life cycle of Black farming, issues of access to farm credit, to bank loans, even to have those companies who they rely on for equipment to have different policies and leverages for Black farmers than they do for others. Have you been thinking of or would you be willing to sit with us as legislators to come up with ways to both incentivize those organizations and those outside and private entities to support Black farming, to grow it, as well as to find ways to enforce Federal law against discrimination and to support them?

The CHAIRMAN. The gentlelady's time has expired.

I now recognize the——

Ms. PLASKETT. May he answer the question, Mr. Chairman?

The CHAIRMAN.—gentleman from South Dakota.

Secretary VILSACK. Mr. Chairman, I will just respond yes to your question, Congresswoman.

Ms. PLASKETT. Thank you.

The CHAIRMAN. Yes, and also, Mr. Secretary, you can respond more in writing for the record.

I apologize to everyone, but we are trying to get everyone in, and so, I hope you will help me here. I want to hear from everybody, too. And perhaps, Mr. Boyd can relate to your question when he is recognized again.

Thank you for your consideration, Members.

I now recognize the gentleman from South Dakota, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you very much, Mr. Chairman, and I will direct my comments and questions to Secretary Vilsack.

I would first note, sir, that you have invested a remarkable amount of time already in speaking with me and other Members of the Committee since you were sworn in, so thanks for that. I think it shows an authenticity and an earnestness on your part to do this work together, and I think this Committee hearing has been fantastic as we talk about how to make sure that we are serving all of agriculture and all producers. It has been a wonderful hearing.

And in that vein, I want to call out and commend USDA, sir, for the appointment of Zach Ducheneaux as Administrator of the Farm Service Agency. Mr. Ducheneaux has been an incredible advocate for South Dakota agriculture, for Tribal agriculture, for socially disadvantaged farmers. He is an enrolled member at Cheyenne River, and he is going to be really good at the job. And so, thank you to USDA for walking your interest in diversity, sir, on that front.

The one question I have for you, Mr. Secretary, follows up on my March 3 letter and gives you a little real time update related to my concerns with the U.S. Forest Service recommendation to reduce the Timber Sale Program. And there is a real impact here on socially disadvantaged people, because a huge portion of the forestry workers who are impacted are Latino and Latina. And the update is just this week in Hill City, and that is a town of about 1,000 in the Black Hills of South Dakota, a large sawmill has announced that it is closing. Forty percent of those 120 employees are Hispanic. That comes the same week that we have the Forest Service announce via a general technical report that they think that the

timber harvest coming out of the Black Hills should be reduced by 50 or 60 percent. And we know that when you lose those jobs from socially disadvantaged people in forestry, in timber, they are highly unlikely to come back. That capacity doesn't come back very easily. We have seen that across the country.

And so, I just want to make sure, sir, that that is on your front burner, and just asking for a commitment to work with you and the Forest Service in continuing to analyze the science behind these studies. We want to make sure that when we have socially disadvantaged employees, they have an opportunity to keep those good paying jobs and help out their communities. Any thoughts, sir?

Secretary VILSACK. Congressman, I certainly appreciate the importance of outreach and connection with stakeholders who have a strong interest, as you have expressed, in the Black Hills. I would hope that our Forest Service—and I believe our Forest Service will continue to be engaged in continued collaboration.

As you have indicated, the scientists from the Northern Research Station's Forest Inventory and Analysis program recently concluded their study. I would point out that this is a scientific document. It is not a policy or decision document, so I think it is important to note that to your point of whether or not there are other considerations or other science or other information that needs to be considered. Obviously, I think we need to take everything into consideration before any specific decisions are made.

It is a large body of science, obviously, that is now available to managers in the Black Hills. They can take a look at it. They can respond to it. They can react to it, and then it will give us the opportunity to sort of take into consideration as we finalize the general technical report. Hopefully, folks are going to provide us the input necessary for us to ultimately make the very best decision for folks in that area.

Let me just simply say, however, this is a very difficult issue generally, this issue of timber and this issue of timber sales and mills. And we have to figure out ways in which we can increase market opportunity for forest and wood products across the board. Whether it is using cross-laminated timber to build tall buildings, or some other mechanism, because we want to make sure that we maintain the carbon that is stored in those trees as opposed to, unfortunately and tragically, watching too much of it burn up in fires that we have seen that have been historic.

Mr. JOHNSON. I think that is well said, sir, and we know that a managed forest is a healthy forest. I liked your problem-solving approach.

With the time that I have left, I will just note that you are right. It is a scientific document. I think there is an opportunity for entrepreneurial policymakers like you and me to try and find some different solutions. For instance, that scientific report only really analyzes the timber available in suitable timberlands, meaning areas that have traditionally been forested, or rather, been harvested. If we can get your team the resources they need to build additional timber roads, that is going to give us new areas of the forest. That is going to give us new jobs, including for these socially disadvantaged people.

Thank you very much, Mr. Secretary. Mr. Chairman, I would yield back.

The CHAIRMAN. Thank you very much.

I now recognize the gentleman from California, Mr. Carbajal, for 5 minutes.

Mr. CARBAJAL. Thank you so much. Thank you to all of you for participating today, and thank you, Mr. Chairman, for holding this important hearing.

In my district, we have over 800 Latino farmers, and I have had the opportunity to speak with some of them about the discriminatory barriers that they face every day, such as language barriers, lack of access to technical assistance, and the need for improved access to land and capital. USDA's Civil Rights Action Team reported in 1997 that Latino farmers were systematically excluded from USDA programs, and in the year 2000, Guadalupe Garcia and a group of Latino farmers filed a lawsuit similar to the *Pigford,* and that was ultimately settled by the USDA. This lawsuit alleged that discriminatory lending practices by USDA deprived Latino farmers of opportunities afforded to their White counterparts.

For example, one of the Latino farmers in this case was denied a loan to buy land by her local FSA office because they claimed that the land didn't have sufficient water to farm it, even though the land in the same area was also being farmed by two White farmers who were financed with FSA operating loans. I would ask for unanimous consent to include in the record the amended complaint in the *Garcia* lawsuit, Mr. Chairman.

The CHAIRMAN. [inaudible].

Mr. CARBAJAL. Without objection?

The CHAIRMAN. Without objection. Thank you.

[The case referred to is located on p. 350.]

Mr. CARBAJAL. Thank you.

Continuing the current discussion of Black farmers, let me ask you this, Secretary Vilsack. In my district, the Natural Resources Conservation District, NRCS, technical assistance, and the expertise of cooperative extension service have proven to be critical to ensuring that the latest science-based practices and the management techniques reach farmers, especially regarding carbon sequestration. In what ways can technical assistance be improved to better benefit Black farmers?

Secretary VILSACK. Well, I think there are a couple of things, Congressman.

First of all, I think we need more folks, more boots on the ground. That is obviously an appropriations issue. I think based on our targets and based on what we think is adequate for servicing the needs of people, we are about ten to 15 percent below where we need to be with NRCS boots on the ground. So, first and foremost, boots on the ground.

Second, partnerships. We have mentioned this before. The ability to align ourselves with the folks who are trusted in the community to expand our reach, if you will. That starts with land-grant universities, Hispanic-serving institutions, and other community building organizations.

I think it is also—we just recently requested input from folks on the issues of climate through the *Federal Register.* I would encour-

age you to encourage your stakeholders in your congressional district to respond to the set of questions we have put forward so we get better ideas and better input on how to structure efforts in terms of carbon in the future at USDA. That may also be a way of increasing our understanding of what is necessary and needed on the ground.

Mr. CARBAJAL. Thank you, Secretary.

I welcome the other witnesses to also weigh in, if you could.

Mr. HAYNIE. Congressman, I think one thing we need to recognize is that we need more diversity within the agency, more people that can relate to the constituents that they serve, more African American and Latino representatives from NRCS that can go engage with these communities and have conversations and relate with those audiences. I think that is a big factor and would help play a big role in continuing the communication and the services that are available to the farms.

Mrs. COTTON. And this is Arnetta Cotton. I would like——

Mr. CARBAJAL. Yes, go ahead.

Mrs. COTTON. This is Arnetta Cotton. I would like to add that you talked about the language barrier. It is not just a Latino barrier. It is the whole—all the acronyms used by the government, all of the different forms that are not down to the language or the capacity of a regular farmer. And then it is the fact that it is the same people in the office who was there through *Garcia,* through *Pigford,* through all of the others. They have not been let go, so they feel it is okay as if they have the blessing of the agency. And it is a poor representation, because the USDA is the peoples' agency.

Mr. BLANDING. Also, Congressman, I would also like to add to that if you don't mind.

I think as a nation, we have to realize that all of our challenges have solutions, and it is incumbent upon all of us, the government, our corporations, our organizations, farmers, and all of our citizens to be a part of those solutions. And until we do that, we are going to constantly run around in circles. Farmers need to be educated, but also the USDA——

The CHAIRMAN. The time of the gentleman has expired. Thank you so very much.

Mr. CARBAJAL. Thank you very much. I yield back.

The CHAIRMAN. I now recognize the gentleman from Georgia, Mr. Allen, for 5 minutes.

Mr. ALLEN. Can you hear me?

The CHAIRMAN. Yes, we can. Go ahead, Congressman.

Mr. ALLEN. Thank you, Mr. Chairman, and thank you for holding this hearing. It is important that we know the state of our food supply in this nation, and of course, we are focused on our Black farmers in the U.S.

When I grew up, I grew up on a farm. Ninety-seven percent of the population of this country was involved in some way when I grew up in agribusiness, and it has changed quite a bit since I grew up. I think it is less than two percent of the people in this country, Mr. Secretary, that are now involved in agriculture. And of course, what happened was my dad was a dairy farmer with timber and other things. Of course, along comes production ag, and in

fact, the milk company was going to finance the expansion of my dad's dairy, but when my dad looked at the numbers and the fact that he had to put his land on the line, he turned it down. He went into competition with them and it put us out of business. And so, again, we are somewhat of a casualty to what has happened in agriculture since the 1960s, and I am sure it has affected folks in this hearing today. That is, it is unfortunate, because my dad loved it, but he just couldn't continue on.

And obviously, from a stand point of bringing this nation together—and I understand the feelings on both sides, but, as people of faith, it is not an option that we come together. In fact, Mr. Chairman, this one is for you, because I know every time I get on an airplane you are reading the Bible. 1 *Samuel* 16:7 says: "The Lord sees not as man sees. Man looks on the outward appearance, but the Lord looks at the heart." And we know that God is an impartial God, so—but we are falling world—and we have to deal with it with our differences.

In that respect, Secretary Vilsack, I am just going to tell you what I have heard floating around, and I just want to find out what you have seen there. But the American Rescue Plan Act of 2021 includes $4 billion for USDA for loans to disadvantaged farmers, but in that definition of *disadvantaged farmers*—and again, what we are hearing is like if you want to change—in this country, if you decide you want to change your gender, you can change your gender. Is there a possibility that farmers could say hey, I want to change my race and benefit from this program?

Secretary VILSACK. Congressman, I think what you are getting to is a very fundamental question, and that is whether we trust farmers or don't trust them. When we had COVID relief, we trusted farmers when they told us that they were producing corn or soybeans. We didn't ask them to prove that, we trusted them, and we sent out billions and billions of dollars. If you want to create some kind of mechanism that suggests that we are supposed to distrust farmers, well, we could do that, but I don't think that is what you want, and certainly not what I want. We didn't ask for that in CFAP, and I don't think we can ask for it in this particular situation.

The reality is, we are going to—we are dealing with people that the Department knows.

Mr. ALLEN. Sir, not to interrupt you. I am not talking about trust. I am talking about what is the legality of that? Did you all look at the legality of that in this law when you made the law?

Secretary VILSACK. Well, I think it is constitutional.

Mr. ALLEN. I am not talking about a trust issue here. If it is legal to do this and someone can legally do it, is that possible?

Secretary VILSACK. First of all, I think the statute is—I think the law is constitutional for the reasons that were articulated earlier. It is tailored. It is focused on a particular set of issues and trying to resolve those issues. And it certainly is dealing with the cumulative impact of discrimination. So—but I do think it is a trust issue at the end of the day, and I think we are going to trust folks. These are people that have dealt with somebody at the FSA office. They have had to make a loan. It is not like these are people that we don't know. We know these people, and the reality is, they are

going to sign the document that says they are attesting to the truth of whatever it is they are representing. And there are serious, serious civil and criminal penalties if you don't tell the truth.

I, for one, I am going to trust the farmers to be truthful, and if they are not, then they are going to be held accountable.

Mr. ALLEN. Okay. Well, again, we make these laws. We appropriate monies, but from a legality standpoint—and that question was asked to me, and I don't think they were joking. I mean, at first I thought it was a joke.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ALLEN. Okay. I yield back, Mr. Chairman.

The CHAIRMAN. With all due respect, Mr. Allen.

I now recognize the gentleman from California, Mr. Khanna, for 5 minutes. You may need to unmute, Mr. Khanna.

Mr. KHANNA. Can you hear me, Mr. Chairman?

The CHAIRMAN. Yes, we got it. Go ahead.

Mr. KHANNA. Thank you. Well, let me just first say how pleased I am to see Secretary Vilsack in his role. He has demonstrated such a commitment in his record of public serve to inclusivity, to expanding opportunity, to caring about rural America, both Black and White rural America, and I have great confidence in his leadership. I am glad that President Biden selected him, and that he was willing to come back to Washington.

I also want to thank Mr. Boyd for his leadership for decades in bringing issues of equity to the forefront, and really, it is a testament, sir, to your leadership and to the Chairman's vision that we are having a hearing that is long overdue about basic equity for Black farmers.

Mr. Secretary, you spoke eloquently about USDA's long history of discrimination and some of the practices. How do you think we can hold some of the local county committees accountable for the bad actors? There are still some bad actors in some of these local county committees, and how do you think we can get accountability there?

Secretary VILSACK. Well, I think first and foremost is making sure that those county committees have adequate representation that reflects the population that they serve. Oftentimes, when I was Secretary last, we had 385 counties, I believe, that didn't have a minority representative. I appointed minority representatives on those committees. First of all, there is that, and to the extent that people do provide discrimination, I think the point has been well taken. I have taken notes on this. The reality is if we say that discrimination is not to be tolerated and, in fact, discrimination occurs, then we do need to take disciplinary action and it needs to be effective, and it needs to be forceful, and it needs to be relatively quick so that people do get the message that this is serious and this is a new day. And I expect and anticipate that our team will act accordingly.

I think it is also—the Equity Commission is going to be looking at all aspects of our operation, and I suspect that they will be looking at the structure and the basis and the mechanisms by which decisions have been made and appeals take place, and how that operates. And they may make a set of suggestions and recommendations. Clearly, our internal review of this from our working group,

consistent with President Biden's Executive Order, may also result in recommendations. That process is just getting started, and I want to make sure that that process is able to work its way through the process so that we get the very best recommendations.

Mr. KHANNA. Mr. Secretary, you have spoken to a number of us on this Committee about the importance of technology, about the importance of broadband, biomanufacturing, precision agriculture, and I wonder how you think we can address some of the digital divide in access to technology where the African American community and Black farmers, Black rural South has been excluded from a lot of that technology, and what can we do to help alleviate that?

Secretary VILSACK. Well, I think first and foremost, making a true fully funded commitment to expanding access to rural broadband, so that, in fact, the technology exists. In many communities, it does not exist.

Second, I think it is working—again, as we talked about community building organizations funding and providing them the resources, extension and land-grant universities, historically Black colleges, *et cetera,* being able to give them the resources that will allow them to do the training so that people understand, whether it is a small business person or a farmer, how technology can be utilized appropriately.

I think it is frankly also basically getting younger people into the United States Department of Agriculture from these areas in the form of internships so that they, in turn, can go back home with an understanding of how USDA works, and what they need in their rural communities, and be able to see if we can create career opportunities for them at USDA in their local communities to be able to solve some of the problems that they know firsthand. It is a combination of that, and I am sure much, much more.

Mr. KHANNA. I appreciate that. I have been surprised in just my work how much of our economic development is funded with the U.S. Department of Agriculture, and I look forward to your leadership on that.

One question for Mr. Boyd and Mr. Blanding, and thank you again for both of your work. You have correctly testified that Black farmers are still impacted by discrimination and government payouts are linked to production. Black farmers have had less land, are smaller because of the historical legacy of racism. How do we then level the playing field, given that Black farmers are at this disadvantage because of having less land?

Mr. BOYD. Yes, I will take a crack at that first.

First of all, we need to redo the base calculation, the way that they are calculated, and also, we need caps. We need caps so all the money just won't go to the big farmers. We have to figure out a way to do that. During those Trump payouts, there was no sense in having one county, like Mecklenburg County, receive $40 an acre, and then in Georgia County receive $140 an acre. We have to figure out——

The CHAIRMAN. The time of the gentleman unfortunately has expired. Perhaps, again, Mr. Boyd——

Mr. BOYD. I am trying.

The CHAIRMAN.—may find a way to answer that when a question is put to you.

What a terrific hearing.

I now recognize the gentleman from Ohio, Mr. Balderson, for 5 minutes.

Mr. BALDERSON. Thank you, Mr. Chairman. I want to thank the panel for being here, and I also want to thank Secretary Vilsack for joining today. I look forward to having a phone call with you next week, but I just want to remind you—you won't remember me, but I met you with Zack Space. You were in my hometown of Zanesville, Ohio, Muskingum County, when Zack represented us in Congress and we were kind of doing a nice little tour, and you did a really nice job. You were down at the Zanesville Welcome Center. Pretty close to Zack's downtown office here. I look forward to working with you being a Member of Congress now.

But Rep. Plaskett kind of touched on this a little bit, Secretary, but you know, 1 month after Congress appropriated additional money for the Coronavirus Food Assistance Program, or as she referred to it as CFAP, President Biden froze the payments. Can you discuss why the Administration suspended CFAP payments and what the Agency discovered in the nearly 2 month halt?

Secretary VILSACK. It is standard practice in changes of Administration for the incoming Administration to take a look at what may have taken place just before the new Administration took over. And so, we wanted the opportunity to basically take a look. We also wanted an opportunity to analyze who wasn't being served, who wasn't being helped, who wasn't being helped as much as they needed to be, and that is why yesterday we made the four-part announcement payments now going under CFAP 2 and CFAP 1 to cattle producers and some of the commodity producers, but also resources now for local and regional food system opportunities, as well as a series of steps we are going to take with roughly $6 billion to help those we have now identified were not served, not helped by previous COVID packages. We will, over the course of the next several months, be involved in rulemaking to get those resources out the door as quickly as possible.

It was designed primarily to give us a chance to analyze who had been helped and who hadn't been helped, and to create and construct an effort to make sure that we had equitable assistance throughout the COVID. I will just say, as part of this hearing, it allowed us to identify the fact that in CFAP 2, the outreach to socially disadvantaged producers wasn't what it needed to be. That is why we are going to expand the sign-up for 60 days to give people a chance to apply for those benefits.

Mr. BALDERSON. Okay. Well, thank you, Mr. Secretary, and I look forward to speaking with you again next week.

My next question is for the panel, and you all can answer this. I appreciate all your testimonies that you have given today.

If each of you could target one area for the USDA to improve its practices or programs, what would that be? Let's start with Mr. Boyd, since he kind of gets shut off every time he gets to start talking. Mr. Boyd, lead the way.

Mr. BOYD. Well, first of all, I would do away with the 3 year limitation requirement for new or beginning farmers. That is the first thing I would do, and I would make sure that we have full participation in farm ownership loans, farm operating loans, all of those

areas where Black farmers today are pretty much absent. The only way to do that is to have oversight and transparency, something I have been trying to get in this whole hearing and I haven't been able to get it in. We need transparency so when we have hearings like this, we will be able to lay out the numbers by state, county, ZIP Code, by race, and when you have people that bring these issues up, you will be able to go right to those numbers and see what they are. That is the way that you improve.

Mr. BALDERSON. Thank you, sir. Anybody going to go next? Mr. Haynie or anybody would like to go next, go ahead.

Mr. HAYNIE. I think the one thing that needs to be addressed is the subsidy programs. John mentioned it earlier, but right now, we are seeing 20¢ for a Black farmer compared to $1 for White farmers on these subsidy programs. That is something that really needs to be addressed. You have Black farmers right beside White farmers and they are only getting 25¢ on a dollar for what their neighbors are receiving in ARC and PLC programs. These programs were established back in the 1980s during the crux of discrimination at USDA, and they really need to be addressed. So, that is one issue.

The Secretary mentioned about the COVID program. One of the benefits of CFAP 1 were the larger farmers had grain storage and capacities that a lot of small farmers didn't have. If you didn't have grain stored in your bins, you weren't able to benefit. A lot of Black farmers had to sell their grains in the fall of the year and weren't privileged to storage benefit. The commodity programs and Congresswoman Bustos from Illinois mentioned it, that is a large pot of money to go out, and the disparities really start to show themselves when you look at subsidy programs and differences in dollars paid out to Black farmers and White farmers.

Thank you.

Mrs. SHERROD. If I may, please allow me the opportunity to say that farmers with smaller acreage can't compete with the commodity crops. We actually have had them co-opted, in cooperatives, and we are organizing them to grow and sell into other markets, vegetables and so forth. They need the infrastructure. They can't afford to put in a facility to wash, dry, cool, and get products to market. It is very important for those small growers, those small landowners to have access to money like this to give them a chance to survive.

The CHAIRMAN. Thank you. Thank you.

Mr. BALDERSON. Thank you very much. Mr. Chairman, I yield back.

The CHAIRMAN. Thank you so much, and I appreciate you all panelists. This is such an energetic hearing. It is great. It is certainly historic, and I appreciate you all.

I now recognize the gentlewoman from Washington, Ms. Schrier, for 5 minutes.

Ms. SCHRIER. Thank you, Mr. Chairman, and thank you to our guests.

The first issue I want to focus on is land and water access for Black farmers. Our witnesses today have left no doubt that farmers of color have faced and still face systemic barriers to land ownership and water access. And today, Black farmers are more likely to rent rather than own farmland. They have smaller farms, own

less land, generate less wealth from farming compared with White farmers, and these factors leave Black farmers at a huge disadvantage, because farmland real estate represents nearly 80 percent of total U.S. farm assets. Farmers who do not own land or have a clear title to land can't leverage that land or capital to invest in, sustain, and improve their farming operations.

Now, this is especially challenging in urban and suburban areas like King and Pierce County in my district. For example, in Washington State in general, the average price for an acre of cropland in 2020 was just over $2,600. But by comparison in King County, the average price for an acre is more than $35,000, and in Pierce County, it is around $21,500 per acre. I have heard from farmers of color in Washington State about the difficulty in obtaining farmland because of these prices, and the historic systems of discrimination that prevent them from ever purchasing farmland.

So, my question, Mr. Blanding, can you speak about the importance of access to land and actually land ownership for Black farmers, and can you talk about what systemic barriers to the purchase and ownership of farmland exists for Black farmers today?

Mr. BLANDING. Yes, thank you. That question is for Blanding or Boyd? I am sorry, I didn't hear.

Ms. SCHRIER. Mr. Blanding.

Mr. BLANDING. Thank you, Congresswoman, for that question.

So, the problems with Black farmers and Black land ownership is historic. First, in terms of ownership, or again, access to land, first of all, there has to be access to equitable credit in order to get access to that land. And I think there has been systemic problems in the credit industry for years. I think this is an opportunity for there to be a Black farmer financial institution modeled after the Farm Credit System where Black farmers can get the kind of credit that they need and serve themselves, just like the Farm Credit System, which is a great system, by the way. But again, Black farmers need to have access to that type of credit.

But our problem is around maintaining and holding on to existing land. Heirs property is a major issue in the Black farming community and the Black community overall. We estimate 60 percent of all Black landowners have this heirs property issue, and so, we must figure out ways to make sure that there are things that can be done to make sure this heirs property situation is cleared up. There are things that already exist, like the Heirs Property Relending Program that was approved for the 2018 Farm Bill, but it has yet to be implemented and funded. So, things like that can be done immediately. But also, a lot of education and technical assistance around that area will go a long way to make sure Black farmers continue to hold on to their land base, and continue to thrive in this country.

But I would also like to say, Congresswoman, that we as a country have to look at the value of not only all farmers, but Black farmers and specifically around dealing with the issues around land and water, as you suggested, because they are all part of the equation, and you have to make sure that Black farmers are part of that as well.

Ms. SCHRIER. Thank you.

I need to address one more question. Thank you for your comments.

I just want to also address Black, Indigenous, people of color farmer participation in conservation programs specifically. Among White farmers in Washington State, about nine percent receive Conservation Reserve, wetlands reserve, farmable wetlands, or Conservation Reserve Enhancement Program payments. For Black farmers in Washington, it is less than one percent.

So, Secretary Vilsack, under your leadership, how will the USDA work to combat historic and current racial injustices in climate and agriculture policy, and how can the USDA continue to support existing conservation programs and make them more equitable and accessible?

Secretary VILSACK. Well, there are several things. First of all, we are going to ask the current acting Chief of the NRCS, Terry Cosby, who is an African American, to help lead that effort to make sure that resources are more equitably available to socially disadvantaged producers.

Second, again, the internal review and the external review, whether it is the Equity Commission or the internal review from President Biden's Executive Order, will obviously identify recommendations.

Third, it is about accountability to John Boyd's question or his comment about transparency. It is about asking for information on an ongoing basis to make sure that you see whether there is, in fact, investment being made, and if there is not, why there is not and who is responsible for making sure that there is.

So, it is a combination of a lot of those things. I think it is also a combination of working again with better outreach. It may not be that folks don't qualify or it may not be that they are prevented from qualifying; it is that they may not even know about the program. They may not know what they have to do. And I think this money in the American Rescue Plan gives us an enormous opportunity to improve outreach and to take a look at additional opportunities to help farmers access more revenue. I think that is what the market process——

The CHAIRMAN. The time of the gentlewoman has expired.

Ms. SCHRIER. Thank you, Mr. Secretary. I yield back.

The CHAIRMAN. I recognize next the gentleman from Kansas, Mr. Mann, for 5 minutes.

Mr. MANN. Thank you, Mr. Chairman.

My question is for Mrs. Cotton. Thank you for your incredible service to your community. In your written testimony and in our conversations, I know you have mentioned that you have helped deliver food to more than one million people in five states during COVID–19 through the USDA's Farmers to Families Food Box Program. What do you foresee is the future for this program, and how can the USDA assist with connecting more rural and underserved communities, or communities in the last mile to get them the food that they need?

Mrs. COTTON. Thank you, Representative Mann. I appreciate that question.

It is an excellent program. It is viable and it is much needed. We have people coming, as you know, from five different states to

Oklahoma, because in their areas, it is not as functional, all right? And so, what happens, some of the food banks for a sense of efficiency, some of the dollars were sent to food banks in these last two programs—in the last two phases. By being sent to food banks, then organizations then have to qualify through the food bank in order to pick up from them or to be considered a hub. What would make it more viable is if the people who are actually getting the work done in integrity—there have been people who have taken advantage of the system—but who are operating in integrity and getting the food out to the people where they belong, I believe that it will continue to be a good program.

As far as the last mile is concerned, it goes back to transparency and accountability. If those vendors were awarded monies that included last mile delivery—so, if for me, I am sending out to different places, then from me, then that person who is doing that work, networking with other people, should get that last mile.

And so, how do we continue to do so? By percentages. It is documentable. They know how many trucks that they are delivering. They know where the trucks are going. They know how much is being disseminated and what is not being returned to them. That is an easy, easy fix. By allowing some of the cold storage, which they have had refrigerated trucks, if they would allow some of the cold storage to include thermal blankets, so in some of the really—because our communities are so rural, they can't afford to get a semi-truck. If they would allow thermal blankets to suffice in cold storage, we would be able to get it out quicker. And if they would underwrite the cost of providing those blankets to individuals who are picking up and then taking to other people. Our community is less than 2,000, and so, there are lot of seniors who are homebound, and we need that service. We actually do. But it is wonderful.

And something to help our volunteers. I would say that, too. Our community has come together, yes.

Mr. MANN. You don't feed one million people without a lot of volunteers, so thank you for that.

My second question, this one is for Mr. Haynie.

Mr. Haynie, in your testimony, you mentioned that you have formed partnerships with land-grant universities. We all know that land-grant universities play an important role in educating our next generation of farmers. Can you talk more about your partnership with these land-grant universities, and how they have helped?

Mr. HAYNIE. Well, I mentioned partnerships with corporations and in our local and state agencies. But we have relationships with the land-grant universities where we have—National Black Growers Council has a field day strategy, and we want to work with those land-grant universities to bring the agriculture community, who typically is not serviced—they can come out and see the latest and greatest that agriculture has to offer. What corporations have to offer as far as seed and chemistry and technology, these communities are often not served by the salesmen who would typically go to the White farmer who is the larger spender and the bigger accounts. They take all this information there, and oftentimes, they drive right past the driveways where Black farmers exist. We wanted to make sure that we were a conduit and a pipeline for in-

formation for the Black farm community to be aware of everything that is available in production agriculture.

Mr. MANN. Great, great. Thank you, both of you.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you very much.

I now recognize the gentlewoman from Arizona, Mrs. Kirkpatrick, for 5 minutes.

Mrs. KIRKPATRICK. Well, good afternoon from Arizona. Thank you, Chairman Scott, for bringing us together with this panel on such an important topic.

I grew up in the White Mountain Apache Reservation in rural Arizona, and was raised in a ranching family, so I know just how important these USDA programs are for farming and ranching families.

In my State of Arizona, there are more Native American farmers than any other state, and I want to mention the unique challenges they face in getting access to USDA programs. Just as heirs property created a barrier for Black farmers getting financial aid from farm loans, Native American farmers have also struggled to participate in USDA programs due to the nature of land ownership of Indian trust lands.

For Native American farmers, historical program rules requiring land ownership for eligibility have prevented them from accessing the assistance they need to develop their land. A common thread in all of the testimony today is that these obstacles create systemic inequity. Not surprisingly, due to these systemic inequities, White farmers are 70 percent more profitable than Native American farms, despite Native American farms being over twice the size.

First, Mr. Chairman, I would like to ask unanimous consent to include in the record a 2019 report by the GAO describing the needs and barriers to agricultural lending on Tribal land.

The CHAIRMAN. It is done without objection.

[The report referred to is located on p. 375.]

Mrs. KIRKPATRICK. Thank you so much.

So, my first question is for Mrs. Sherrod. I am moved by your testimony, and I am so sorry to hear about this grim anniversary of your father's death. It saddens me to hear that you never received justice in your father's case. I am also very troubled by the problems you detailed that still plague the USDA today, and continue the cycle of inequity.

So, here is my question. Can you describe some things that the USDA can do to improve its outreach to Black farmers, and what are the main barriers to Black farmers accessing USDA programs?

Mrs. SHERROD. Let me say that working with community-based organizations, we are on the ground. We have been working with them to help change their situations, in spite of all the issues they face with USDA. I think it is very important—that is why we fought for Section 2501 way back in the 1990s to try to get funds specifically targeted to minority farmers and through community-based organizations and 1890 land-grants. That program is now serving everybody. They have thrown the kitchen sink towards that program so that Black farmers are not getting the benefit of something we fought so hard to get passed. There are so many different barriers now because people have been kept out of the agency. You

have to make them feel they can come back there for help, and that can happen if you work with people on the ground who are working with them. USDA is there but they need us, and we can help turn that around, but we can't get the funding to do it.

Mrs. KIRKPATRICK. They do, indeed, need you, so thank you for recognizing that.

My second question is for Mr. Rowe. I am inspired by your testimony today and by your decision to become a first-generation farmer. Further, I can only imagine the difficulty in not only starting a farm completely from scratch, but going through the process to ensure you are producing organic crops.

From my conversations with farmers back home, I know that going through the organic certification process is something that scares a lot of farmers off, or they don't know where to start, even if they are already operating under USDA organic practices. Can you describe for us some of the reasons you chose to produce organically, and if you see an opportunity to help more Black farms through the USDA organic certification?

The CHAIRMAN. I am going to have to ask if you might be kind enough to reply in writing. We are way past the time. I deeply appreciate your consideration. We want to get every Member in this important hearing.

So, now I recognize the gentleman from Iowa, Mr. Feenstra, for 5 minutes.

Mr. FEENSTRA. Thank you, Chairman Scott and Ranking Member Thompson.

First, I just want to thank each of the witnesses for their testimony today and sharing the experiences you, your family, and your friends have faced. I appreciate you saying these things, and I also definitely appreciate the Secretary of Agriculture, Mr. Vilsack, for being here today. He is from my home state, and I appreciate that.

Mrs. Cotton, in your testimony you speak to the importance of local community organizations in relaying USDA resources. Can you expand on how USDA could better engage with community organizations and non-governmental organizations to conduct outreach and to implement USDA training programs?

Mrs. COTTON. Absolutely. We have land-grant—thank you so very much for that question and for the opportunity.

We have land-grant universities here in Oklahoma through which, as Mrs. Sherrod just talked about, the Section 2501 programs. We have that available to us that we can partner with the USDA. They are educational institutions and they are established as minorities, and so it would be wonderful if through those university's programs with existing community outreach programs, they would partner together in order to be the hands and feet—or rather, the boots on the ground for the people in the communities. They are big enough to partner with the USDA offices in all of their branches, FSA, NRCS, RD, in order to talk to the people in their language and kind of break it down, break it down from what the government expects, break it down to its simplest denomination so everyone can understand it, and then they be there to help walk the people through giving technical advice without coming back and saying yes, you did it right. Let's follow up on that. Let's follow through to see that it was successful are two different things. By

partnering with the USDA and the land-grant universities, we can do that. They can absolutely create educational programs that can go out to the field and then be applied to those in the communities.

Mr. FEENSTRA. I appreciate that, Mrs. Cotton, and so, I am just curious. In Iowa, we have the Iowa Extension Service that does some of this that sort of works together. I didn't know if the extension service is available in your area or not. This is pretty big for our area, for our farmers, and I find it—I am a local farmer here. My family is, and we use that extension service a lot.

Mrs. COTTON. The extension services are available to us. OSU extension is available to us in the area, but when it comes to combining the two programs, they focus more on the agricultural side—actually the agricultural side, but the implementation of USDA programs needs the partnerships primarily with land-grant universities that are historically underserved.

Mr. FEENSTRA. Yes. No, I appreciate your comments and I agree 100 percent with you. I would love to work with the Chairman and things like that on trying to figure out how that partnership can occur. I have a land-grant university in my state also, Iowa State University, and they are very big into agriculture and trying to figure out how we can help one another, and continue to expand, especially in diversity.

So, thank you so much for your comments, and Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. Thank you very much.

Now, I recognize the gentleman from Georgia, Mr. Sanford Bishop, for 5 minutes.

Mr. BISHOP. Thank you very much, Mr. Chairman. Let me thank you so very much for holding this historic hearing on the state of Black farmers in the United States. Let me thank you for bringing together such a tremendous panel to help us understand how we can bring equity to Black farmers. Let me thank especially Secretary Vilsack for his commitment to bringing equity. I want to also thank him for his efforts to reconcile with Mrs. Sherrod, who was once in the Administration where he was Secretary of rural development for Georgia. I want to welcome the other witnesses from Georgia with whom I have worked, and am so delighted that they were able to testify, and for Mrs. Cotton and Reverend Cotton, I want to welcome you. I am delighted to meet you.

Let me go back to what was just raised with regard to outreach and advocacy. One of the tremendous needs for Black farmers to be able to fully access the resources of USDA is to know what resources are available and how to get to them. Advocacy and outreach is extremely important, and of course, the Office of Partnerships and Public Engagement is performing that function, and I think under the previous Vilsack-run Department the advocacy and outreach function was performed there.

But it seems to me that to bring together the 1890s, the landgrants, the community-based programs, the Section 2501 programs, you need to have within USDA a focused office of whose sole responsibility is to make sure that that outreach happens in each and every subagency of USDA, Farm Service Agency, Rural Development, Rural Housing Service, Rural Utilities Service, NRCS, marketing, the export opportunities, research, and the opportunity

to develop young farmers. The 1890s National Scholars Program, for example, the internship programs, all of these things are vitally important, but somebody at USDA—and right now, I think it is being done by the Office of Partnerships and Public Engagement—but I would like to ask the Secretary if he can assure us—and I congratulate him on Deputy Secretary Hairston—who we hope will soon be confirmed, to work with him to make this happen.

Can you comment on that briefly, Mr. Secretary, and then I would like to—if you could be brief on that, to ask Mrs. Sherrod and Mrs. Cotton to comment on the impact and experience that they have had as Black women farmers.

Secretary VILSACK. Mr. Chairman, thank you very much for the question. The answer—the quick answer is yes, and we know this works because on advice that Shirley Sherrod gave me in my last time at USDA. We did create the Strike Force Initiative that she made reference to. It ended up operating in over 20 states and made over 200,000 investments. This system works. We need more of it.

Mrs. SHERROD. And I want to add that as a female in the field of agriculture, working with farmers and farming, we made major contributions, just let me say that. I have gone from having to sit down with the farmer and help him understand what it meant to change—for example, if I go back years from the old allotment program with peanuts to the—well, I won't go back that far. But farmers are focused on farming. Women focus on the business as well, and when you put those together, we can make progress. We also plan and are developing cooperatives and looking at markets and helping our farmers to transition from row crops when they don't have enough land. We make those contributions to this work that no one really recognizes.

Mrs. COTTON. And let me add to that. In addition to all of that, we do the actual work: haul the hay, fix the fence, work the cows. But when we go into the offices, I have had to even prove—I am 4′11″, you all—and I have had to go in and show video of me staging hay because they said there was no way that I could do it.

The CHAIRMAN. I am sorry, but the time of the gentleman, Mr. Bishop, has expired. I am sorry.

Mr. BISHOP. Thank you very much.

The CHAIRMAN. Now, I recognize the gentlewoman from Minnesota, Mrs. Fischbach, for 5 minutes.

Mrs. FISCHBACH. Thank you, Mr. Chairman. I appreciate the opportunity and I thank all of the testifiers for being here today. It has been very, very interesting.

I just have a couple of questions for the Secretary. I have heard a couple of the testifiers mention passing on the farm and several generations worth of farming, and Mr. Secretary, the Biden Administration has been talking about potentially making some changes to the calculation of the stepped-up basis. I am wondering if you could maybe comment on that, on how that might affect some of these folks that are trying to pass on that farm, particularly in the socially disadvantaged communities?

Secretary VILSACK. Congresswoman, I have not had an opportunity to visit with anyone in the Biden Administration on the issue of stepped-up basis. I do know that it is an important aspect

of the countryside where people who pass away, the appreciation of their farmland is essentially not taxed, not subject to income tax, and it provides an opportunity for transfer to the next generation. I am happy to look into that issue and find out more about it, but I am sorry to say I am not prepared to respond to that question today. I didn't anticipate that one.

Mrs. FISCHBACH. And Mr. Secretary, I would appreciate that. Just—like I said, as we were talking, some of the testifiers were talking a little bit about those generational farms, and so I just thought that that might be something that would be of concern.

But Mr. Secretary, just one other thing. Congressman Bishop was talking a little bit about some of the outreach. I was just kind of wondering if maybe you could expand a little bit on some of that, and what kind of outreach is being done on some of the existing programs to make sure in particular that younger generation of farmers, but, with an emphasis on those groups in the socially disadvantaged communities?

Secretary VILSACK. Well, obviously COVID has made somewhat of a different situation over the last year, but historically, I think the panelists have basically put their finger on the real problem here, which is that it is very, very hard for farmers to initiate the conversation that leads to providing the technical assistance and outreach if you don't trust the people that you are asking for help. And that is the fundamental issue here, one of the fundamental issues. We have to restore trust out on the countryside. And frankly, we can't do that—in my estimation, we can't do that by walking in to—or walking on the farm and saying, as we say, hi, I am here from the government. I am here to help you. We have to walk on the farm with someone who they trust. It can be a community building organization, a land-grant university, extension, whatever it might be, and basically say we are here to listen. We are here to learn how we can help you. And then, there has to be a commitment to make it a successful relationship and transaction. It can't be just we listen and then we give you 15 reasons why it won't happen. We have to figure out ways in which we take care of each one of those reasons and ultimately get to success so that people recognize that there is a reason for the Federal Government; there is a reason for the Department of Agriculture; that we are there to help and it creates the relationship that ultimately leads to further opportunities.

I think it starts fundamentally with building trust, and I think that starts with making sure that we are not alone when we go providing assistance and help, and that we listen, that we respect and acknowledge the reason why they are distrustful. It is absolutely rational what we are dealing with here.

Mrs. FISCHBACH. And Mr. Secretary, I appreciate that and because we have existing programs, we just have to make sure that there are programs within the USDA and I just want to make sure that we are making sure that people are aware of those, and I appreciate the issue of the trust and that you will be reaching out in that way with a trusted individual with you, or however you determine that is going to be working.

But thank you very much, Mr. Chairman. I appreciate the opportunity, and I yield back my whole 45 seconds.

The CHAIRMAN. Wonderful. Thank you so much.

I now recognize the gentleman from Florida, Mr. Lawson, for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman, and I am delighted that you called this hearing. I want to thank you all and I want to welcome the witnesses here.

I know that there have been a lot of questions today, but I am interested to ask Mr. Boyd that when you talk about all of the problems that we have had, especially with the relationship between Black farmers and USDA, what mechanism should we be doing now? We have a new Secretary in now to help rebuild the relationships.

Mr. BOYD. Thank you very much for the question. I tapped on it a little bit earlier, and everybody has today. Outreach and technical assistance, and building trust. We have 116,000 members in 46 states, and we are overwhelmed with just inquiries on all of this stuff. There has to be better communication, and I am going to say this to Secretary Vilsack, who I have an enormous amount of respect for. Organizations like the National Black Farmers Association have to be engaged at the highest levels at the United States Department of Agriculture if this thing is going to work. When you are forming these committees and you are having these inside panels, we need to be at the table, too, so we can make sure we are injecting the right information. The government can't fix itself. The fox can't watch the henhouse here. You got to have some people at the table on the outside of these groups at the table to help advise and make sure that we do this thing right, that we get it right this time.

So, we have a wonderful opportunity here, I believe, to do some great things here in the next 4 years, and the only way to do that is work collaboratively together in an expeditious way, because right now, we are facing extinction. Our farmers are hurting and they are looking for answers, and they are looking for next steps. I am looking forward to working with this Administration to putting all of those things in place, especially the outreach and technical assistance piece.

Mr. LAWSON. Okay, thank you very much, and Mr. Secretary, a year ago or 2 years ago when Mr. Perdue was Secretary, I brought him down to Tallahassee to Florida A&M University to speak with the agricultural department at the HBCU and he was very helpful on a lot of things that he said that they were going to do. I just wanted to ask you, Mr. Secretary, how do you intend for your agency's support in these Black students, Black women, Black veterans who are trying to enter into the agriculture industry for the first time?

Secretary VILSACK. Well, I think there is tremendous opportunity with resources that have recently been provided to really expand and to deepen our commitment to internships. Getting these young people to be connected to the USDA in a variety of different mission areas, so they have experience, they develop relationships, they develop an understanding and appreciation for the opportunities that may exist. And then basically make sure that, that it is connected potentially, to a job opportunity. We have a tremendous internship program. Chairman Scott, is a great supporter of that.

Chairman Bishop is a great supporter of that. I would anticipate and expect that we will continue to have support for that effort to link internships with job opportunities, and I think that is one way of getting people involved and active.

The second way, there is a program called Together We Grow that is currently working out of Colorado State University, but it includes historic Black colleges as well, and they are working collaboratively with agribusiness, with the USDA, and other entities to try to expand opportunities for minority students in all of agribusiness. I would say that the USDA probably should be looking for ways at some point to link up with that effort or similar efforts to make sure that agribusiness is also engaged in this outreach effort.

Mr. LAWSON. Okay, thank you very much. I have about 40 seconds, but I want to ask Mr. Rowe, how do you get more Black farmers interested in organic farming? Did anyone——

The CHAIRMAN. Is Mr. Rowe——

Mrs. SHERROD. One thing is to help farmers like Mr. Rowe become successful. He hasn't been able to access financing through the agency. Helping him—he is an example for so many others, and there are other examples out there. We need to really help them and showing that there is a possibility.

The CHAIRMAN. The time of the gentleman has expired, unfortunately.

Mr. LAWSON. My time has expired, Mr. Chairman. I yield back.

The CHAIRMAN. Now, I recognize the gentlewoman from Illinois, Mrs. Miller, for 5 minutes.

Mrs. MILLER. Thank you, Mr. Chairman. I have a question for Mrs. Sherrod.

You make the statement in your written testimony that the USDA has been the driving force behind the steady decline in the number of Black farms and Black-owned farmland. I was just curious could you specifically expand on what you mean by that statement, and then give me what your prioritized solutions would be?

Mrs. SHERROD. Okay. Well, I can give you lots of information on justifying the statement that I made, going back to our own farm, going back to land that an organization we have to create as an answer to land being taken. We created the First Community Land Trust and the discrimination we faced by USDA caused us in 1985 to lose 6,000 acres of land. A White farmer can want your property—and I have worked on so many cases like this—and the next thing you know, you are in real trouble with the agency if you are a borrower. I have seen it happen so many times. I have worked through so many of those issues through the years, and again, having people who the farmers trust and willing to get to know the various programs that they need to access, and helping them to do that is part of the answer to this. Because there are so many programs out there they can take advantage of, but they are afraid to try to even go to the agency. There is no trust there, and they think it is a place where they will definitely lose their land.

Mrs. MILLER. Okay, thank you. I yield back, Mr. Chairman.

The CHAIRMAN. Oh, awesome, Mrs. Miller, thank you very much.

And now, I recognize the gentleman from Illinois, Mr. Bobby Rush, for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman, for this outstanding and historic hearing that is shining a bright light on one of the longstanding problems that we have in our nation.

Mr. Chairman, I am currently reading a book entitled, *The Color of Money: Black Banks and the Racial Wealth Gap,* by Mehrsa Baradaran, and one particular passage in the book that really resonated with me as I prepared for today's critical and long overdue hearing goes like this, and I quote, "When the Emancipation Proclamation was signed in 1863, the Black community owned a total of 0.5 percent of the total wealth in the United States. . . . more than 150 years later, that number has barely budged—Blacks still own only one percent of wealth in the United States." When Martin Luther King stood on the steps on the Lincoln Memorial in 1963, he said, and I quote, "America has given the Negro people a bad check, a check which has come back marked 'insufficient funds'. Yet, despite a century of honest toil—the check has continued to involve insufficient funds." And Mr. Chairman, it is clear from today's hearing that Black farmers exemplify how the Black community has received and still receives an NSF check.

I want to thank all the witnesses before us.

Mr. Chairman, I want to ask Secretary Vilsack. Secretary Vilsack, I am honored that you are committed to prioritizing a diverse team into addressing the longstanding racial equity issues the vast majority of Black farmers and Black-owned farmland. Secretary Vilsack, I have a number of questions here. Will you expand upon the concrete steps that you are taking to foster trust and ensuring the timely access to capital for Black farmers? Include Title 9 in that. Do you need any additional authorities from Congress to enact policies to directly help struggling Black farmers and to reverse the impact of decades of discriminatory practices in the USDA? It is my understanding that there is currently insufficient transparency regarding assistance to farmers based on race. To that end, I would like to know, can you tell me the number of Black farmers who bought crop insurance policies in 2019 compared to White farmers? Can you tell me how much Black farmers received in premiums or income support compared to White farmers? Can you tell me how many part-ownership Black farmers received farm ownership or operating loans in 2019 compared to White farmers? Given the decades of discrimination that have led to the vast majority of Black farmers having to sell their farms, can you support [inaudible] on subsidies and loans available to Black farmers?

Mr. Secretary, can you answer any or most of those questions?

Secretary VILSACK. Congressman, I am happy to provide you the data on the last question you asked concerning transparency to the extent that we have it. I know, for example, from 2017 to 2020, there were 2,131 direct loans to socially disadvantaged farmers, approximately $112 million went out. That I know. I am happy to provide you with information on that.

I don't know that I necessarily need more authority, but I am interested in knowing what the Equity Commission and our internal review pursuant to President Biden's Executive Order will identify, and we may come back to you asking for additional authority.

In terms of specific steps, over the course of the next 6 months, I think we are going to take—we are going to learn a lot. We are going to take an effort to try to better connect with the historic Black colleges and other community building organizations with the resources you have provided in the American Rescue Plan, and I would anticipate and hope that we have—to begin the process, and I emphasize *begin,* begin the process of improved outreach as a result of the Section 1006 money that is provided in the Rescue Plan.

The CHAIRMAN. Thank you very much.

Mr. RUSH. Mr. Chairman, I ask for unanimous consent to enter into the record the quote from the book, *The Color of Money: Black Banks and the Racial Wealth Gap,* by Mehrsa Baradaran who I referenced earlier in my testimony. Unanimous consent.

The CHAIRMAN. It is so done without objection.

[The excerpt of the book is located on p. 348.]

Mr. RUSH. Thank you.

The CHAIRMAN. Thank you, Mr. Rush.

Ladies and gentlemen, it looks like we have entered the end of our Members' questions. And so, what we want to do now is have concluding remarks from my Ranking Member, Congressman Thompson, and myself.

But let me just say this, please. This has been extraordinary. When I opened this hearing, I opened it with the precious words of the Lord, as was expounded by his great apostle, Paul. When Paul wrote that all things come together for good to them who love God, and to them who are called according to God's purpose. Ladies and gentlemen, we have done that today. And I just want to say from the bottom of my heart, thank you, and God bless you. I want you to know that this testimony that we have had today will become the basis, the foundation of the legislation that we are working on in our Committee right now to address racial discrimination against our Black farmers, and it will be on two major foundations, all of what you said. We will make it wrong, unlawful for all and each of the discriminatory practices that you all have outlined to us will be in this legislation, written into law that never again will we have any of the discriminatory practices that you all have exposed for us today within our United States Department of Agriculture. But this legislation isn't going to stop there, because the fundamental problem that we have is to make sure that we increase the market share of the products that our Black farmers are bringing and producing to the agricultural market. We are going to have some incentives in there so that we can increase that. We will also have things in this bill that will increase the number of Black farmers we have, the acreage we own, but we had to hear from you first, and you have outlined God's purpose that He has brought you and me and this great Committee together.

And so, right now, I want to introduce and have my partner, because let me tell you this. You didn't just hear from Democrats today who said they are concerned to eliminate the racial discrimination. You heard from Republicans. And let me tell you something else. That great Republican, Abraham Lincoln, who freed the slaves, he not only did that. When he created the Agriculture Department, it was Abraham Lincoln who said this is the people's de-

partment. Abraham Lincoln said that. I think that, and his freeing of my people and our Black people makes him the final statement that I want to make before I introduce my Republican friend. Because let me tell you all this. We talk about that 1890s land-grant African American colleges and universities. It was a Republican Senator named Senator Morrill. It was the Morrill Act that established the land-grant colleges in 1860, and then after *Plessy* v. *Ferguson,* that is when it was separate but equal established. And everywhere there was a White land-grant by law, it was the same Republican Senator Morrill and it is called the Morrill Act. It was he who established the 19 land-grant colleges and universities. That is why I am telling you, man, we did God's work in here today, Republicans and Democrats together, and Republicans and Democrats are going to put this bill together that is based upon what you all have testified and asked us to put into this bill.

And now, with that, I want to present my distinguished partner and the Ranking Member, Congressman Thompson.

Mr. THOMPSON. Well, Mr. Chairman, thank you, David. I appreciate the partnership as we work for this amazing industry of agriculture that provides the food and the fiber, the building materials, construction materials, all come off of agriculture land. I would like to say without a robust rural economy, every American is going to wake up in the cold, dark and hungry. And so, thank you for this hearing today. I thought it was a great hearing.

First of all, thank you to all of our witnesses. Your written testimony, your oral testimony was compelling. It was insightful. You made it passionate and personal, and so, I think we succeeded. And so, thank you to each and every one of you. Thank you to all the Members that weighed in and participated and asked thoughtful, insightful questions. I would be remiss, if both the Chairman and I wouldn't say thank you to all the staff, both Committee staff of both parties, and quite frankly, the agriculture staff of these individual Members who put their heart and soul into working on this issue.

This is a conversation that was long overdue, and the fact that we have elevated this, we have had this conversation we have—if we are going to really achieve that vision that I think we share of restoring a robust rural economy, that means we have to lift everyone up and we can leave no one behind. I think the discrimination that we have seen a record of in the past, the documentation, whether it was systemic in terms of policy or whether it was the attitudes that were unacceptable, just cruel attitudes that certain folks perhaps had that had authority at USDA. Their time has passed. I am confident we have a Secretary that will be a great partner with us as we go forward. I am confident that we will learn from this, and the practices that we have in place.

I am also very proud of what we have done in the past couple farm bills in terms of the set asides that we put out there for Black farmers and socially disadvantaged farmers, and so, I think we have momentum. We got great momentum, but we need to build on it, and I think we just have the right farm team together, let me put it that way, to be successful.

So, once again, thank you to all the witnesses. Mr. Chairman, thank you. I yield back.

The CHAIRMAN. Thank you. Yes, and I wanted to just use my closing remarks to thank this panel.

Secretary Vilsack, God bless you, my friend. You came and you stayed for this entire hearing, and you heard what I heard. And the reason that is so important is that you and I and our Committee, along with this testimony that we have heard from Mr. John Boyd, from Mrs. Shirley Sherrod, from Mrs. Arnetta Cotton and Earrak Cotton, from Cornelius Blanding, from Sedrick Rowe, and from Philip Haynie, what a blessing that God has given us with the wisdom, the information that these individuals have given to you and me and this Committee. Now our charge is to take this wisdom, take what they are asking us to do.

This bill that we will be working on to end, end racial discrimination in the United States Department of Agriculture and in our wonderful world of agriculture, our entire industry, we will be able to do. And let me assure you, this is truly God's work, and I want to thank again my Republican partner, because he and I have to put this bill together. But we couldn't do it until we heard from the Black farmers, and that is what we will base this on.

Mr. Secretary, I want you to know from me personally what your participation in this hearing means. Not just from me, not just for our Committee, but the entire nation to see you here because so many of these charges of racial discrimination were laid at your feet. This is why it is so important that we recognize your participation and the fact of your willingness to be the leader in making sure that your Agriculture Department of which you lead will eliminate all vestiges of discrimination. I couldn't do it. None of us can do it. The only one that can make sure, regardless of what we put in the law or paper, is because we have the Secretary of Agriculture that is built on the legacy of the man who put our agriculture together, and who freed Black people from the vestiges of slavery when he called the Department of Agriculture the people's department. Abraham Lincoln did that, and that is whose shoulders we stand on this day. And I thank you so much for being a part of this. God bless you, and God bless this panel. Thank you.

Under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplementary written responses from the witnesses to any questions posed by a Member.

This hearing of the Committee on Agriculture is adjourned. Thank you.

[Whereupon, at 4:29 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED LETTERS BY HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

LETTER 1

ON BEHALF OF JAMES BUNCH, PRESIDENT/CHIEF EXECUTIVE OFFICER, BUNCHOLOGY LLC

March 24, 2021

Hon. DAVID SCOTT,
Chairman,
House Agriculture Committee,
Washington, D.C.

Subject: Agricultural Outreach Project To Increase the Number of Black Farmers in the U.S.

Dear Chairman Scott:

Bunchology LLC is a disadvantaged small minority owned business eligible for contracts and grants from the U.S. Government. The owner is an American with a disability. Eliminating food deserts and increasing the number of Black farmers is a **must** during this critical time in our country. I would like to make you aware of the following project that will help the Administration address these concerns and build back better. The title of this Initiative is: "How The Hip Hop Farmers Youth Initiative and the Divine Nine (Black Greek Organizations) Can Help The Administration Build Back Better By Tackling Food Deserts In Historically Underserved Communities". This project will create approximately 2400 jobs for economically distressed and poverty stricken communities. It will be a multi-state (25) and multi-million dollar Initiative.

President Biden often speaks of how he is keenly aware that Black Americans played a major role in his victories and that he is committed to addressing their specific concerns. He has often stated that he will ensure that Black businesses will receive their fair share of government contracts and agreements during his Administration. Several months from now when the President and Vice President are going around the country highlighting their accomplishments specifically for the Black community, my goal is for this project to be one of their stops. In light of President Biden's Executive Order "On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government", I believe this Initiative would address his commitment to be Bold and Go Big!

Therefore, my ask of you is that you please share the attached Proposal through the proper channels with Secretary of Agriculture Tom Vilsack and Deputy Secretary of Agriculture Jewel Bronaugh. I am seeking a Cooperative Agreement with the Department to fund my Project. I respectfully request a written response from the Secretary within 15 days from the date of this letter.

I would like to thank you for your assistance with this request. Please do not hesitate to contact me if you have any questions or need additional information.

Warmest Regards,

JAMES BUNCH, *President/CEO*
Bunchology LLC

Cc:

THEODIS BUNCH, USDA Retiree, Pine Bluff, AR
ORLANDO PHELPS, USDA Retiree, Hermanville, MS
CLIFTON E. PETERS, USDA Retiree, Lorman, MS
EDDIE L. BUNCH, USDA Retiree, Carlisle, AR
WILLIE J. TERRY, USDA Retiree, Greenville, MS

ATTACHMENT

Summary

Project Title: *How the Hip Hop Farmers Youth Initiative and the Divine Nine (Black Greek Organizations) Can Help the Administration Build Back Better By Tackling Food Deserts in Historically Underserved Communities*
Project Start Date: October 1, 2021
Project End Date: September 30, 2022

Bunchology LLC was developed by James Bunch, President/CEO to provide the following services to the U.S. Department of Agriculture:

Increase the number of New and Beginning farmers among historically underserved groups/individuals such as Veterans, Community Based Organizations, and

socially disadvantaged youth. Provide technical assistance and training to these groups/individuals on how to start a business in vegetable crop production utilizing the Seasonal High Tunnel System.

The collaborators for this project will be one hundred (100) historically underserved farmers, land-grant colleges and universities and one hundred (100) Divine Nine local Black Greek chapters located throughout the twenty-four (24) states and the District of Columbia. Selected states include Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, D.C., and Wisconsin. The critical need for this project is due to the lack of the availability of healthy foods (fresh fruits and vegetables) in these communities which are impacted by food deserts. A team of twelve (12) retired USDA professionals will provide the leadership/expertise to ensure the development of one hundred (100) demonstration farms to include the construction of two hundred (200) seasonal high tunnel systems (30′ x 72′) to facilitate the production of fresh fruits and vegetables and training to project participants.

Expected outcomes:

- Increased availability of fresh fruits and vegetables in the targeted states[;]
- Economic boost in the targeted area due to job creation (approximately 2,400)[;]
- Increase in the number of new and beginning farmers among historically underserved groups (approximately 100); and
- Increase in students pursuing degrees in the food and agricultural sciences, thereby increasing the pool of candidates eligible for USDA career opportunities.

Contact:

JAMES BUNCH, *President/CEO*
Bunchology LLC
Phone: 901–315–6008
Email: *Bunchology@gmail.com*

LETTER 2

ON BEHALF OF WEBSTER E. DAVIS, SENIOR POLICY ADVISOR, FAMILY FARM ACTION

April 4, 2021

Hon. DAVID SCOTT,
Chairman,
House Agriculture Committee,
Washington, D.C.;

Hon. GLENN THOMPSON,
Ranking Minority Member,
House Agriculture Committee,
Washington, D.C.

RE: A Hearing to Review the State of Black Farmers in the U.S.

Family Farm Action would like to thank Chairman Scott and Ranking Member Thompson for convening this hearing to review the state of Black farmers in the U.S. Discrimination against Black farmers is sewn into the fabric of U.S. agriculture. In 1910, Black farmers owned 16 to 19 million acres of land and made up 14% of America's farmers, while in 2017 Black farmers operated on just 4.7 million acres of farmland and accounted for 1.4% of farmers in the U.S. Much of this land loss can be attributed to discriminatory lending, particularly by the hands of USDA. We are grateful that Congressional hearings on the issues faced by Black farmers were held, as increasing awareness and dialogue is key to the proper courses of action.

By calling for this historic hearing, it is clear the Members of this Committee recognize the need to address systemic racism in agriculture, and to work together to begin rectifying it. We are also encouraged by Secretary Vilsack testifying and confronting the discriminative actions toward Black farmers by the hands of USDA. The Secretary's commitment to rooting out this behavior in the agency, and affirming that racism and discrimination have no place in the agricultural sector on the whole. While encouraged by these commitments, we know that racism is pervasive and is experienced by Black farmers across this nation. We hope the testimony we hear today will bring about action and justice for Black farmers.

The provisions in the American Rescue Plan Act of 2021 set a well-rounded approach and build the solid foundation needed to address the ongoing legacy of systemic racism Black farmers experience in the United States. We applaud the passage of the American Rescue Plan which included full debt forgiveness, the creation of an Independent Civil Rights Oversight Board, and the creation of an Equity Commission. However, the work of this Committee and the Biden-Harris Administration has just started.

Historic discrimination and exploitation of Black farmers, ranchers, and workers must be actively addressed and remedied. Policy must intentionally create equitable access for BIPOC folks to land and credit, market opportunities, safe working conditions, a seat at the policy development table, access to culturally relevant training and technical assistance, and just treatment by all Federal agencies. Family Farm Action Alliance issued key policy recommendations to the 117th Congress,[1] and has continued to request anti-racist development and implementation of prog[r]ams authorized by Executive Order and the 117th Congress. Those recommendations that specifically call for anti-racist food and farm policy and that we recommend for your consideration are included below.

Ensure full implementation and outreach of USDA COVID Stimulus Grants and Food Purchasing Programs authorized in the Consolidated Appropriations Act of 2021 and the American Rescue Plan Act of 2021.

- Use every resource necessary to reach all socially disadvantaged farmers and provide technical assistance to forgive all currently held loans
- Ensure all farmers receive USDA Consumer Data From AD–2047 and technical assistance to complete it, which allows them to identify as a socially disadvantaged producer, and thus be eligible for designated programs, funding, and support.
- Ensure all farmers receive USDA Program Discrimination Complaint Form AD–3027 and technical assistance to complete it, which allows them to file a complaint to USDA in cases of discrimination.
- In the development of the USDA AMS COVID–19 stimulus grant, we recommend at least 10% of funds be set aside for applicants in persistent poverty counties as outlined in the Clyburn 10/20/30 formula,[2] and a 10% set aside for BIPOC and women-owned and operated food chain businesses.
- USDA should hold state and regional meetings inviting state leaders to determine the best roll out plan for particular regions and states to help insure an equitable distribution of funds.

Pass the Justice for Black Farmers Act:[3]

- Forms a Black Farmer Land-Grant through a new line agency at USDA where land of up to 160 acres would be available to Black individuals at no cost.[4]
- Increases credit access and land retention for marginalized farmers.
- Funds historically Black colleges and universities at a level of $500 million per year for 10 years to expand agricultural education.
- Provides additional funding and technical expertise to assist with resolving heirship issues for existing Black farmers.
- Strengthens existing antitrust enforcement through the Packers and Stockyards Act, with the knowledge that food chain workers of color are additionally vulnerable to economic and labor exploitation.

Fund 1890 Land-Grant Universities:

- Appropriate 1890 college payments and 1890 cooperative extension funds to the same Federal level as 1862 land-grant college payments and cooperative extension funds, and require states to meet the Federal match. Often, 1890 univer-

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[1] Family Farm Action Alliance. Toolkit for Congress. January 2021. Available at *https://farmactionalliance.org/toolkitforcongress/*.

[2] Congressman James. E. Clyburn. "10/20/30 Formula to Fight Persistent Poverty." Available at *https://clyburn.house.gov/10-20-30-amendment*.

[3] 117th Congress: Justice for Black Farmers Act (S. 300).

[4] Homestead Acts passed between 1862–1916 granted land in the amount of 160–640 acres, and prioritized people of European descent while excluding Black people. "Forty acres and mule," a land-grant program that passed during the Civil War, granted land to formerly enslaved men. The program was poorly administered, and was revoked upon transition from the Abraham Lincoln to Andrew Jackson Administrations. As other ethnic and racial groups have historically been prioritized in land-grant programs and continue to benefit from their legacy, it is appropriate to prioritize Black individuals in a future land-grant program.

sity appropriations fall short of 100% funding, while 1862 university appropriations often exceed "full" funding.
- Discontinue the use of funding waivers used by states to side-step appropriating 1890 universities to the same level as the respective state's 1862 land-grant college.
- Fully investigate claims of state under-funding of 1890 universities and cooperative extension programs.

Support New and Beginning Farmers:

- Forgive student loan debt so farmers and aspiring farmers may pursue agriculture without the massive burden of debt.
- Change USDA lending authority to prequalify beginning farmers for FSA loans, and provide no interest loans to beginning BIPOC farmers and BIPOC-led cooperatives.

Support All Ownership and Aggregation Structures:

- Provide oversight of the implementation of the order for USDA to examine the impacts of current land tenure disputes regarding Heirs' property, fractured allotments, and Colonias as directed in the 2018 Farm Bill.[5]
- Fully implement the program to allow operators on Heirs' property to obtain a FSA farm number as directed in the 2018 Farm Bill.[6]
- Order ERS to study and make recommendations on Federal cooperative ownership standards, to remedy the current state patchwork policies regarding cooperative establishment, ownership, public-private collaboration, and operation.

Acknowledge Past Discrimination by Protecting Workers and Championing New Programs:

- In the agrifood supply chain, immigrants and people of color are overrepresented in U.S. food chain worker demographics. In meatpacking, 44.4% of workers are Hispanic, and 25.2% are Black.[7] Food chain workers are often talented agriculturalists that have not been able to secure land to farm or safe, secure employment due to monopolistic business practices. To begin addressing this, create a Federal fund with mandatory contribution by mega-food chain employers to place food chain workers who have left due to exploitative conditions to gain employment in an independent, non-monopolized entity in the same sector, including payments to current and former food chain workers who experienced adverse health and exploitative working conditions.
- Enact the Safe Line Speeds in COVID–19 Act[8] to suspend and not issue any new line speed waivers, and permanently suspend the implementation of the New Swine Slaughter Inspection System.[9]
- Authorize funding to support the creation of racial equity, diversity, and inclusion priorities in 4–H and other Federal agricultural discovery programs curriculum so young people are empowered to pursue a career in agriculture.
- Authorize the Consumer Financial Protection Bureau to investigate claims of discrimination by Farm Credit Service (FCS) institutions, and require FCS to meet SDFR lending goals.

Family Farm Action reaffi[r]ms our deep sense of thanks to Chairman Scott for convening this hearing, those providing testimony, and the leadership shown thus far in the 117th Congress to address systemic racism and discrimination against Black farmers. We know there is much work yet to be done.

Thank you for the opportunity to provide our testimony and input for the record. We look forward to working with you as you consider our recommendations.

Sincerely,

Webster E Davis

WEBSTER E. DAVIS,

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[5] Agricultural Improvement Act of 2018: Sec. 12607. 7 U.S.C. § 2204i.
[6] Agricultural Improvement Act of 2018: Sec. 12615. 7 U.S.C. § 6622b.
[7] Shawn Fremstad, Hye Jin Rho, & Hayley Brown. April 29, 2020. "Meatpacking Workers are a Diverse Group Who Need Better Protections." Center for Economic and Policy Research. Available at *https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/*.
[8] 116th Congress: Safe Line Speeds in COVID–19 Act (S. 4338).
[9] FEDERAL REGISTER. *New Swine Slaughter Inspection System Final Rule.* Vol. 84, No. 190. October 1, 2019. Available at *https://www.govinfo.gov/content/pkg/FR-2019-10-01/pdf/2019-20245.pdf*.

Senior Policy Advisor,
Family Farm Action.

LETTER 3

ON BEHALF OF COLLIS JONES, VICE PRESIDENT, U.S. POLICY & STRATEGY, DEERE & COMPANY

March 25, 2021

Hon. DAVID SCOTT,
Chairman,
House Committee on Agriculture,
Washington, D.C.;

Hon. GLENN THOMPSON,
Ranking Minority Member,
House Committee on Agriculture,
Washington, D.C.

RE: Statement for the Record on "A Hearing to Review the State of Black Farmers in the U.S."

Dear Chairman Scott, Ranking Member Thompson, and Members of the House Committee on Agriculture:

Thank you for holding this hearing and for the opportunity to submit these comments on behalf of Deere & Company ("Deere").

In 2020, Deere joined with other partners in forming an organization dedicated to improving the livelihoods of Black farmers. The LEAP coalition (Legislation, Education, Advocacy, and Production Systems) focuses on addressing the decades-long issue of heirs' property rights, in which no clear title to farmland is recorded.

In the announcement issued by Deere launching the coalition on September 15, 2020, the following statement was made by Marc A. Howze, Group President, Lifecycle Solutions and Chief Administrative Officer: "Property ownership is a driver of economic growth for individuals and families. However, too often the benefits of ownership for those who lack clear title cannot be truly realized."

Joining Deere in the coalition are the Thurgood Marshall College Fund, National Black Growers Council and we are partnering with The Federation of Southern Cooperatives. These partners provide expertise that complements our company's legacy of serving farmers for nearly 200 years. Further, the coalition builds on Deere's longstanding relationships with Black farmers and organizations that have traditionally supported them and also served as forceful advocates for social and economic justice.

The basic principles defining LEAP and describing its mission are outlined below:

Legislative:

- Support legislation on Heirs' Property reform.
- Serve as a conduit or partner in efforts to clearing title for Black farmers.

Education:

- Invest in Fellowships/Internships/Agribusiness paths.
- Engage in estate planning to prevent the further proliferation of Heir's Property.

Advocacy:

- Amplify the work of The Federation of Southern Cooperatives.
- Raise awareness regarding the issues and challenges experienced by Black farmers.

Production Systems:

- Education and training to support Long-term Sustainability and Economic viability.
- Access to tools, technology and innovation.

Land is a farmer's most valuable and productive asset. Yet a majority of Black farmers—who make up about two percent of the U.S. farm population—are believed to operate on property lacking a documented title. At the same time, the amount of land owned by Black farmers has fallen sharply, to less than 5 million acres compared with over 16 million acres a century ago. The decline occurred in large part due to discriminatory practices affecting how Black farmers acquired and transferred their land—a form of ownership commonly called "heirs' property." Many landowners also lacked the resources for formal estate planning and passed property

to their heirs without a will. Over generations, this practice led to increasingly fractional ownership and unclear titles.

Without such title, farmers cannot use their property as collateral for loans and often cannot participate in government farm-support programs or receive emergency or disaster-relief aid. To this end, securing clear title helps eliminate systemic barriers to land improvement and wealth building that have constrained many farmers, particularly those in minority or underserved groups, across the United States.

Black communities in southern states have been disproportionately affected by these issues. However, similar situations exist in other populations and geographies. These include White communities in Appalachia, Native Americans on Tribal lands, and Hispanic communities in southwestern United States. Each of these constituencies stand to benefit from LEAP's work.

Deere has a proud history supporting racial equality as reflected by our longstanding support for Minorities in Ag Natural Resources and Related Sciences (MANRRS), the National Black Growers Council, 1890's land-grant institutions and other organizations supporting Black entrepreneurs and social justice organizations.

In addition, Deere has engaged in the work of a special committee on racial equity and social justice of the Business Roundtable. The group's finance subcommittee, of which Deere's Chairman and Chief Executive Officer John C. May is a member, focuses on providing access to capital in minority communities and on other factors contributing to persistent income disparity.

In our view, Deere is uniquely positioned to help promote public policy solutions and corporate initiatives that help underserved farmers gain access to capital and enjoy the advantages that come with proven land ownership. We believe, moreover, the impact of Deere's leadership on this issue can be further leveraged through our participation in organizations such as LEAP.

Deere's partners in the coalition are providing the educational, legal, and technical resources to help disadvantaged farmers secure clear title to their land and acquire the technology and tools necessary to make their operations more profitable, productive, and sustainable.

Deere has made a number of investments to help ensure LEAP's success and remove the systemic barriers undermining the success of Black farmers. Among these is a collaboration with our dealer Tellus Equipment to fund and support two lawyers working on land retention efforts, making a 5 year commitment to serve as title sponsor of the Federation of Southern Cooperative's Heirs' Property Conference and expand its investment in the cooperative's programming.

In addition, Deere is providing funding for legal interns recruited through the Thurgood Marshall College Fund to work at the Federation of Southern Cooperatives. Deere has created a full-time position within the company to oversee the LEAP effort and ensure its success.

Deere is committed to helping farmers, regardless of size or background, have access to the vital resources needed to achieve success and sustain their operations for generations to come. The LEAP coalition reinforces this goal by addressing the issue of heirs' property ownership and helping disadvantaged farmers secure clear title to their land.

Thank you for the opportunity to address these important issues and to share additional information on Deere's partnership with members of the LEAP coalition. Should the Committee have any additional questions for Deere, we welcome the opportunity to speak with you.

Sincerely,



COLLIS JONES,
Vice President, U.S. Policy & Strategy.

Cc: Members of the House Committee on Agriculture.

LETTER 4

ON BEHALF OF DUANE SIMPSON, VICE PRESIDENT, NORTH AMERICA GOVERNMENT & INDUSTRY AFFAIRS, BAYER CROP SCIENCE

February 18, 2021

Hon. DEBBIE STABENOW,
Chairwoman,
Committee on Agriculture, Nutrition, and Forestry,
United States Senate,

Washington, D.C.;

Hon. DAVID SCOTT,
Chairman,
Committee on Agriculture,
United States House of Representatives,
Washington, D.C.

Dear Chairwoman Stabenow and Chairman Scott:

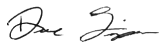
Bayer applauds the introduction of [S. 278], the Emergency Relief for Farmers of Color Act. This critical legislation introduced by Senators Warnock, Stabenow, Booker, Leahy, Luján and Klobuchar, and included in the American Rescue Plan, is an important relief measure as it would forgive U.S. Department of Agriculture (USDA) loan debt for farmers of color and provide funding for outreach, research on heirs' property, and other efforts to assist minority farmers. The $4 billion in debt relief, and the $1 billion in additional funds, is part of the $16 billion COVID–19 relief plan, which will add to the approximately $40 billion farmers have received this past year.

Bayer recognizes the importance of remedying the longstanding systemic disadvantages facing farmers of color. As documented by Congress and acknowledged by USDA, Black, Indigenous, and Hispanic farmers have dealt with limited access to credit and are often left out of Federal aid. We commend the Members of Congress who have taken steps to ensure the Federal Government addresses its past mistakes.

We also understand that it is not only just the Federal Government's responsibility to treat farmers of color fairly. We, too, continue to have conversations around, and seek to be conscious of, how our products and programs are meeting the needs of minority farmers.

As a company that serves farmers of every background, Bayer remains committed to supporting our customers of color as they push for equity in our food and agriculture system.

Sincerely,



DUANE SIMPSON,
Vice President,
North America Government & Industry Affairs.

CC:

U.S. Department of Agriculture
The Honorable JOHN BOOZMAN
The Honorable GLENN 'GT' THOMPSON
The Honorable RAPHAEL WARNOCK
The Honorable CORY BOOKER
The Honorable PATRICK LEAHY
The Honorable BEN RAY LUJÁN
The Honorable AMY KLOBUCHAR

SUBMITTED PRESENTATION BY HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA; ON BEHALF OF BERNICE ATCHISON, FARMER FROM CHILTON COUNTY, AL AND *PIGFORD* Historian

The Seven Tiers of the Black Folks Plan for Black Farmers



Submission by Bernice Atchison, a Pigford I Black Woman Farmer **who watched Full House Agriculture Committee "Hearing to Review the State of Black Farmers in the U.S., Thursday, March 25, 2021** and was a Panelist for U.S. Senators in a Zoom session entitled: "Black Farmers to Applaud $5B in USDA Debt Relief included in Covid Stimulus Law".

A 2021 Briefing on the Black Folks Plan for Black Farmers as part of the Universal Periodic Review of Human Rights in the USA by the United Nations

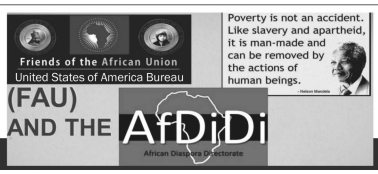
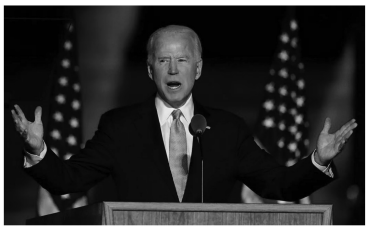


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Introduction



In 2020 President-elect Joe Biden used his victory speech to deliver an emphatic thank-you to the Black voters who overwhelmingly backed him in major cities, helping propel him to victory in crucial swing states like Michigan, Pennsylvania, and Wisconsin.

"Especially at those moments when this campaign was at its lowest ebb, the African American community stood up again for me," Biden said, repeatedly slamming his fist on the podium as the crowd erupted in cheers. "You've always had my back, and I'll have yours.“

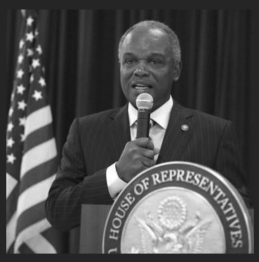
Now in 2021 around black farmers we look for his administration to start to have our back.

The African Diaspora and their families in the USA is 55M

The African Diaspora may be divided into two categories:

(i) people of African heritage who "involuntarily" migrated to North America, Europe, the Caribbean, Brazil, Latin America, Arab Lands, Oceania, etc.; and,

(ii) persons who recently left Africa, 1919. and on, "voluntarily". (This includes those ex African slaves in the Americas who migrated to the USA.)



Congressman David Scott (GA-13) was approved by the Democratic Caucus to serve as the first African American Chairman of the House Agriculture Committee.

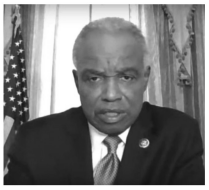
The good of COVID 19 is that black farmers from all over the USA and around the world could watch the first Black Chairman of the House Agriculture Committee examine the status of Black Farmers at the Full House Agriculture Committee "Hearing to Review the State of Black Farmers in the U.S., Thursday, March 25, 2021 at 12:00 PM..

Those who watched as the Chairman greeted newly appointed Secretary of Agriculture Tom Vilsack in his first conversation of his second tenure at USDA. He made it clear that Pigford was an issue that he had wrestled with in his first term.

Member families of our organization have experienced over a century discrimination against Black farmers by USDA, that has been well-documented. In later decades reports by the U.S. Commission on Civil Rights, the Government Accountability Office, and even the USDA itself describe the discriminatory practices enabled by laws dating back to the 1930s.

In fact, in 1997, a group of Black farmers, including Mr. Timothy Pigford, Mr. Bates, ***Bernice Atchison****, Rod Bradshaw and Muhammad Robbula were part of a class action lawsuit against USDA over the agency's discrimination against Black farmers in farm loan programs and other benefit programs, as well as over the agency's failure to investigate race discrimination complaints.*





Chairman of the House Agriculture Committee



United States Agriculture Secretary

Although the USDA settled this class action lawsuit (PigFord) and as a part of that settlement and some Black farmers received $50,000 dollars - most did not. As a matter of fact, many lost their farms because of the management of the case by the pro bono law team and representatives of black farmers in that time.

We loved it when the House Agricuture Committee Chairman pointed out the economics of farming, such as when you said about many of your House colleagues who may think that $50,000 dollars is a lot of money, but when a new tractor costs as much as a half a million dollars, $50,000 dollars is barely enough to buy even a reasonably good used one.

Having read your prepared statement which ss, "It isn't enough to make improvements to the land. It may not even be enough to finance next year's purchases of seed and fertilizer. And in my frank opinion, $50,000 dollars is not enough to make up for decades of discrimination and generational wealth lost from the losing of land and livelihood among Black farmers.

Further, adding insult to injury, Black farmers were saddled with IRS tax bills from the Pigford settlements, leaving many of them worse off than before."

We agree that the then Pigford settlements were too little, too late for the Black farmers who lost their farms and livelihoods due to longstanding, systemic discrimination. And this systemic discrimination continues to be felt by Black farmers today, who are still disadvantaged in USDA programs.

The Black Belt Justice Center uses legal advocacy, public education, and community organizing to address structural barriers that hinder African American farmers, landowners, and communities in the Black Belt region of the US from achieving economic prosperity and holistic wellness.

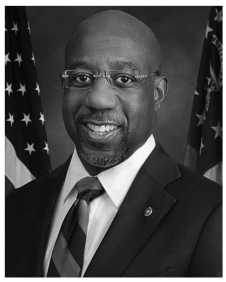
In addition, the Black Belt Justice Center, a registered 501 (c)3 nonprofit organization, is the fiscal sponsor for the Acres of Ancestry Initiative/Black Agrarian Fund. In order to regenerate the African American agricultural land base to the aspirational pinnacle of 15 million acres in 1910 as well as address the unmet land access needs of the landless returning generation, the Acres of Ancestry Initiative/Black Agrarian Fund encourages acts of restorative land justice.

ENVIRONMENTAL WORKING GROUP

"*I want to thank the two sponsors of this Zoom call the Black Belt Justice Center and the Environmental Working Group*", Bernice Atchison



Senator Elizabeth Warren



Senator Raphael Warnock



Senator Cory Booker

These three US Senators spoke in a Zoom session on March 22nd, 2021 entitled "Black Farmers to Applaud $5B in USDA Debt Relief included in Covid Stimulus Law" in which I followed and then entered into the record this submission through my Friends of the African Union smartWISE Community Reinvestment Coalition partners.

Testimony by Bernice Atchison, a Pigford I Black Woman Farmer and a Panelist for U.S. Senators in a Zoom session entitled:

"Black Farmers to Applaud $5B in USDA Debt Relief included in Covid Stimulus Law"

"In the outset we had the Pigford I, in 1999, it gave some relief, but it was not fair to all, many was denied. In 2004 Congress summoned me to testify at the Congressional Hearing on the No Notice Hearing [In the Pigford I Trial] from this came Pigford II. Pigford II, which was never litigated."

In addition, she said, "…*that there where more claimant paid than actual [black] farmers.*"

She stated that,"In this process many of real legacy [black} farmers was dined.



Thomas James Vilsack born December 13, 1950 is an American politician and lawyer serving as the 32nd United States secretary of agriculture under the Biden administration. A member of the Democratic Party, he previously served as the 30th secretary of agriculture from 2009 to 2017 in the Obama administration and as the 40th governor of Iowa from 1999 to 2007

"I agree that President Biden chose Vilsack because he wanted someone at USDA with deep knowledge of the department's operations and who can immediately address the problems facing rural communities, farmers and low-income families in need of food assistance during the pandemic."

According to a person familiar with President Elect Biden's thinking in 2020 that Vilsack's work at USDA establishing the department's first Minority Farmers Advisory Committee and creating the Office of Advocacy and Outreach to serve small, beginning and socially disadvantaged farmers. "No one knows the department better than Tom Vilsack," the person said.

"We saw an opportunity with this COVID package to begin the process of righting so many wrongs," Ag Secretary Tom Vilsack said in a Zoom meeting with farmers of color.

Contact:

Contact: Carolyn Kennedy
Executive Director of the African Diaspora Directorate
phone: 240.417.2726
twitter: @afdidi2063
Email: executive.director@africandiasporadirectorate.org
Website: https://africandiasporadirectorate.org/reparations

Pigford 3: a solution for Black Farmers in the USA

In 1997, 400 African-American farmers sued the United States Department of Agriculture, alleging that they had been unfairly denied USDA loans due to racial discrimination during the period from 1983 to 1997.

They won in the Courts and in Congress against the United States Department of Agriculture (U.S.D.A.) but lost at settlement administration but now in 2021, the current U.S.D.A. Secretary can correct that error.

Backgrounder on the **Pigford I** and **Pigford II** cases.

Pigford v. Glickman was a class-action lawsuit brought in 1997. The suit, in which farmer Timothy Pigford sued then-Agriculture Secretary Dan Glickman, resulted in a court-approved agreement in 1999 to settle claims of discrimination that occurred between 1983 and 1997. But tens of thousands of black farmers missed the deadline for filing claims. Congress took testimony on complaints that inadequate notice and poor legal representation were to blame for the late claims and passed a law in 2008 that gave the late filers the right to have their cases heard on the merits. The 2008 law provided $100 million to settle the additional claims.

Congress in 2010 appropriated another $1.15 billion. The second settlement came to be known as Pigford II.

Pigford 3
Black Farmers Qualifications

HISTORICAL BLACK FARMERS

1. Be an American Citizen whose ancestors are of African Descent and have a USDA Farm Number
2. Be an American Citizen whose ancestors are of African Descent and have a USDA Loan
3. Be an American Citizen whose ancestors are of African Descent and have a USDA Grant
4. Be an American Citizen whose ancestors are of African Descent who was in the business of farming, food manufacturing, processing and or sales.

CURRENT & FUTURE BLACK FARMERS

1. Be an American Citizen whose ancestors are of African Descent and have a farming business
2. Be American Citizen whose ancestors are of African Descent and are in a farming community who want to support farming and or meet the needs of food deserts.
3. Be an American Citizen whose ancestors are of African Descent and want to be in a farming businesses or in the business of food manufacturing, processing and or sales.

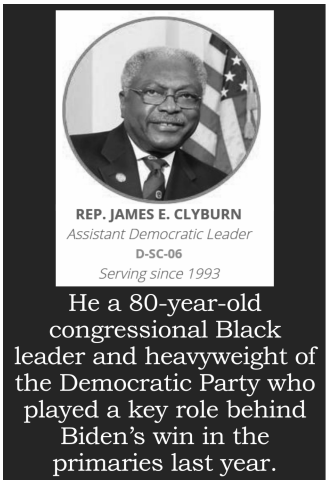
The Seven Tiers of the Black Folks Plan for Black Farmers (***Pigford 3***)

1	Those Black Farmers and or their families and or their businesses and or their estate who applied for and or were accepted to Pigford I
2	Those Black Farmers and or their families and or their businesses and or their estate who applied for and or were accepted to Pigford II
3	Those Black Farmers and or their families and or their businesses and or their estate who missed the application date for Pigford I and or Pigford II but meet the qualifications then.
4	Assist Black Farmers and or their families and or their businesses and communities apply for funding from Federal, State and Local Funding from government including using coalitions.
5	Assist Black Farmers and or their families and or their businesses and communities apply for funding from stimulus funding including the $1.9T American Rescue Plan Act of 2021.
6	Assist Black Farmers and or their families and or their businesses and communities apply for funding from the over $210B in Fed Bank based Community Benefit Agreements
7	The Black Folks Plan for Black Farmers

Pigford 3 and the USDA

The American Rescue Plan Passed – Now What?

They won in the Courts and in Congress against the United States Department of Agriculture (U.S.D.A.) but lost at settlement administration but now in 2021, the current U.S.D.A. Secretary can correct that error.



Clyburn has said that he felt the agriculture department needs to undergo big change. According to him, the department is favoring interests of big farmers at the moment over "little farmers in Clarendon County, South Carolina, or food stamp recipients in Cleveland, Ohio".

In addition, he said, 'I'm sick and tired of people saying that rural America is only Nebraska and Iowa."

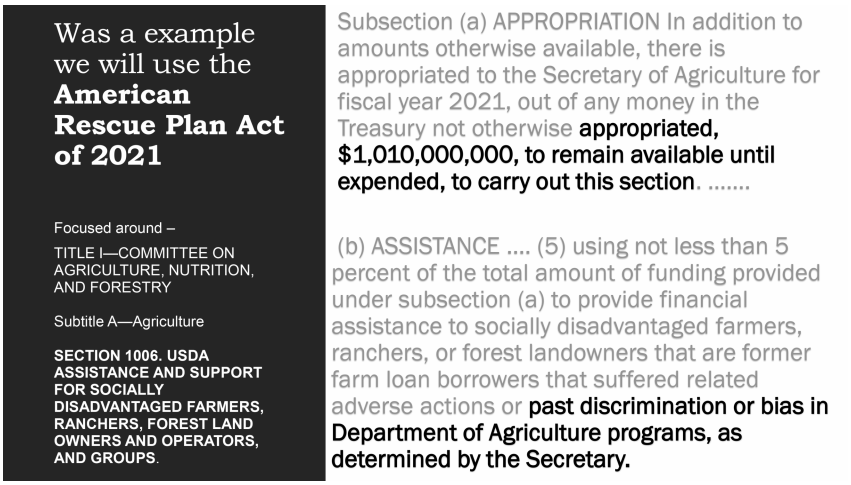
"Rural America is South Carolina, it's Mississippi, it's Alabama. It's Georgia. It was Black rural voters who helped Biden carry Georgia in the general election," he has said.

Clyburn, however, was not convinced with the idea of the 70-year-old Vilsack getting another term as the agriculture secretary, saying the incoming administration should not be Obama's 'third term', something Biden also stressed recently. "I don't know why we've got to be recycling," he told The Times. He also alleged that the Black farmers did not get a "fair shake" when Vilsack was doing the job.

In the end Vilsack was selected and now we shall see if he learned the lessons from his first time as Agriculture Secretary.



The Seven Tiers of the Black Folks Plan for Black Farmers branded as Pigford 3 uses (1) funds from the $1.9 trillion Rescue Plan Act of 2021, (2) the Farm Credit System, and (3) the over $210B in Federal Reserve bank-based Community Benefit Agreements we are part of.



Creation of joint operations as an equity commission of the African Diaspora Directorate Secretariat Agricultural & Food Council that will address racial equity issues within the Department of Agriculture and operate programs in line with Presidential Executive Orders and OMB Guidance that can draw on funding from the American Rescue Plan Act of 2021 will be through the Brotherhood and Sisterhood International (BSI) Blacks and Whites Uniting Communities (1989) nonprofit organization.

The African Diaspora Directorate Secretariat Agricultural & Food Council will be manager.

The African Diaspora Directorate Secretariat
AfDiDi Agricultural & Food Council.

Initial Membership'

- African American Agriculturalist Association – Chair
- Friends of the African Union smartWISE Community Reinvestment Coalition of Chilton County Co Chair
- African American Agriculturalist Association
- FAU Nominee –HBCU Representative – Secretary
- Affiliated Black Farmer Organization - Treasurer
- HBCU School of Law
- Affiliated Black Farmers Organization

Eventually this could grow to 27 members

Ex Officio

AfDiDi Chairman, AfDiDi Executive Director and the AfDiDi Managing Director

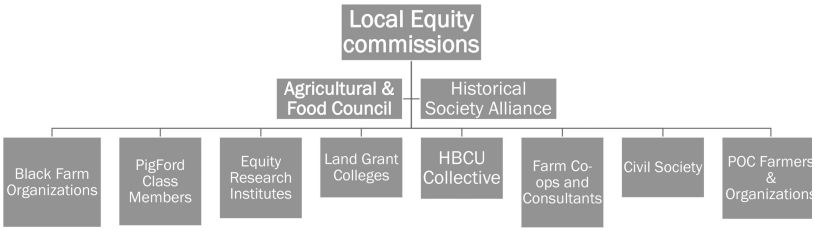
This Council would negotiate with United States Department of Agriculture Secretary an agreement based on this document and it shall be branded Pigford 3.

Friends of the African Union smartWISE Community Reinvestment Coalition of Chilton County	African American Agriculturalist Association	African American Agriculturalist Association	FAU Nominee –HBCU Representative	Affiliated Black Farmer Organization	HBCU School of Law
Blacks Mayors		AfDiDi African Diaspora Directorate Secretariat AfDiDi Agricultural & Food Council.			Affiliated Black Farmers Organization
Black Rural Mayors					Historic Black Colleges Association
Black mayors International					Black Business Groups
Black Elected Officials					Economists
Black County Commissioners					USDA Representatives office of Civil Rights
Blacks In Government					Domestic Policy Council Repersentative
Black Forestry Organization	Black Ranchers Organization	Black Livestock Organization	Black Farmers Organization	Black Farmers Organization	Black Farmers Cooperative Alliance

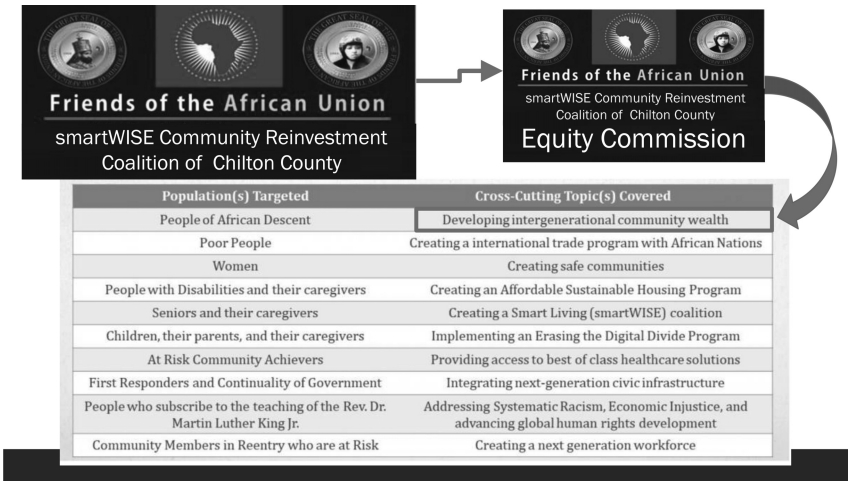
The 1st Step in Pigford 3 with the USDA

As a first step the USDA Secretary will agree to create and fund an equity commission based on the African Diaspora Directorate Secretariat Agricultural & Food Council as described herein.

1 Creation of joint operations as an equity commission of the African Diaspora Directorate Secretariat Agricultural & Food Council with at least 24 partners plus Ex Officio members the AfDiDi Chairman, AfDiDi Executive Director and the AfDiDi Managing Director . It will address racial equity issues within the Department of Agriculture and operate programs in line with Presidential Executive Orders and OMB Guidance that can draw on funding from the American Rescue Plan Act of 2021 TITLE I—COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY Section 1006 Subsection (a) APPROPRIATION (b) ASSISTANCE (3) and or from private sector and or personal along with corporate and institutional grants.



The second of these equity commissions would be a joint venture established in Chilton County no later than April 19th, 2021, 1 day before the 100 day start of the Biden Administration. We would propose that the Howard University School of Law be legal team leader.



Population(s) Targeted	Cross-Cutting Topic(s) Covered
People of African Descent	Developing intergenerational community wealth
Poor People	Creating a international trade program with African Nations
Women	Creating safe communities
People with Disabilities and their caregivers	Creating an Affordable Sustainable Housing Program
Seniors and their caregivers	Creating a Smart Living (smartWISE) coalition
Children, their parents, and their caregivers	Implementing an Erasing the Digital Divide Program
At Risk Community Achievers	Providing access to best of class healthcare solutions
First Responders and Continuality of Government	Integrating next-generation civic infrastructure
People who subscribe to the teaching of the Rev. Dr. Martin Luther King Jr.	Addressing Systematic Racism, Economic Injustice, and advancing global human rights development
Community Members in Reentry who are at Risk	Creating a next generation workforce

The 2nd Step in Pigford 3 with the USDA

As a second step the USDA Secretary will agree to create and fund under the equity commission services to socially disadvantaged farmers, ranchers, or forest landowners, or other members of socially disadvantaged groups as described herein.

2 The African Diaspora Directorate Secretariat Agricultural & Food Council would work 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 socially disadvantaged farmers, ranchers, or forest landowners, or other members of socially disadvantaged groups using, but not limited to, the American Rescue Plan Act of 2021 TITLE I—COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY Section 1006 Subsection (a) APPROPRIATION (b) ASSISTANCE (1)

The 3rd Step in Pigford 3 with the USDA

As a third step the USDA Secretary will agree that the equity commission would work to the Settlement of Claims of those Black Farmers and or their families and or their businesses and or their estate who applied for and or were accepted to Pigford I or II subject to agreed upon checks and balances in a finial public private partnership agreement.

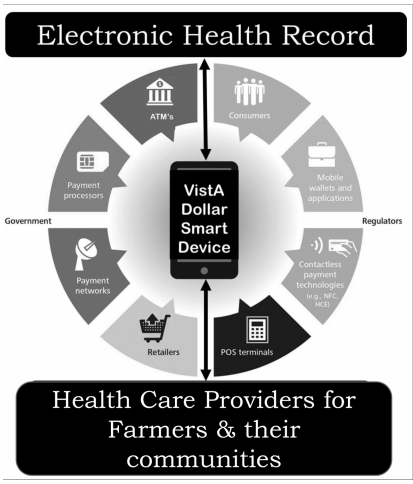
3 The African Diaspora Directorate Secretariat Agricultural & Food Council would work to the Settlement of Claims of those Black Farmers and or their families and or their businesses and or their estate who applied for and or were accepted to Pigford I or II, starting with Rod Bradshaw and other members of the African American Agriculturalist Association, whose claims together amount to over $60M and will set the model we will use, and or affiliated to the African Diaspora Directorate Secretariat Agricultural & Food Council via Agreements with the AfDiDi Business Operations Bureau and that could use, but is not limited to, the funds and authority in the American Rescue Plan Act of 2021 TITLE I—COMMITTEE ON AGRICULTURE,

The fourth project of AfDiDi Agricultural & Food Council projects will be VistaA Dollars as a Digital SaaS for the project.

IT IS A HISTORIC OPPORTUNITY FOR A HEALTH SYSTEM FOR WITH A BUILT IN DIGITTAL CURRENCY FROM AN OPERATIONS CENTER IN OKLAHOMA TO SERVE AMERICA AND ITS FARMERS

The VistA Dollar is being built on the Open-Sourced Veterans Information Systems and Technology Architecture (VistA). It is the primary nationwide veterans clinical and business information system of the U.S. Department of Veterans Affairs (VA). VISTA consists of 180 applications for clinical, financial, and administrative functions all integrated within a single database, providing single, authoritative source of data for all veteran-related care and services.

The VA will spend over a billion dollars maintaining the system through 2030 and we plan to bid on that work as well as run our own system as SaaS. This shall be the digital backbone from which the African Diaspora Directorate Secretariat Agricultural & Food Council that will address racial equity issues within the Department of Agriculture



The VistA Dollar will be built on a system that is intended be a very broad programming platform where a Friends of the African Union smartWISE Community Reinvestment Coalition of Leavenworth (Kansas) as a National Community Reinvestment Coalition member coalition acting as a developer incubator can support building business support, financial applications, farming apps, social networks, and pretty much everything we already use today to provide equal access to farmers no matter where.

However, as a currency platform it it is to be run off a decentralized system with a shared ledger system based on a fork of Blockchain technology with embedded MDi/GLINC solutions that make the system what we will call **ULTRA SECURE**.

Friends of the African Union smartWISE Community Reinvestment Coalition of Chilton County

Bernice Atchison, Carl Zieger, Lucy Binon
Rev. Richard Davis City Councilman and Robert Binion launched in Alabama on MLK Day 2020 Friends of the African Union operations for Black Farmers through the African Diaspora Directorate with the Sons and Daughters of Africa

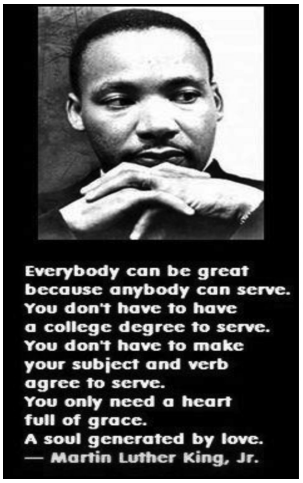


The FAU smartWISE Community Reinvestment Coalition of Chilton County believes that we, residents and allies, must work together to make a change. In this regard, FAU smartWISE Community Reinvestment Coalition of Chilton County encourages increased economic stability in a given community through the creation of businesses where the owners have an understanding of the financial marketplace and these for-profit community-sponsored businesses are in part-owned by a nonprofit enterprise that would invest in the people, families, and communities of Chilton County. Our fiscal fiduciary is the Brotherhood and Sisterhood International (BSI) Blacks and Whites Uniting Communities. The African Diaspora Directorate ("AfDiDi") is a DBA of the Brotherhood and Sisterhood (BSI) International Blacks and Whites Uniting Communities, is a 31-year-old American Non-Profit Organization, EIN 52-1569388 with a 501c3 Ruling in 1989. It will become registered in Alabama as a foreign corporation and is in good standing with the state.

In order to form a more perfect union between the people of the African Union and the United States of America, establish justice and the rule of law equally applied to all people, ensure global tranquility, provide for the common defense of the people of the African Diaspora, promote the general welfare for the people of the African Diaspora, and secure the blessings of liberty to ourselves and our posterity, did ordain as an American Civil Society Organization ran by citizens of the African Union and those of the African Diaspora living in the United States of America on Juneteenth 2019 (June 19th 2019) join with Friends of the African Union (FAU) in the creation of its concept of the African Diaspora Directorate (#AfDiDi2063) as a global civil society organization for people of the African Diaspora. By our estimate, they number 55M in the USA.

The Black Folks Plan for Black Farmers work is a paradigm shift in the status of Americans of African Heritage after 400 years of Africans in 13 of the British Colonies of North America which would unite successfully in 1789 to become the most powerful nation in the world in 2020, the United States of American (USA).





Friends of the African Union smartWISE Community Reinvestment Coalition of Hamilton County (doing business as "FAU smartWISE of Hamilton County") a nonreporting unincorporated association operating under Ohio Revised Code Chapter 1745: Uniform Unincorporated Nonprofit Association Act with a joint operating agreement since June 19th, 2020. Now in 2021, we are now becoming an incorporated Ohio nonprofit organization.

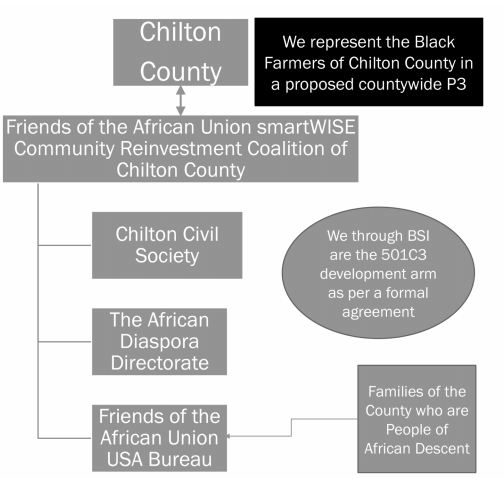
On December 10th, 2020 International Human Rights Day, the International Association for People with Disabilities was established by the African Diaspora Directorate, a 501(c)3 fiduciary organization of the Friends of the African Union and through the Friends of the African Union smartWISE Community Reinvestment Coalition of Hamilton County People with Disabilities Council action on December 3rd, 2020 which was the International Day of Persons with Disabilities. We agreed to start operations in Chilton County with Bernice Atchison based on this model.



Population(s) Targeted	Cross-Cutting Topic(s) Covered
People of African Descent	Developing intergenerational community wealth
Poor People	Creating a international trade program with African Nations
Women	Creating safe communities
People with Disabilities and their caregivers	Creating an Affordable Sustainable Housing Program
Seniors and their caregivers	Creating a Smart Living (smartWISE) coalition
Children, their parents, and their caregivers	Implementing an Erasing the Digital Divide Program
At Risk Community Achievers	Providing access to best of class healthcare solutions
First Responders and Continuality of Government	Integrating next-generation civic infrastructure
People who subscribe to the teaching of the Rev. Dr. Martin Luther King Jr.	Addressing Systematic Racism, Economic Injustice, and advancing global human rights development
Community Members in Reentry who are at Risk	Creating a next generation workforce

Proposed Organization Chart

A public–private partnership (PPP, 3P, or P3) is a cooperative arrangement between two or more public and private sectors, typically of a long-term nature. In other words, it involves government(s) and business(es) that work together to complete a project and/or to provide services to the population. They are an example of multistakeholder governance which is a key target of United Nations Sustainable Development Goal 17. Public–private partnerships have been implemented in multiple countries, are primarily used for infrastructure projects, such as the building and equipping of schools, hospitals, transport systems, and water and sewerage systems.




Friends of the African Union is an economic, social, humanitarian, charitable, educational and new technology civil-society organization founded to work for the benefit of the people of the African Union and the African diaspora in their host countries.
Friends of the African Union (FAU) recognizes that the African Union, to date, is the only organization which has the structural and functional capacity to unite, and service the needs and aspirations of the more than 1.5 billion African people, globally.
FAU is organized around the action in 2005, when the African Union defined the African Diaspora as "... peoples of African descent and heritage living outside the continent, irrespective of their citizenship, and who remain committed to contribute to the development of the continent and the building of the African Union."


For men on our seal is Menelik II was king of Shewa and emperor of Ethiopia (1889). He expanded the empire, modernized Ethiopia and after his army defeated Italian forces at the Battle of Adwa in 1896, Ethiopia's independence was recognized by Italy and other European countries that were colonizing Africa. He is widely called "Emiye Menelik" in Ethiopia for his forgiving nature and his unselfish deeds for the poor.
Our Friends of the African Union organizational seal features the symbol of the African Union at its center with the number 1963 as the AU founding & 2063 as in Agenda 2063 the date it looks to have finished the unification of Africa. The torch of freedom now and at its center in the atomic symbol for the future. On the other is a lighting bolt of the struggle for freedom. Out of many African people we will be come one in a PPP – a public private partnership like the United States of America. Only made better because of experience as a people of the Global African Diaspora in the USA.
For women on our seal is Bessie Coleman who was a stunt pilot, was a pioneer in aviation. She was the first African American woman with a pilot's license, the first African American woman to fly a plane, and the first American with an international pilot's license.



FAU Unity is where members of the organization will be able to unite, not only with other brothers and sisters from all over the world that have similar goals, interest, skills, talents, and intelligence, but also with allies who support the people of the African Union in meeting the challenging times before us.

FAU Self-Determination is where a member can take as an active part in our self-determination as an African people as they want – in person or electronically. We encourage members to take a leadership role in the activities of the FAU and make them fully inclusive of peoples with disabilities.

FAU Collective Work and Responsibility is centered around private public partnerships. A member will have the opportunity to take part in making a better present and future for our children, youth, seniors and people with disabilities by being involved with the collective works and responsibility that is going to make life better for African People. Our goal is to have a million of these by Junetenth 2016.

FAU's Cooperative Economics creates for each member a public private partnership that makes each member part of an economic plan that will aid in our people's financial upliftment.

FAU Purpose is to support the people of the African Union creating a unified Africa which includes the youths, daughters, sons, mothers, fathers, babies, elders, and all our people worldwide.

FAU as a Creative Class Coalition entourages members to use their creativity to come up with ideas that will be beneficial to our people, starting with themselves through joint ventures and stand alones.

FAU has faith that united together, there is nothing that is impossible for our people to do and as such we have created My Brother's Keeper of Africa and the Americas Alliance as the tool that brings together our people with allies. Our first demonstration will be in Cincinnati.



Soon after Friends of the African Union was organized in 2012 as an economic, social, humanitarian, charitable, educational and new media civil-society ruling body founded to work for the benefit of the people of the African Union (AU) and the African diaspora in their host countries Princess Ngozi Ukeje joined our movement. She like our founding group recognized that the African Union (AU), to date, is the only organization which has the structural and functional capacity to unite, and service the needs and aspirations of the more than then 1.5 billion African people, globally. She and her mentor's organization, Infinitely Building Economics / Black Political Action Communities (IBE-BPAC) joined us in 2014 submitting during the second cycle of the Universal Periodic Review of the USA. She also in charge of our 2021 efforts as FAU Nigeria which is to operates for the benefit of the people of Nigeria and the Nigerian Diaspora worldwide with a focus of those in the USA.

FAU founding at 1415 UTC on Jan. 16, 2012 [Martin Luther King, Jr. Day] at the World Peace Bell with members of Occupy Cincinnati



Listed below is the original logo used by Friends of the African union till July 19th 2012. It was created by Daniel McLellan of Occupy Cincinnati.

Friends of the African Union

Because of our actions Dr Desilva Mr. McLellan withdrew permission to use the above logo during my heart attack. He did not know that I had had a heart attack but it looked to him as though I reneged on all my promises. So I created a new logo in use since 23 July 2012.





The Convener of the FAU USA Bureau was FAU Chancellor Bishop N. Snipes, we lost him in 2020.

Friends of the African Union
United States of America Bureau

Friends of the African Union

1. 2012 We started this work at a business conference at the invitation of the US State Department at the US Africa Business Conference
2. 2013 Participated in the AU's Consultation on the AU's Africa 2063 Plan
3. 2014 Responded to the Universal Periodic Review of the USA with a $5T Black Folks Plan that supported a $3T plan for the African Nations
4. 2015 Meet with CIDO and 2nd General Assembly of AU's ECOSOCC
5. 2016 Signed off on a $30B bank based Community Benefit Agreement
6. 2017 Created a update to the Black Folks Plan during the UN's Africa Week
7. 2018 Updated the Black Folks Plan as a Community Benefit Agreement
8. Now in 2019, after 7 years of work we are setting a new standard in our relationship with African Nations based on our updated 2019 report to the Working Group of Experts of the People of African Descent 2016 report.



Backgrounder on Friends of the African Union and the African Diaspora Directorate

The African Diaspora Directorate and Friends of the African Union relationship is built on supporting these aspirations. We believe that they can be created by the wealthiest people of the Global African Diaspora, us, the 55m in the USA, whose $1.25T GDP would rate as the 13th largest economy, above Mexico.

- A Prosperous Africa, based on inclusive growth and sustainable development.
- An integrated continent, politically united, based on the ideals of Pan Africanism and the vision of an African Renaissance integrating the global African Diaspora.
- An Africa of good governance, democracy, respect for human rights, justice and the enforcement of the rule of law
- A Peaceful and Secure Africa that is based on peaceful coexistence of people of differing heritage, cultural identity, values, and religion integrating the global African Diaspora.
- An Africa whose development is people driven, relying on the potential offered by People of African Descent, especially its women and youth and caring for children.
- An Africa as a strong, united, resilient and a influential global player and a partner for us in the USA.

AfDiDi
African Diaspora Directorate

The African Diaspora Directorate and Friends of the African Union are in Unity to unite, not only with the people of the African Union from all over the world that have similar goals, interest, skills, talents, and collective goals but also with allies who support the people of the AU in meeting the challenging times before us and builds on, and seeks to accelerate the implementation of past and existing continental and African Diaspora initiatives for growth and sustainable development.

Friends of the African Union

The African Diaspora Directorate

The African Diaspora Directorate's (AfDiDi) work is a paradigm shift in the status in Americans of African Heritage after 400 years of Africans in the British Colonies of North America (1619-2019) which would become the most powerful nation in the world in 2020.

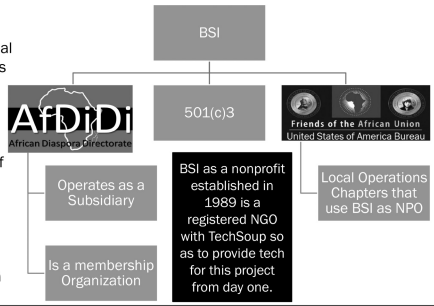
We do so based on the African Diaspora Directorate and its grassroots member organizations creating opportunities for people of African Heritage to build wealth and meet intergenerational disenfranchisement due to racism. We work with community leaders, policymakers, institutions and corporations to champion fairness and end discrimination.

AfDiDi
African Diaspora Directorate

Brotherhood and Sisterhood International (BSI)
Blacks and Whites Uniting Communities
doing business as the African Diaspora Directorate

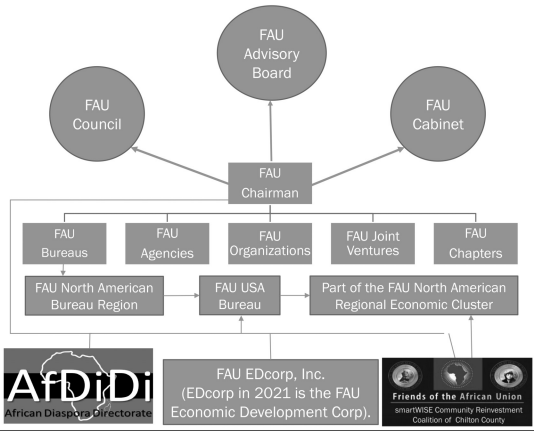
in 2019, we (Friends of the African Union) are creating a next-generation innovation team for sustainable change that supports these seven global programming focus areas and is focused on Ohio as the first state of over 30 states to be targeted through 2021. It is called the African Diaspora Directorate and it was first called for when we addressed the question in the United Nations Concept Note 24th Session of the Working Group of Experts on People of African Descent of 25-29 March 2019 in its Request for data-guidance note.

We created with the established 501(C)3 (1989) Brotherhood and Sisterhood International (BSI) Blacks and Whites Uniting Communities the African Diaspora Directorate



Through the African Diaspora Directorate farmers will join and or create FAU smartWISE CRC coalitions that provide agenda-setting research, training, insight and advocacy on behalf of members; provide counseling to home buyers and owners and business-building expertise to entrepreneurs; train and support housing counselors nationwide; test, monitor and challenge discrimination in financial services and housing; and, convene and facilitate dialog between financial institutions and community networks.

Its operations are dedicated to the advancement of People of African Descent in Farming, Ranching and Food to increase lending, investments, public private partnerships and philanthropy in neighborhoods that need it because of institutional racism.





(1) A **General Assembly** with three operational chambers: a People's Congress, a Civil Society Organizational Congress and an Assembly of State Leaders;

(2) an **African Diaspora Secretariat** was established in the USA by August 25th, 2019 and shall consist of operations councils, committees and task forces as such be approved by the Board of Directors in the Strategic Plan of the African Diaspora Directorate. We have started the AfDiDi Agricultural & Food Council March 16th, 2021.

(3) the **African Diaspora Royal Society** which is governed by the African Diaspora Directorate Royal Council. The Society is a membership of those of African Tribal Royalty in the global African Diaspora, the tribe in Ghana created for those in the global African Diaspora without a tribe, African Tribal Royalty that welcome members of the African Diaspora in them and or tribes recognized by them for the members of the African Diaspora;

(4) a **Civil Society Bureau** will work with the African Union's (AU) Citizens and Diaspora Directorate (AU/CIDO) to implement the AU's engagement process with non-state actors through the involvement of the African Diaspora's Civil Society through AU/CIDO;

(5) the **Diaspora Bureau** will organize at a national, regional and/ or state geographic and Tribal level in the people of African Descent in the global African Diaspora who are African nationals. We are currently focused on Civil Society Organizations (CSOs) in line with AU's Economic, Social and Cultural Council, the United Nations, the European Union, Organization of American States along with other international and or multinational organizations;

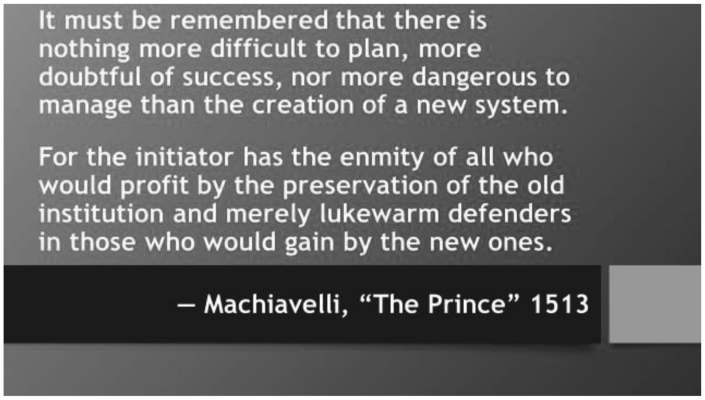
(6) an **Operations Bureau** that will create and oversee the ethical operations of the partnerships and businesses called for by the organs of the African Diaspora Directorate; and,

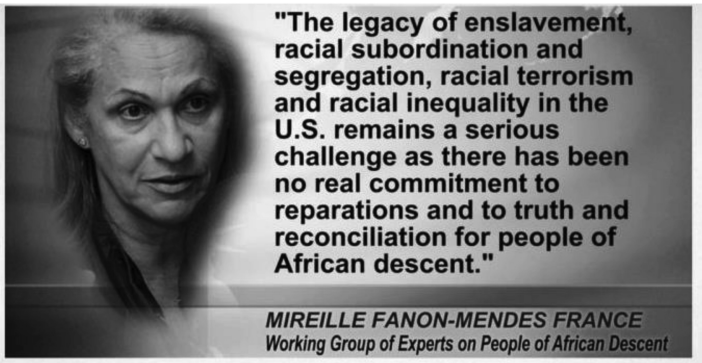
(7) the **Business Operations Bureau** shall create business corporations organized for profit with a, in part, corporate purpose of creating general public benefit for the People of the African Diaspora (PAD). These benefit corporations offer PAD entrepreneurs, business partners and investors the option to build and invest in businesses that farm and produce food that operate in a socially and environmentally responsible manner. Their operations are overseen by the Operations Bureau.

The Black Folks Plan for Black Farmers

The #BlackFolksPlan will be a stimulus to the nations economy that is focused on People of African Descent that is judicious & addresses solutions to lead poisoning in houses using bank based community benefit agreements

As of January 20th, 2021 there are over $210B of these federal reserve bank agreements driven by a 600-member national coalition we are part of.



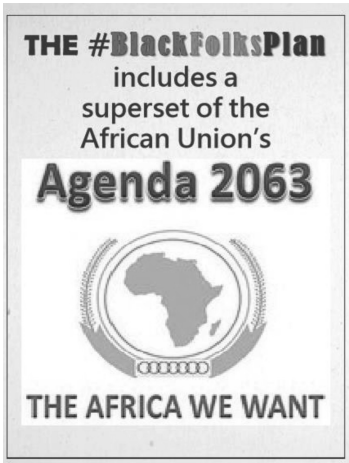


THE #BlackFolksPlan

Our current round of work started in 2016 and is based on the United Nations Human Rights Council Working Group of Experts on People of African Descent (#WGEPAD) on their visit to the United States of America, when we also submitted our then proposed solution to the problems encountered by People of African Descent (PAD) in the USA since the beginning of the country on March 4th 1789.

After 7 years of work (2012-2019), now in the year of Remembrance and Return from August 25th 2019 to August 25th 2020 we are planning our, PAD, triumph over adversity after 400 years in the American British Colonies as recognized by the US Federal Government on January 8th 2018.

We will draw on the authority contained in Federal Executive Orders starting with new ones like Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and old ones such as Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

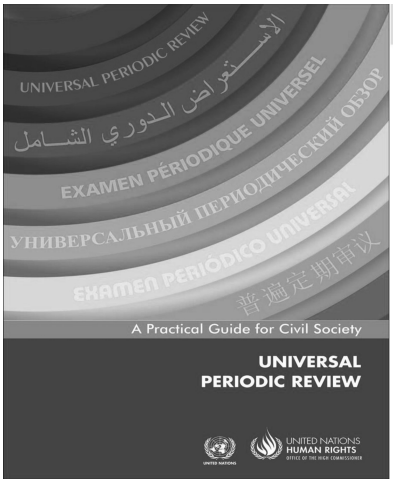


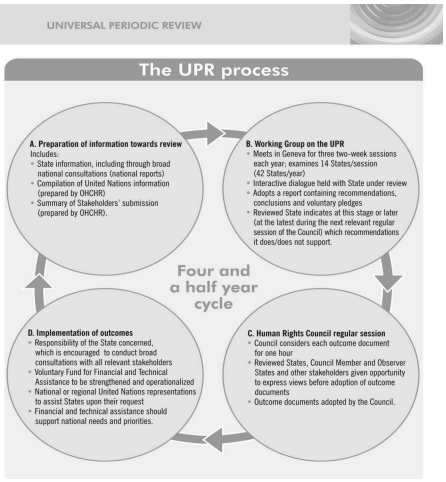
Agenda 2063 builds on, and seeks to accelerate the implementation of past and existing continental initiatives for growth and sustainable development.

Some of the past and current initiatives it builds on include: the Lagos Plan of Action, The Abuja Treaty, The Minimum Integration Programme, the Programme for Infrastructural Development in Africa (PIDA), the Comprehensive Africa Agricultural Development Programme (CAADP), The New partnership for Africa's Development (NEPAD), Regional Plans and Programmes and National Plans. It is also built on national, regional, continental best practices in its formulation.

We, the 55 leaders of the African national members of the African Union, aspire that by 2063, Africa shall be:

- A major social, political and economic force in the world,
- with her rightful share of the global commons (land, oceans and space);
- An active and equal participant in global affairs, multilateral institutions,
- and a driver for peaceful co-existence, tolerance and a sustainable and just world; and
- Fully capable and have the means to finance her development.





* * *

Universal Periodic Review Process

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

In preparation for the third UPR cycle, the U.S. government will conduct consultations with civil society, as it has during the prior two cycles. The US State Department with representatives from the Justice Department held such a session January 27th, 2020 and we submitted the African Diaspora Directorate as our agent.

In 2019 we submitted two documents in the process (1) on the solutions for Black Folk – we call it the Black Folks Plan and (2) a solution to injustice for women judges and the school to prison pipeline in the USA.

The Universal Periodic Review (UPR) is a process through which all UN Member States and civil society like us are provided the opportunity to review the human rights records of all other Member States. At the same time, each State under review has the opportunity to report on human rights conditions within their own borders, including actions that have been taken to address concerns detailed by other States. The United States is a strong supporter of the UPR process, which provides a unique avenue for the global community to discuss human rights around the world.

Individual countries are scheduled for review every four and a half years. The United States underwent its third review in 2020. UPR sessions take place in Geneva three times a year and are orchestrated by the Office of the High Commissioner for Human Rights starting from a report submitted by the national government of the country under review.

The Universal Periodic Review process reviews the human rights record within a country based on three documents: (1) a report submitted by the national government of the country under review; (2) a report compiled by the Office of the UN High Commissioner for Human Rights (OHCHR) consisting of information contained in the reports of treaty bodies and special procedures concerning the country, including its observations and comments, and other relevant official UN documents; and (3) an OHCHR compilation of information that is credible and reliable from other stakeholders, including NGOs and national human rights institutions.

Concluding Remarks at the Adoption of the

Third Universal Periodic Review (UPR) of the United States

As delivered by Lisa Peterson

Acting Assistant Secretary of State for Democracy, Human Rights and Labor

Geneva, March 17, 2021



"We complete our third Universal Periodic Review proud of our heritage as a nation conceived in liberty, and firmly dedicated to the proposition that all persons are created equal.

As Secretary Blinken said before the Human Rights Council, the United States is placing democracy and human rights at the center of our foreign policy, because they are essential for peace, prosperity, and stability.

American leadership still matters. We will exercise that leadership with humility, knowing that we have a great deal of work to do at home to enhance our standing abroad, but also knowing that no single country acting alone, can fully and effectively address these problems.

The United Nations is uniquely poised to take on our shared global challenges. When – collectively – we are consistent and persistent in acting according to the values upon which it was founded, the United Nations can be an indispensable institution for advancing peace, security, and our collective well-being. When we falter in the defense of those values, others will come to fill the void, and the global community suffers, and so do American interests."

Now, in the UN UPR process, over the next 4 years the US Government will be looked to implement the over 347 comments including our own contained in the Black Folks Plan

The Black Folks Plan is a $6T Reparations ask for Black Folk in the 2020 Updated Public-Private Partnership with the US Government with no Congressional Action Needed

$6,000,000,000,000	Use of proceeds of the Black Folks Plan, a 75-year (2021-2075) domestic plan for black folk
$1,000,000,000,000	Trust Fund – for decedents of America's slavery
$2,000,000,000,000	Housing – 7M homes
$400,000,000,000	Workforce
$300,000,000,000	Reentry
$400,000,000,000	Education
$260,000,000,000	Business
$600,000,000,000	Health Care
$220,500,000,000	Transportation
$338,000,000,000	Environmental
$254,000,000,000	Infrastructure
$227,500,000,000	Global Trade

2020 Reparations Rationale Update - Accounting for inflation through 2019, the #BlackFolksPlan, with an interim update on February 4th, 2020, if we use the $20,000 that the Japanese received for 3 years in Concentration Camps (1942-1945), then we asked for funding it would be $1,114,463.18 per person in 2020 dollars if applied to the 4,660,920 Africans in 1866, at the end of the civil war, August 20 1866. Then the total amount is $5,194,423,160,011.97 or $5.2T with damages of $800B. We will ask for $6T in our proposed public private partnership using the Daniels IDIQ. This will be a 75 year agreement (2021-2095) in three (3) 25 year periods. In each period we will have 5 year funding commitments with the first 2021-2025.

On March 4th, 2021 The Biden Administration took control of United Nations Review of Human Rights in the USA

On November 12th 2020 the US State Department Responded to our Unsolicited Proposal called the Black Folks Plan – our April 20th 2021 update will include a -

Black Folks Plan for Black Farmers & their Communities

$251,495,000,000	JANUARY 18TH 2021 TOTAL BLACK FOLKS PLAN FUNDS FOR BLACK FARMERS	
$100,000,000,000	Trust Fund	Pigford III THROUGH THE $210B IN CURRENT FEDERAL RESERVE BANK BASED AGREEMENTS
$50,000,000,000	Rural Housing	A plan for HUD plus market rate housing for Black Farmers, current and future, rural and urban.
$20,000,000,000	Workforce	Creating a Black farm workforce through school, community and college-based programs
$15,000,000,000	Reentry for Food	Reentry (creating farmers from those in prison and or reentering society including from the Military)
$10,000,000,000	Education	Education (creating black farmers, health professionals who will serve in black rural communities and HBCU funding around black farming, agriculture and food merchandising while funding the education of children about nutritional habits and the history of black farmers)
$12,500,000,000	Business	Business (in this we will fund through the SBA by providing over 50,000 black farmers loans by 2030) either in the Farm Credit System or the Federal Reserve System.
$13,500,000,000	Health Care	Health Care (creating in rural communities a world-class health care infrastructure around black farm communities starting this next week in GA, CA, MD, NY, DC, Ok, Ohio, Pa and Ala)
$4,410,000,000	Transportation	Transportation (Funding starting in California, Texas, Kansas, Georgia, Alabama, Oklahoma and Ohio to create our own logistics infrastructure to carry black farm and allied goods to market)
$7,182,500,000	Environmental	Environmental (to meet the needs of rural communities and in urban communities creating biosafe level 4 based aquaculture based black farming solutions)
$5,890,000,000	Infrastructure	Infrastructure development that includes roadways for over 300 rural communities that have significant black farmers and vertical farms and energy storage in 100 urban communities
$9,100,000,000	Global Trade	Global Trade (focused on a global shipping infrastructure under the Jones Act and with Boeing and Lockheed Martian in support of black farm goods being exported and imported goods from African and other nations such as Mexico, Jamacia and Haiti)
$3,912,500,000	Energy and smartPOWER	Energy and smartPOWER (creating a global rural farming power infrastructure based on the needs of current American black farmers and that of the future, domestic and foreign)

Civic Action in support of Black Farmers

On March 17th, 2021 The Biden Administration spoke in Geneva on the United Nations review of Human Rights in the USA through the 3rd Cycle Universal Period Review of the USA

On April 20th, 2021 we will release the details of the $251.5B for Black Farmers contained in the #BlackFolksPlan that was presented to the Working Group of Experts on Peoples of African Descent on December 3rd, 2020.

The Working Group of Experts on People of African Descent (WGEPAD) is composed of five independent experts appointed on the basis of equitable geographic representation. Members are elected for three years and can be renewed for one additional three-year mandate.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001, adopted the Durban Declaration and Programme of Action. It specifically requested the Commission on Human Rights to consider establishing a working group or other mechanism of the United Nations to study the problems of racial discrimination faced by people of African descent living in the African Diaspora, and make proposals for the elimination of racial discrimination against people of African descent.

The Working Group of Experts on People of African Descent was established in 2002 by the Commission on Human Rights resolution 2002/68 (as a Special Procedure).



The Working Group's current members

In 2017 the Working Group reported to the Human Rights Council on their thematic session "**Leaving no-one behind: people of African descent and the sustainable development goals**"

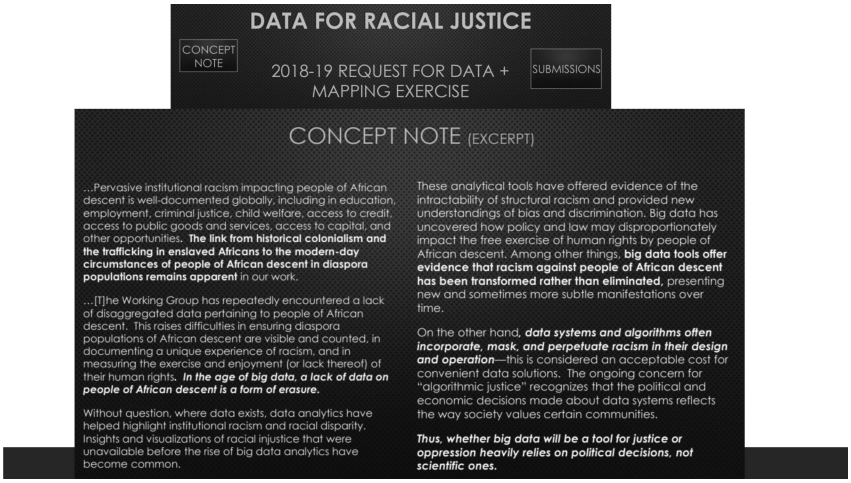
Working Group of Experts on People of African Descent (WGEPAD)

The WGEPAD public 27th session, entitled "The Urgency of Now: Systemic Racism and the Lessons of 2020" was held from 30 November to 3 December 2020. We, collectively, through the African Diaspora Directorate submitted a statement On December 3rd 2020.

In the document we said, "**The Global Black Folks Plan is based on the AfDiDI co-Founders Friends of the African Union**, participation, at the invitation of the International Chamber of Commerce, in the International Business Forum on July 14th, 2015 at the Third Financing for Development Conference, Addis Ababa, Ethiopia July 2015.

We updated that $5T work in a presentation we presented the U.S. Government United Periodic Review NGO Consultation Event on Monday, January 27, 2020, at the U.S. State Department presided over by the Bureau of Democracy, Human Rights, and Labor's Acting Principal Assistant Secretary Scott Busby. AfDiDi did deliver remarks around its now $6T Black Folks Plan Reparations proposal based on this statement President Trump said in remarks at the 2019 National Historically Black Colleges and Universities Week Conference on September10, 2019, "**The first and highest duty of government is to take care of its own citizens. African Americans built this nation through generations of blood, sweat, and tears. And you, like all of our citizens, are entitled to a government that puts your needs, your interests, and your families first.**"…"

In addition, in it we also said, "We agree with Dr. Martin Luther King, Jr. who said, "**Freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.**"



DATA FOR RACIAL JUSTICE: SUBMISSIONS

MEMBER STATE SUBMISSIONS

- BOLIVIA
- POLAND
- SWEDEN
- GUYANA
- MEXICO
- MALI
- COLOMBIA
- GUATEMALA

CIVIL SOCIETY + OTHER SUBMISSIONS

- EU FUNDAMENTAL RIGHTS AGENCY
- CENTER FOR REPRODUCTIVE RIGHTS
- LEADERSHIP CONFERENCE EDUCATION FUND
- FRIENDS OF THE AFRICAN UNION
- SAMUEL DEWITT PROCTOR
- ACTION ON SMOKING AND HEALTH (ASH)
- AFRICAN AMERICAN TOBACCO CONTROL LEADERSHIP COUNCIL (AATCLC)
- HUMAN RIGHTS FOR WEST PAPUA PEOPLES PROTECTION ASSOCIATION INC. (HRWPPPA)
- BLACK SOUTH WEST NETWORK (BSWN)
- THE CRITICAL RACE AND ETHNICITY RESEARCH CLUSTER, MANCHESTER METROPOLITAN UNIVERSITY
- LUIZ VALERIO P. TRINDADE, PH.D
- DEWAN ADAT PAPUA
- FIGHT RACISM NOW NETWORK
- AVENUES TO ZERO TRANSMISSION
- AT-SIK-HATA, YAMASSEE-MOORS
- AGING PEOPLE IN PRISON HUMAN RIGHTS CAMPAIGN
- ADE OLAIYA
- GLOBAL NETWORK OF BLACK PEOPLE WORKING IN HIV (GNBPH)

THE WORKING GROUP ENCOURAGES FURTHER SUBMISSIONS + COMMENTS FROM MEMBER STATES AND CIVIL SOCIETY.

REQUEST FOR DATA



Source: US Secretary of State Antony J. Blinken, US National Security Advisor Jake Sullivan, Director Yang And State Councilor Wang At the Top of Their Meeting,

Anchorage, Alaska

March 18, 2021

https://www.state.gov/secretary-antony-j-blinken-national-security-advisor-jake-sullivan-chinese-director-of-the-office-of-the-central-commission-for-foreign-affairs-yang-jiechi-and-chinese-state-councilor-wang-yi-at-th/

US Secretary of State, ".....one more hallmark of our leadership here at home, and that's a constant quest to, as we say, form a more perfect union. And that quest, by defnition, acknowledges our imperfections, acknowledges that we're not perfect, we make mistakes, we have reversals, we take steps back. But what we've done throughout our history is to confront those challenges openly, publicly, transparently, not trying to ignore them, not trying to pretend they don't exist, not trying to sweep them under a rug. And sometimes it's painful, sometimes it's ugly, but each and every time, we have come out stronger, better, more united as a country.

National Security Advisor Jake Sullivan, The other secret sauce of America is that our people are a problem-solving people, and we believe we solve problems best when we work together with allies and partners around the world.

U.S. and Chinese officials traded words in Alaska this past week as they met for the first time under the new administration of President Joe Biden. During the meeting in Anchorage, Alaska U.S. Secretary of State Antony Blinken and national security adviser Jake Sullivan said the United States intended to discuss "deep concerns" about some of China's actions internationally, while Chinese diplomat Yang Jiechi and State Councilor Wang Yi accused the United States of hypocrisy in regards to cybercrimes and human rights abuses, CNN reported.

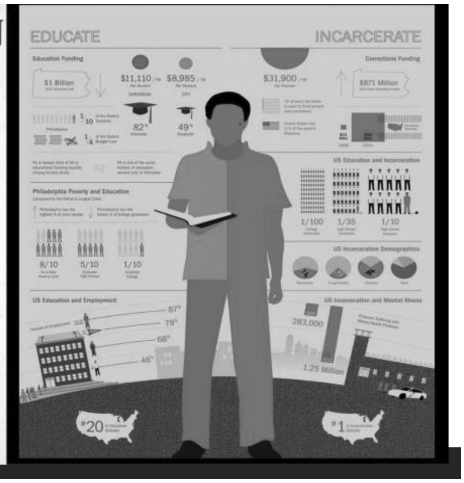


Director of the Central Foreign Affairs Commission Office Yang Jiechi "....the challenges facing the United States in human rights are deep-seated. They did not just emerge over the past four years, such as Black Lives Matter. It did not come up only recently..."

WE ARE AN AFRICAN AMERICAN PERSISTENT THREAT SOLUTION

BASED ON ECONOMIC JUSTICE SOLUTIONS IN WHICH IF THERE ARE NO JOBS THEN NO PEACE

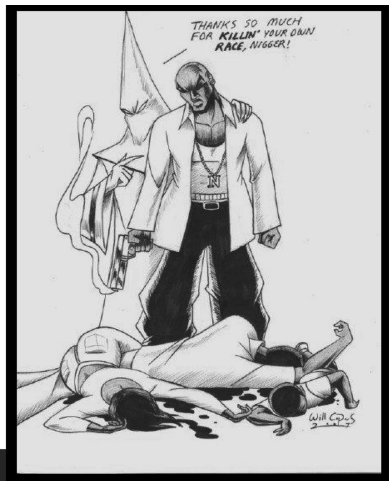
Our Black Lives Matter operations are not connected Black Lives Matter Global Network Foundation, but our mission is, like theirs, to eradicate white supremacy and build local power to intervene in violence (physical or economic) inflicted on Black people and their communities.



WE ARE PARTNER OF THE UNITED HOOD NATION TO BE THE CHANGE WITH OUR OWN CAPITALIST BASED

BLACK LIVES MATTER

CHAPTERS



Friends of the African Union

smartWISE Community Reinvestment Coalition

BLACK LIVES MATTER

CHAPTERS

1. We are unapologetically Black in our positioning and are aligned with the African Union definition of the global African Diaspora.
2. We are guided by the fact that all Black lives matter, regardless of actual birth gender or perceived sexual identity, gender identity, gender expression, economic status, ability, disability, religious beliefs or disbeliefs, immigration status, or location.
3. To love and desire freedom and justice for ourselves is a prerequisite for wanting the same for others. Our tools include the Universal Declaration of Human Rights, the Preamble to the US Constitution and the US Constitution itself as a work in progress.
4. We will partner to eradicate white supremacy and to build local power to intervene in violence, physical or economic, inflicted on Black Folks and their communities. Although the transatlantic slave trade ended more than two centuries ago, "the ideas of white supremacy that underpinned it remain alive", the UN Secretary-General António Guterres said on Thursday, March 25th, 2021, the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade
5. We will end modern slavery starting in the USA by changing the US Constitution's 13th amendment through a advocacy campaign.



SUBMITTED STATEMENTS BY HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

STATEMENT 1

ON BEHALF OF NAVINA KHANNA, EXECUTIVE DIRECTOR, HEAL (HEALTH, ENVIRONMENT, AGRICULTURE, LABOR) FOOD ALLIANCE

April 4, 2021

The HEAL (Health, Environment, Agriculture, Labor) Food Alliance (HEAL) is grateful for the opportunity to submit written testimony regarding the recent hearing on the State of Black Farmers.

HEAL is a national multi-sector, multi-racial coalition led by Black, Indigenous and People of Color (BIPOC) that is building collective power to transform our food and farm systems for the health of our communities and the planet. Our 50+ member organizations represent over two million rural and urban farmers, ranchers, fishers, public health advocates, farm and food chain workers, Indigenous groups, scientists, policy experts, community organizers, and activists. Together, we are creating systems that are healthful for our families, accessible and affordable for all communities, and fair to the hard-working people who grow, distribute, prepare, and serve our food—while protecting the air, water, and land we all depend on.

Our members know too well that the legacies of chattel slavery, colonization, and the historical and current realities of institutional racism have direct bearing on the socioeconomic status of Black people nationwide. Longstanding structural and institutional racism have excluded Black people from access to land, financial resources, information, political standing, and educational and professional trajectories. Such exclusion has prevented truly sustainable food systems from being established, and created enormous barriers for communities seeking to maintain or revive culturally appropriate foodways and to live in balance with their ecosystems. Strengthening support for Black people within the agriculture sector, on the other hand, can establish paths toward long-term prosperity while helping to secure the future of sustainable and resilient food systems.

We commend the House Committee on Agriculture for taking up the important, long overdue issue of support for Black farmers. Below, you will find recommendations from our members, and we look forward to being in continued conversation with your respective staff and departments as we collectively undertake the hard work of righting historic wrongs and collaborating together for a future that works for all people—and the health of our planet.

No one organization, including HEAL, can speak for all Black communities working across our food and farming system, and we are aware that we are part of an ecosystem that includes Black agricultural communities with diverse strengths, challenges and perspectives. HEAL's analysis continues to be informed by our membership and key leaders in the landscape such as the National Black Food and Jus-

tice Alliance, Soul Fire Farm, Land Loss Prevention Project and many more unheralded grassroots leaders. These are the communities that have been doing the hard work of addressing Black land loss over the last few decades and fighting for the ability to be in the right relationship with the land and one another. Below, we offer testimony and recommendations from our membership.

According to the most recent United States Department of Agriculture (USDA) Census data, approximately *95% of farmland owners are white.*[1] For reference, in 1920 the United States had about *1 million*[2] Black farmers; however as of the 2017 Census of Agriculture, this number is closer to *45,000,*[3] and just *0.52%*[4] of the total farmland in the country is owned or operated by a Black farmer. This is a glaring problem and a consequence of a system designed to dispossess Black people of wealth, and Black farmers of land. There is a long and detailed history of discrimination by the USDA and documented efforts by Black farming and civil rights leaders' to right these wrongs through legal means such as the *Pigford* cases, policy initiatives within the farm bill and advocacy at local (state, county, city, *etc.*) levels.

At HEAL, we join our members in support of efforts that aim to address issues of land access and tenure such as the Justice for Black Farmers Act. We recommend fully supporting the Justice for Black Farmers Act and our members' contributions to the legislation are rooted in the wisdom of lessons from past failures and investment in steps towards a radical reclamation of what we know our communities need and deserve. We also support the greater call for reparations for Black communities. As voiced by some of our members:

> *Over the past 100 years, 98% of Black farmers have been dispossessed of their land, driving the median age of the Black farmer up to 62 years and the share of Black operators down to 1.4%. Passage of the Justice for Black Farmers Act is essential to right the wrongs endured by our legacy farmers and to provide opportunities for the next generation of Black farmers. Soul Fire Farm, a NY-based rural training center for Black and BIPOC farmers, has observed a clamor of interest for careers in agriculture and maintains a multi-year waiting list for its programs. The time is now.*
>
> LEAH PENNIMAN, *Founding Co-Director,* Soul Fire Farm.

> *The National Black Food & Justice Alliance's work to build Black Land and Power and Self Determining Food Economies is inspired by and in honor of Mrs. Dorothy Wise, a Black farmer who made her transition after being forcibly displaced from her farmland with her husband by armed U.S. Marshalls in 2016 based on USDA discriminatory lending practices.*
>
> Dr. JASMINE RATLIFF, *Policy Manager,* National Black Food and Justice Alliance.

The U.S. Government can and should focus on an "invest/divest" framework, moving away from harmful practices and investing instead in the sustainability, well-being, and safety of all communities with community-controlled solutions.

The U.S. Government can make it easier for Black people to access and retain land by:

- **Providing grants, subsidies, and incentives to make it easier to finance and own land.** These should include mechanisms facilitating land ownership transitions, as well as reparations to return appropriated land and to reverse land-grabs.
- **Providing legal aid to help Black people access and retain land.** For example, grants from USDA could fund law schools to offer legal clinics providing free or low-cost, culturally competent legal services tailored to Black farmers. Given evidence of ongoing discrimination, the USDA should also require an independent review of drivers and preventive measures prior to foreclosures of Black-owned farmland (Rosenberg and Stucki 2019; *Keepseagle* v. *Vilsack;* Cowan and Feder 2013).* And, government should fund increased legal support

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[1] *https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf.*

[2] *http://usda.mannlib.cornell.edu/usda/AgCensusImages/1920/Farm_Statistics_By_Color_and_Tenure.pdf.*

[3] *https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf.*

[4] *https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf.*

* **Editor's note:** the in-text citations contained in this statement ***do not*** have a corresponding list of citations at the end of the document, nor is there internal citation information within the document. It has been reproduced herein as it was received.

for the formation of cooperative ownership structures that help Black people access and retain farmland (Taylor 2018; Calo and De Master. 2017; Gies 2018).

- **Reforming heirs' property laws** that can protect landowners from involuntary land loss (Mitchell 2016). The USDA must implement the planned changes in the 2018 Farm Bill to expand and regularize the types of documentation that can be used by heirs' property owners to qualify for USDA credit and conservation program eligibility (DeCaille 2018).
- **Generating land-focused reinvestment,** for true community self-determined economic development.

The U.S. Government can support Black farmers, particularly those practicing community-based, sustainable agriculture, in achieving financial security and resilience, by:

- **Expanding financial supports,** including within key USDA programs that offer technical assistance (for example, the Conservation Stewardship Program) and grants for capacity building, such as the Farming Opportunities Training and Outreach program, the Sustainable Agriculture Research and Education program, and the Gus Schumacher Nutrition Incentive Program. Barriers to participation should be identified and eliminated, such as by recognizing traditional best management practices and ecological knowledge in the evaluation of applications and proposals.
- **Ending discriminatory lending practices** and other mechanisms of land seizure.
- **Promoting community-led and -centered programming** to promote and financially facilitate sustainable business ownership among economically marginalized populations.
- **Improved access to loans, including low-interest and micro-loans,** as well as loans not requiring collateral. The USDA's Farm Service Agency launched a micro-loan program in 2013 to better meet the needs of underserved farmers (FSA 2019; Tulman, *et al.,* 2016), but the limit on annual funding available must be raised (NSAC 2019).
- **Financial safety nets, such as insurance and relief programs.** Since the USDA does not currently publish rates of and utilization of Federal crop insurance or disaster payments across racial and ethnic groups, transparency is needed to help guide improvements.
- **Fair, sustainable markets** that support Black farmers and reward social and ecological well-being. Direct marketing, farm-to-institution arrangements, food hubs, and market diversification can raise incomes and financial viability and can be strengthened through grants, initiatives, and institutional procurement commitments that are inclusive of and accessible to these communities (Hand 2010; Key 2016; Cooper 2018). Developing markets for ethnic specialty crops and culturally relevant fruits and vegetables can leverage skills while also contributing to local economies (WF 2019).

The government can also advance the quality and equity of infrastructure and information. Currently, Black farmers have less access to, ownership of, and control over several key resources related to infrastructure and information that are pivotal in establishing successful, resilient, and sustainable farms. For example, fewer Black farmers have access to internet service relative to white farmers (USDA 2019). Public research institutions have not served Black farmers equitably and have, in some cases, been used as mechanisms for exclusion (Lee and Keys 2013; Ammons, *et al.,* 2018; Lee and Ahtone 2020).

USDA programs can help level the playing field through the following:

- **Infrastructure investments—such as targeted grants and incentives**—are needed to fund BIPOC-led improvements on-farm (such as washing, packing, storage and processing facilities) and in communities (funding such things as internet access, kitchen equipment in school cafeterias to enable local sourcing from Black farmers).
- **Technical assistance and outreach that serves Black farmers,** including by recognizing traditional ecological knowledge and management as best practices. Such programs should hire culturally competent community representatives and service providers (*e.g.,* lenders, insurance agents, extension agents, educators).
- **Research and education** that includes and engages directly with Black farmers and communities. For example, land-grant institutions should be accountable to a revitalized public mission supporting such work, including sharing re-

sources with community-based organizations. Additional resources should be directed to the 1890 land-grant institutions (Historically Black Colleges and Universities), to ensure they have the same services and support as the land-grant institutions originally chartered in 1862 (Lee and Keys 2013).

Perhaps most critically, the U.S. Government must ensure diverse representation and leadership across agricultural decision-making, including grant panels, advisory boards, and committees.

Removing discriminatory barriers to Black farmers and their networks, and supporting their leadership in sustainable and community-driven farming, will advance the equity and resilience of the nation's food systems (HEAL Food Alliance 2018; Carlisle, *et al.,* 2019).

> *The roadmap for how Black people, and other communities of color, have been subjugated politically, culturally and economically, is illustrated by the history of the U.S. Food system. While racial equity has a new popularity in our political system, the real work to address the severed relationships Black and Brown farmers have experienced lies in building and restoring our relationships to the land, to our culture, to healthy and nutritious food, to the tools and resources for economic autonomy, and to building political power for the decision-making that impacts our communities. The USDA and other areas of our Federal and local governments must commit to removing corporate influence in our government and then to reinvesting in a long-term relationship with farmers of color to build democratic, healthy and sustainable regional food systems.*
>
> Midwest Farmers of Color Collective Coordination Team.

In partnership with grassroots communities, the U.S. Government has a critical role in creating opportunities for Black people in farming that will pave the way toward long-term prosperity and sustainability.

> *Black farmers and ranchers have faced and continue to face systemic discrimination in USDA programs, leading to lack of access to credit and generational land loss. Moving forward, it is essential that USDA policy—whether related to credit, land access, or climate—prioritize investment in Black farmers in a structured way. Land Stewardship Project, as an organization with a primarily white membership base in rural Minnesota, Wisconsin, and the Midwest, stands in solidarity with our Black farmer and community members.*
>
> JESSICA KOCHICK, Land Stewardship Project.

Thank you for the opportunity to submit written testimony.

Sincerely,



NAVINA KHANNA,
Executive Director,
HEAL (Health, Environment, Agriculture, Labor) Food Alliance.

STATEMENT 2

ON BEHALF OF TANYA WARD JORDAN, PRESIDENT, COALITION FOR CHANGE, INC. (C4C)

As President of the Coalition For Change, Inc. (C4C), I (Tanya Ward Jordan) submit the present statement for inclusion in the hearing record on the *State of Black Farmers in the United States.*

The C4C is a public interest volunteer and whistleblower group formed to eradicate employment discrimination and retaliation in the Federal sector. It also serves as an informational support network for present and former Federal employees injured due to such unlawful acts. U.S. Department of Agriculture's (USDA) employees have complained to our organization about widespread discrimination. We find such reports most troubling.

The C4C recognizes that the culture of internal workplace discrimination harms employees. It also hampers USDA's ability to provide fair and efficient services to the Black farmers. One key measure we can take to improve the profitability and sustainability of Black farmers is to bolster the Equal Employment Opportunity Commission's (EEOC) oversight of USDA's complaint activity. Towards this goal, C4C recommends that the House Agriculture Committee inquire into the U.S. EEOC's hearing, appeal, and field audit activity linked to USDA complaints.

It is key to note that the C4C had been meeting with Mr. Carlton Hadden, EEOC's Director of the Office of Federal Operations, (OFO), to recommend and spur reforms that would address the culture of racism, sexism, and intimidation operating within the USDA that impacts Black farmers, USDA employees and other Federal employees. To our dismay, the EEOC's efforts to address C4C's recommended EEO reforms and Federal employee concerns halted abruptly after the 2016 United States presidential election.

Notwithstanding any inaction of the EEOC, I along with Paulette Taylor, the C4C's Civil Rights Chair, presented Equal Employment Opportunity (EEO) reforms to the late Representative Elijah Cummings. He first introduced our crafted reforms in H.R. 1557[1] Federal Employee Antidiscrimination Act of 2015 and later in H.R. 135. Remarkably, on January 1, 2021, lawmakers adopted and included the EEO reforms we presented to the late Congressman in the law aptly called the Elijah Cummings Federal Employee Antidiscrimination Act of 2020. [The reforms can be found under the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.]

Expressly, Black farmers and employees complain that when discrimination is found, USDA rarely if ever disciplines law-breaking employees. A key reform in the Elijah Cummings Federal Employee Antidiscrimination Act calls for the EEOC to make disciplinary referrals to the Office of Special Counsel when discrimination is found. The C4C recommended this reform after learning, via Freedom of Information Act request, the EEOC had failed (over several years) to refer any cases to the OSC for possible disciplinary action.

In closing, the EEOC can play a key role in addressing the discriminatory culture of USDA. An improved workplace culture will benefit the Black farmers and others seeking equitable treatment in need of USDA programs and services. For this reason, the C4C recommends that the House Agriculture Committee take a critical look into the *EEOC's oversight* of the USDA complaint program.[2]

STATEMENT 3

ON BEHALF OF RURAL COALITION/COALICIÓN RURAL, *ET AL.**

Introduction

Black farmers have been some of our nation's most vital stewards of the land, productive and industrious farmers, and resilient and determined producers. Remarkably, they have also used their farming and business acumen to produce more generations of farmers and landowners, schools, college graduates, separate business ventures, progressive community organizations, and more. Many Black farmers and their communities thrived until they made the decision to acquire loans or other financing from the United States Department of Agriculture (USDA). The USDA was supposedly designed to help farmers in times of expansion, blight, and disasters. Yet, its racist lending and supervisory policies caused countless Black farmers unwarranted stress and heart ache, debilitating illnesses, financial ruin, constant threats of government takeover, and premature deaths. Consequently, Black farmers continue their more than century-old struggle for justice and equality from the U.S. Government.

Matthew Grant (1918–2001) and Florenza Moore Grant (1921–2001) were farmers in Tillery, Halifax County, North Carolina. In the 1940s, they bought their family to the Tillery Resettlement Farms community under the Federal Resettlement Administration that offered landless rural people an opportunity for hard work and

[1] See *https://www.c-span.org/video/?c4545890/user-clip-coalition-change-inc-instrumental-addressing-workplace-injustice*.

[2] The EEOC, which is to eradicate discrimination, consistently fails to hold officials accountable for violating the Federal Equal Employment Opportunity Program guidelines. For example, a review of USDA data collected under the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act reflects that the USDA is delinquent in posting No FEAR data and that for the "2019" period shown on average the USDA exceeded the 180 day complaint processing time for investigating complaints. As of April 2, 2021, USDA most recent post of No FEAR cumulative complaint activity covers Fiscal Year 2019. See data at *https://www.usda.gov/nofear*.

*Alabama State Association of Cooperatives; Concerned Citizens of Tillery; Cottage House, Inc.; North Carolina Association of Black Lawyers Land Loss Prevention Project; Oklahoma Black Historical Research Project, Inc.; Operation Spring Plant, Inc.

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survival. The Tillery Resettlement (Colored Section) was established as a segregated community with African American families like the Grants receiving smaller farms, smaller houses, and less farm equipment than their white neighbors. African American farmers were offered an opportunity to purchase land in the flood plain of the Roanoke River, while the White area of the Resettlement was out of the river's reach.

Toiling under the material and mental pressures of segregation, Matthew and Florenza raised a family and became leaders in their community. In the early 1970s, under pressures of mechanization of agriculture and competition from big agribusiness, they borrowed money under a U.S. Department of Agriculture (USDA) program that was supposed to help small farmers. They believed that unlike the local government, with its historical role in maintaining racial oppression, the Federal program would be fair and supportive of a rapidly disappearing pillar in the nation—the African American family farmer.

By the late 1970s, the Grant family realized their hopes were misplaced. African American farmers were given smaller loans at higher rates than White farmers. In the spring, when White farmers were receiving funds to buy seed and fertilizer, African American farmers were still waiting for their loans. In the local Agriculture Department office, the Grants and their neighbors were told to wait until all White farmers had been seen first. They watched as checks were given out to Whites, only to be told that their money had not yet arrived. Loans to the Grants and other African American farmers were closely supervised, requiring extra signatures and trips to the county seat before farm supplies could be purchased. These hard working, proud survivors of the rural south, farming land that their slave ancestors worked for plantation owners, were treated with disrespect and racial hatred.

Drought years and discriminatory practices prevented the Grants from repaying the loan during the 1970s. In 1981 they signed a Consent Judgment against their property in an agreement that the USDA would release farm equipment and the Grants would withdraw a discrimination lawsuit. This according to the USDA was a "settlement of sorts" that would allow the Grants to continue farming and moving on with their lives, but the USDA refused to work with them on a means of repayment on the delinquent debt. Subsequently, Matthew and Florenza's children tried to "assume the debt," but their proposed monthly payment plan was not accepted. Matthew was actually told by the FmHA district director, "It does not matter who you go to see, who you bring or what you come up with, we are going to sale you out." Meanwhile, White farmers who had been affected by crop losses were given flexibility to settle their debts. Matthew and Florenza did not deny the debt, but they protested that their financial situation had been worsened by illegal racists practices.

In 1996, the USDA admitted that it had discriminated against the Grant family. However, they prevented the Grants from collecting the settlement that could have paid off their debt. Since that time the Grant family has worked without success to achieve a reasonable settlement with the government. Matthew and Florenza Moore Grant both died in 2001, 6 months apart from one another.

The Grant family requests that the USDA clear the Matthew and Florenza Moore Grant family debt, meet with our family to discuss an adequate settlement for years of discrimination and turmoil, and assist our family with starting an agricultural education fund for young students interested in farming and being stewards of the land.

Cumulative Impact and Consequences of Discrimination

Experiences such as that of the Grant family are not uncommon, when alternate financial arrangements are used to prevent permanent loss of land, especially when the underlying factor is discriminatory treatment by the government. The USDA has maintained that the Equal Credit Opportunity Act does not cover the impact of pain and suffering. The cumulative impact to the communities where these families farmed included a loss of feeling of good faith in any sort of debt settlement with the government. As a result, many farmers were unwilling to deal with USDA.

The Secretary and the Congress are urged first to hear their stories. As Section 1006 of the American Rescue Plan is implemented, we also urge that the Secretary consider how BIPOC who've taken over family operations family farm can be given a release from prior debts as long as their debt arose out of some discriminatory actions. USDA and the Congress should take such action to assure that the cloud over the family is lifted so that the next generation farmers can participate in USDA programs on their own as new and beginning farmers. Their eligibility should not be barred because of a look back to debts of their parents or anybody else within their family who had the previous ownership of the farm.

The following excerpt from the introduction of the Statement by John Zippert that the Federation of Southern Cooperatives/Land Assistance Fund and the Rural Coalition to the U.S. House of Representatives Committee on Agriculture Subcommittee on Conservation, Credit, Energy, and Research on March 27, 2007 summarizes our past recommendation Congress, including issues that remain relevant today:

"Collectively, the Federation, and the Rural Coalition and its members and allies, have worked with thousands of farmers on the intricacies of their dealings with USDA and to seek structural change both administratively and in policy to assure equity and accountability in programs and services.

"Over the past decade, we have supplied documents, analysis and testimony to the Civil Rights Action Team, the National Small Farms Commission, the U.S. Congress and the U.S. Civil Rights Commission. A half dozen of us served on the National Small Farms Commission, and we have also participated on other committees and in many sessions with the Secretary and the staff of the Department. We have led efforts to institute the USDA Partners meeting held annually for the past 3 years to allow USDA to develop relationships and understanding of the work and experience of its Community Based Organization Partners.

"Our collaborative legal and legislative work included the 1987 Agriculture Credit Act, the Minority Farmers Rights Act of 1990 that was accepted as section 2501 of the 1990 Farm Bill, the 1994 Agriculture Reorganization Act, and collaborative efforts towards passage of the 1999 Waiver of the Statute of Limitations that removed a critical barrier to the settlement of the longstanding class action lawsuits. Over the years, we have also worked on disaster response, especially following hurricanes Katrina, Rita and Wilma.

"We have also worked with this Committee on the most recent 2002 Farm Bill. We appreciate the support the Members of this Committee who helped assure that structural changes instituted to promote equity were included in that bill.

"The average age of farmers continues to rise, especially among African American and other socially disadvantaged producers. For many years, inadequacies and inequities in programs and services have hastened the loss of African-American and other people-of-color owned farms. Access to credit is essential for all agricultural producers and those who aspire to be agricultural producers. This Committee has the ability to take the actions needed to assure that new generations of people of color farmers and ranchers will have access to land and production.

"In my years of work with the Federation of Southern Cooperatives/Land Assistance Fund, I have never met a Black farmer who was not discriminated against. I believe the same is true for most of the diverse group of African-American, Latino, American Indian, Asian American and female farmers I have encountered within the Rural Coalition. As you well know, there remain issues surrounding the settlement of the *Pigford* v. *Veneman* and other still pending class action lawsuits against USDA that need to be addressed. We will provide a supplemental appendix for the record with updated statistics of the status of this settlement and on late claims.

"For the past several months, our organizations have worked with a group of colleagues who represent a wide and diverse array of minority farmer and farmworker organizations called the Farm and Food Policy Diversity Initiative. As you begin your work on the 2007 Farm Bill, we share with you the collective wisdom of our organizations and our partners on some essential changes that Congress can and should make in order to prevent the actions that necessitated legal action in the first place and assure transparency and accountability in the provision of services.

"We want to help bring about the day when African American and other minority farmers can turn their attention to growing crops and revitalizing rural communities instead of filing complaints and lawsuits to secure the equitable service to which they are entitled in the first place.

"Because of the cumulative effects of many years of discrimination and neglect, we are also proposing remedial measures and special services intended to reverse the impact of years of discrimination and neglect on many minority farmers. Our other recommendations include actions that can be taken to improve services to the many farmers who have suffered disasters in recent years, and some ideas on how to assure that new farmer programs will also serve socially disadvantaged producers."

We have also attached for the use of this Committee an extensive appendix of the research and policy recommendations Rural Coalition with our members have devel-

oped and shared over several decades. Central to this work especially as related to Black farmers were our founding members including the Rural Advancement Fund of the National Sharecroppers Fund (founded 1937) and the Federation of Southern Cooperatives/Land Assistance Fund (founded 1967), and members who have formed and joined since, including Concerned Citizens of Tillery, Cottage House, Inc., North Carolina Association of Black Lawyers Land Loss Prevention Project, Operation Spring Plant and Oklahoma Black Historical, and our allies and partners including Intertribal Agriculture Council and Arkansas Land and Farm Development Corporation and the National Family Farm Coalition and Farm Aid.

The attached Congressional Testimonies include the many policy recommendations we jointly made over the years to this Committee and to the U.S. Senate since the first hearings in 2002. On the issue of credit, we have also attached numerous policy briefs related to Farm Credit, many authored by our Policy Advisor, Quinton Robinson, who in 2002 was the House Agriculture Committee staff member who organized the first hearing in the Subcommittee on Departmental Operations. Of particular relevance at present is the need for USDA Farm Services Agency to issue regulations to fully implement the Equitable Relief Provisions and the Heirs Property Relending Fund passed in the 2018 Farm Bill

Over these years, our team of collaborated have worked with the House and Senate Agriculture Committees to develop and promote passage of 40 sections passed in farm bills and related legislation since 1986. In those years, we worked with Rep. Edolphus Towns, whose staff member Brenda Pillars gave us access to a typewriter when the opportunity for a new amendment arose, including the amendment for matching grants for state mediation programs. The most extensive work began in the 1987 Agriculture Credit Act when discrimination by race and ethnicity was first defined in the context of Federal Agriculture Policy.

It continued in section 2501 of the 1990 Farm Bill, which authorized the first program to tangibly support the organizations who serve Black and other farmers who had suffered discrimination, called the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (OASDVFR). That statute for the first time that recognized the importance of this network of community-based organizations, including many who testified in this hearing, by making them eligible for grants and contracts. We will underscore the importance of the direct one-on-one technical assistance they have long been doing as a critical factor in stopping foreclosures and helping Black farmers hold onto their land.

We call particular attention to the aforementioned USDA Partners Process. Beginning in 2005 and continuing into the Obama Administration, this process convened a series of dialogues, or conversations, on critical barriers faced by BIPOC farmers and the community-based groups who served them with interagency teams of USDA career staff. The process was led by Shirley Sherrod and other CBO leaders. We estimate that as many as 500 people contributed over those 5 years. The comprehensive *A Time to Change: A Report by the Assessment Conversations Team,*[1] Sept. 22, 2010 remains useful today both to measure progress and to identify additional changes. It was structured to identify problems, propose solutions including statutory changes needed, and also to describe what success would like. Many of the recommendations informed our proposals to you for the 2008 Farm Bill, and around 30 passed in the statute.

Since that time, many recommendations developed by the wide network of community-based organization who work directly every day with this nation's Black farmers and ranchers, and other Tribal, Latino, Asian Pacific, and other small-scale producers have been passed into law, with some implemented more fully than ever. We have also mobilized our communities to help lawmakers understand the degree of support for this proposals, including with sign on letters and collaboration with Members of Congress especially in Congressional Black and Hispanic Caucuses, annual Dear Colleague Letters. One of the early ones was led by Rep. Sanford Bishop who for years led efforts to continually press for more funding for the 2501 Program, from $1 million to its present funding level. We will continue to work also with Secretary Vilsack and his team to assure these funds more effectively reach and support the eligible entities as defined by statute. We will be forwarding additional recommendations to you on how the full suite of Outreach, Beginning Farmer and Local Food programs can best complement each other.

The drafting and action by this Committee in this year of 2021 represents a historic and significant step forward in a new effort to begin to right some of the longstanding wrongs faced by Black farmers. We have attached for your record a copy of our March 3 sign on letter that we prepared to help support passage of the historic provisions he included in the American Rescue Plan and a brief authored by

[1] *https://drive.google.com/file/d/10rJEsuSOef1_3jOhA3HCDEkCIHJ_cDPr/view.*

our Policy Advisor on the relevant authorities supporting these provisions. We are deeply grateful to Chairman David Scott and the Members of this Committee, several of whom we have worked with for decades, for this action.

Relevant Data and Research

We are already working with USDA on the implementation of Sections 1005 and 1006 of the American Rescue Plan. As the Committee's work of oversight continues and the preparation for the 2023 Farm Bill commences, we share additional proposals we are refining with our members and allies to support Black farmers in securing land tenure for their families and generations into the future and restoring the agriculture as an economic base of their communities.

Particularly as the debate over climate mitigation begins, we will be highlighting the importance issue of land tenure. New investments of Federal dollars over time have often favored larger scale farmers at the expense of others. But as the recent pandemic has shown us, crises such as these cause fundamental disruptions in existing food chains. Resiliency now and in the future point toward the value of reorienting the processing and distribution of food to shorter and more direct local and regional farm to food networks that are closer and more readily adaptable to serve the food needs of some of this nation's most vulnerable communities.

We will specifically address the issue of heirs property later in this piece. First, we thought it helpful to share a sampling of charts we have developed in connection with a research project under an Agriculture and Food Research Initiative project with the National Institute of Food and Agriculture. This AFRI standard research project, "*Community Resilience Through Land Tenure Rights,*" will examine the impacts of land tenure arrangements, non-ownership and related encumbrances on the management of small to medium-sized farm operations in a diverse cross section of socially disadvantaged agricultural communities. Rural Coalition and its co-principal investigators include both CBO's and researchers from Tuskegee University and Kansas State University. North Carolina Association of Black Lawyers Land Loss Prevention Project are co-Principal Investigators, with almost a dozen other CBO partners.

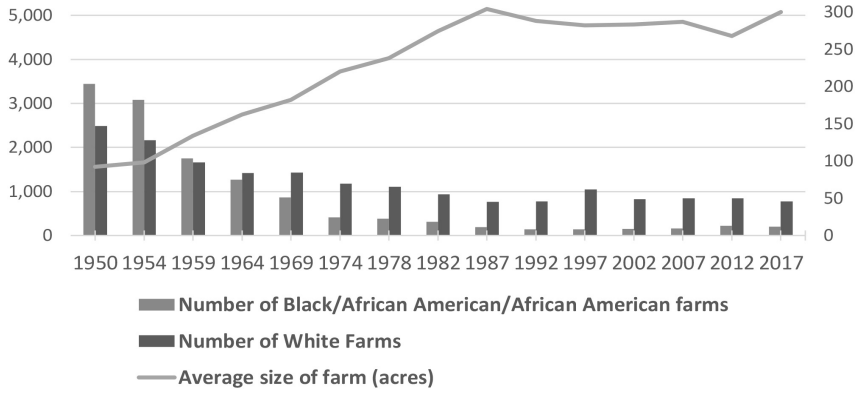
We will also use similar profiles for in related research under a Sustainable Agriculture and Research grant, *Securing Land Tenure Rights for Heirs Property Owners.* The North Carolina Association of Black Lawyers Land Loss Prevention Project is Principal Investigator. The Rural Coalition and Tuskegee University and Virginia State University are Co-Principal Investigators along with multiple CBOs and Farmers in the Southern Region. The second grant focuses also on the quality and availability of legal services.

These charts provide a snapshot of the trends in loss of land over time as far back as 1959 for Orangeburg county. There also charts for Barber Co[.], AL and Halifax county, NC. While there are specific issues with data at various points in time, we have found that the trends reflected are consistent with data we and others including the 1890 Universities have collected.

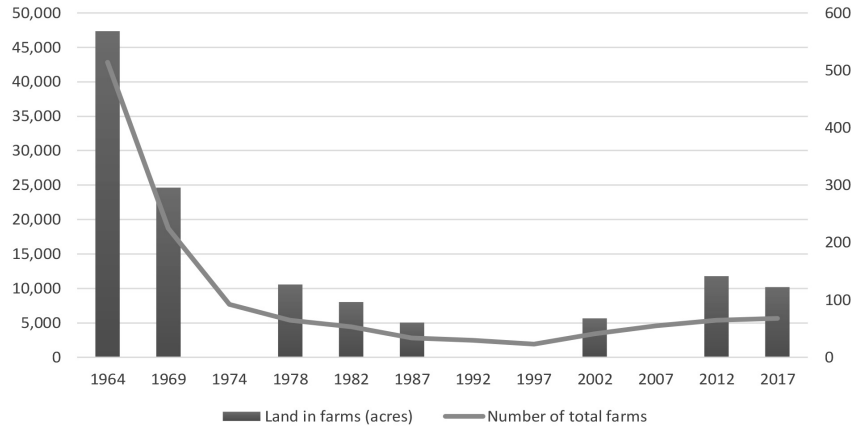
What the charts clearly provide is a sense of the cumulative impact of the past and in some places ongoing failure to address and halt discrimination. The result is the unjust and unnecessary loss of land by African American producers whose place on the land predates the arrival of many others in farming today.

State of Black Farmers in the U.S.—Historic Land Tenure by County

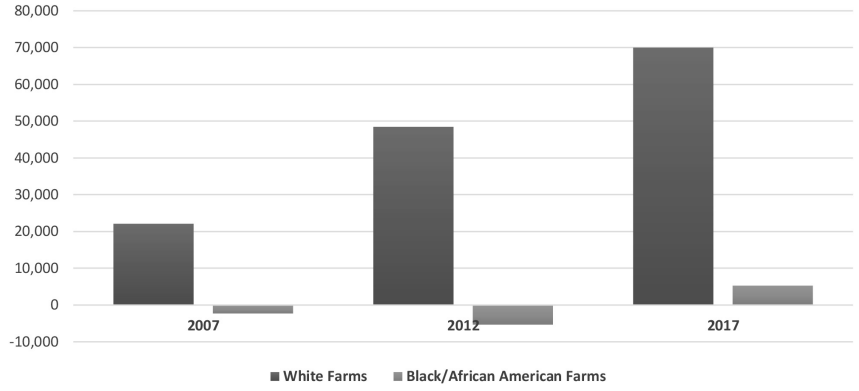
Change in Farm Numbers, Orangeburg County, South Carolina (1950–2017)



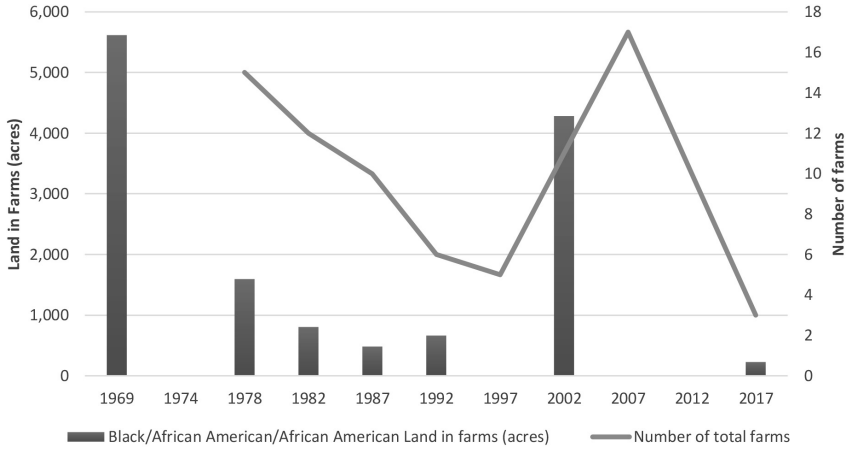
Black/African American Land Tenure in Barbour County, Alabama, 1964–2017



Net Cash Farm Income by Race in Barbour County, Alabama, 2007–2017



Black/African American Land in farms (acres) in Dale County, Alabama, 1969–2017



Decrease in Black/African American Farms and Land in Halifax County, North Carolina, 1978–2017

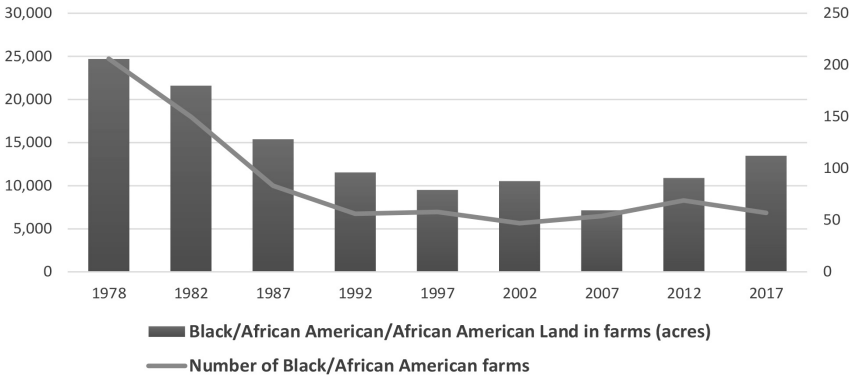
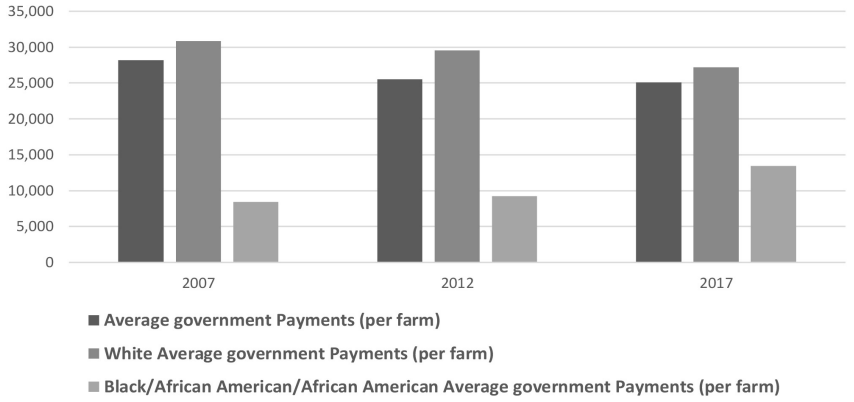


Chart Average Government Payments by Race Ethnicity in Halifax County, North Carolina, 2007–2017



In almost every county we have already researched over several decades, land ownership has become more concentrated. Many farmers and ranchers have been unable to retain their land. The evidence of disparate treatment is particularly notable with respect to Black farmers and ranchers.

In collaboration with our farmer and rancher leaders, we organized several participatory research projects designed to better understand their views of USDA. The first was around issues related to participation in Crop Insurance programs. The second followed a series of farmer-led training we developed with our members. Our reports are included in the appendix, but the following charts provide a snapshot of how the needs of farmers overlap or diverge with the structure and operation of USDA programs and services.

Table 1: Socio-Demographic Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)

Characteristic	Percent
Gender	
Male	67.5
Female	32.5
	(1,048)
Race/Ethnicity	
American Indian	24.8
Asian American	3.5
Black/African American	54.9
White	5.0
Hispanic/Latino	10.7
Other	1.1
	(1,052)
Highest Level of Education	
Less than High School Degree	29.6
High School Degree	34.8
Some College, No Bachelor's Degree	29.6
Bachelor's Degree or Higher	6.0
	(1,050)
Total Farm Income (after expenses) in 2003	
Less than $4,999	54.0
$5,000–$9,999	23.5
$10,000–$19,999	13.9
$20,000–$29,999	4.3
$30,000 or More	4.3
	(814)

Table 2: Farm Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)

Characteristic	Percent
Own Land	84.5
	(911/1,078)
Rent Land from Others	38.8
	(409/1,053)
Own *and* Rent Land	28.1
	(295/1,048)
Acres in agricultural production in 2003*	
Mean	85.2
Median	15.0
Minimum–Maximum	0–2,400
	(937)
Acres in agricultural production in 2004*	
Mean	87.4
Median	15.0
Minimum–Maximum	0–2,600
	(935)
Produced Commodity Crops in 2003 or 2004	54.5
	(561/1,030)

Table 2: Farm Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)—Continued

Characteristic	Percent
Produced Fruits/Vegetables in 2003 or 2004	54.6 (553/1,013)
Raised Livestock in 2003 or 2004	47.1 (480/1,020)
Produced Commodity Crops, Fruits/Vegetables and Livestock in 2003 or 2004	14.3 (137/960)

*Ranchers often did not include grazing acreage in their estimates of land in agricultural production.
Therefore, the numbers presented here are conservative estimates.

Table 3: Risk Management Strategies of Participants from Rural Coalition Financial Training Project (2004/2005)

Risk Management Strategy	Percent
Have Risk Management Plan	4.7 (45/961)
Use a Tax Accountant	42.7 (439/1,029)
Make Use of IRS Form Schedule F	18.6 (165/886)
Ever Purchased Crop Insurance	
Yes, Currently Have Policy	9.6
Yes, But No Current Policy	5.8
No, Never	84.6 (971)

Table 4: Labor Use of Participants from Rural Coalition Financial Training Project (2004/2005)

Risk Management Strategy	Percent
Spouse, Children or Other Family Members Receive Wages from Farm	17.7 (154/869)
Number of Full-Time Employees	
None	85.4
1–10	14.0
11–20	0.3
21 or More	0.3 (988)
Number of Regular Part-Time Employees	
None	80.6
1–10	17.9
11–20	0.9
21 or More	0.6 (987)
Employed any Seasonal or Migrant Employees in the Past Year	16.4 (127/773)
Any Seasonal or Migrant Employees Participate in H–2A Program	*50.4 (64/127)*
Understand Tax Rules for Farm Labor	14.5 (126/870)

Table 5: Awareness of and Participation in Government Programs Among Participants from Rural Coalition Financial Training Project (2004/2005)

Agency/Program	Percent Aware
Farm Services Agency Credit Programs	52.5 (533/1,015)
Farm Services Agency Disaster Payments	54.4 (522/959)
Natural Resources Conservation Service	48.7 (465/955)
Cooperative Extension Service	58.1 (567/976)
Rural Development	42.0 (400/953)
Risk Management Agency	35.7 (335/939)
Program	**Program Participation**
Ever Applied for a Loan from USDA	27.9 (234/839)
Ever Been Denied a Loan from USDA	*91.3 (210/230)*
Ever Received a Loan from USDA	*32.0 (72/225)*
Ever Received USDA Disaster Assistance	36.2 (354/977)
Participate in any Annual Commodity Program	13.5 (113/839)
Participate in any Conservation Program	8.1 (84/1040)

The farmer/mentors requested that we ask not only questions about the number of farmers who prepared schedule F of their tax return. Only 18.6% said yes. They also wanted to know how many used tax preparers. 40% responded they did. Many of the groups who participated in this research continue to this day provide direct technical assistance to producers on the importance of good financial records, and the need also to provide required reports to document production and report losses.

These findings also underscore the importance of sustaining community-based organizations who are trusted by farmers for assistance in understanding and navigating USDA programs.

Also instructive is one chart from an earlier study which included a slightly different population of producers. We will have more to share as this Committee begins work on the next farm bill and on climate issues. We looked at the level of participants in all types of insurance and these are our findings from the year 2002.

Table 4. Insurance Use from Small, Limited Resource and Minority Farmers Survey †

Variable	Frequency	Percent
Currently use any form of insurance		
Respondents answering yes	116	137
	84.7	100.0
Types of insurance used		
Health insurance *	97	83.6
	116	100.0
Dental insurance	43	37.1
	116	100.0

† **Editor's note:** there is no corresponding table note for the entry with the asterisk. The table has been published herein as received from Rural Coalition/Coalición Rural.

Table 4. Insurance Use from Small, Limited Resource and Minority Farmers Survey †—Continued

Variable	Frequency	Percent
Accident insurance	39	33.6
	116	100.0
Life insurance	74	63.8
	116	100.0
Disability insurance	29	25.0
	116	100.0
Auto insurance	100	86.2
	116	100.0
General homeowner or renter insurance	84	72.4
	116	100.0
Disaster insurance	25	21.6
	116	100.0
General liability insurance for farm operation	43	37.1
	116	100.0
Crop insurance	29	25.0
	116	100.0

We underscore the importance of the Farm Opportunities Outreach and Training Programs, including the Outreach and Assistance Program for Socially Disadvantaged Farmers and Ranchers. Our community-based organization members routinely accompany farmers the farmers we serve to USDA offices to make sure they are prepared to request services they need and to navigate USDA systems.

Our research findings highlight the need for improved connections and restoration of trust with USDA. Our organizations led efforts to establish systems that would allow USDA to monitor how these systems are working. One particular recommendation as far back as the 2002 Farm Bill is to require the farmer be provided a Receipt for Service on each visit to the agency. This was adopted in 2008 as a require to provide a Receipt upon request. Rep. (and now HUD Secretary) Marcia Fudge offered an amendment during the 2014 Farm Bill Mark-up which is now a statutory requirement whose validity is affirmed including in an Administrative Law Judge opinion on a farm appeal. We remind the Committee that the required receipt for service is not uniformly provided in all offices and farmers are still facing push back for asking or outright refusal of their request.

Just last evening, our Rural Coalition Board Member Barbara Shipman of Cottage House, Inc. in Ariton, Alabama shared this story. "I had one of my farmers to go into a particular NRCS office and FSA office to request assistance. The young lady threw and not only hit him in the face with his folder, but she also told him '*get out of the office and don't come back until you have 3 years' worth of farm records*.' Let me tell you please—returning military members have PTSD it didn't take the snap of a finger to get them in the military zone again so that's why I go with them. I ended up having to talk to State Director. He said he was going to get involved. He called back to say he did so and said I should have no problem with anybody else like that."

Mrs. Shipman, herself an Army veteran of the Gulf War, routinely welcomes recently returned service members from Fort Rucker to consider farming. This particularly newly returned Veteran had grown up on a farm and had a plan for producing pecans and goats.

She also recounted that she recently accompanied two farmers to visit four separate county offices to determine who was supposed to serve them. One was not open for a prescheduled appointment; another was closed. In the last office, the staff member agreed to get on the computer to ascertain the correct service center. She said it was closing time, but she could provide service there at another time. Barbara told her, "that's fine as long as he leaves here with two things—a letter of receipt for service that provides his farm and tract number and a copy of the technology map of where his land is located. Then in future all you have to do give the address and you can pull it down on the computer and print it all. When we walked out of the office, I told him that when you get ready to go back to the office you let me know. We will go together because that's what I do. I will walk him through how to get those things he wants, and I know he's in that computer system. He can't march over to the NRCS, no way, if he's not in the computer system in FSA, step

number one." She works with 40–60 farmers every year to assure service is done right. Without her, "they'll just turn him away and they won't even tell them about the receipt for service and they will not tell him he's due a copy of that topology map of his land or get him a farm and tract number—because that farmer number goes on that letter receipt for something so when he goes in the next time he has to do his put his farm in tracking down in the system and it brings up his file right and then he should have access."

Technical Service Providers and Community Based Organizations—Mrs. Shipman has many other examples to share. Community based organizations need to have a sustained funding, perhaps in new ways, to assure the many CBO staff members who provide such services can be compensated, retained and prepare to train others to perform these services. They could form the foundation of a network of CBO based technical service provides with authority to work on technical assistance for both FSA and NRCS programs.

She and many of our other members, including Mr. Willard Tillman of the Oklahoma Black Historical Research Project, have the stressed the need for ongoing support in order to do the work necessary to help farmers and ranchers connect with USDA. They are also able to build relationships with service centers and assure farmers are able to do what they need to do. These CBO technical service provides are also provide the invaluable service of calling inadequate service to the attention of USDA leaders at the state and national level, so immediate intervention can be made, with appropriate accountability. It is critical to set in place new policy to provide this kind of trusted technical support to help farmers, ranchers, forest land owners and their families secure land and rebuild local economies.

Technical Support Providers are now used extensively in conservation programs. Authority should be provided to allow these providers who work with CBO's to cover FSA programs also. This would help CBO's to build a sustainable network of next generation leaders trained by our skilled leaders who have supplied technical assistance to our farmer members for over 4 decades. We believe that such investments would improve family wealth, stabilize land values and secure a tax base with improvements to the education, public works and the economic situation of the whole community.

Critical and Continuing Issues—County Committees

Our early collaborative work began in 1997, when we convened a group to address the issue of Farm Service Agency County Committees. After a week of training and dialogue at USDA headquarters coordinated in cooperation with NRCS Chief Pearlie Reed and FSA Credit Director Lou Ann Kling, we examined voting patterns, and eligibility and access issues. Our members looked at county data of eligible voters and how many voted in county committee elections, and ballot counting procedures. We encouraged turnout with some results in subsequent years.

We have also examined over the past few decades the data systems of USDA and how transparency and accountability could be advanced with modification of these systems. In 2002, we prepared testimony for the Senate Committee on Agriculture where we were invited to testify by Senator Richard Lugar. This statement, which we have not located, was very similar to the one shared of the House hearing at the same time.

Senator Lugar, with Senator Blanche Lambert Lincoln and others, included language we recommended to assure transparency and accountability in USDA practices, including the collection and publication of data on the participate rates of producers in USDA programs by race, gender and ethnicity. These provisions were added and were updated in subsequent farm bills. More work is necessary to assure these are available to farmers and groups working with them at the county level. They are also essential to help the Secretary and his team to in a proactive way identify offices that are doing a good job, and offices where improvements or other action are needed.

For many years we urged USDA and the Congress to move from a complaint generated system of solving exclusions proactively instead of only after farmers had have to enter the long and risky process of appeals, civil rights complaints and litigation. We urge the Secretary to also engage the office of the Assistant Secretary for Civil Rights to have the ability to transform systems of analysis necessary to offset problems before the pose a barrier to more farmers.

We share the following story from our Rural Coalition newsletter of December 2000 which recounts the proceedings of the first Senate Agriculture Committee Hearing on Civil Rights in September that year.

Senate Agriculture Committee Holds First Hearing on Civil Rights in Agriculture: RC Chair Zippert Testifies

On September 12, John Zippert, Chair of the Rural Coalition and Program Director of the Federation of Southern Cooperatives, testified on behalf of both organizations at a landmark Senate hearing on Civil Rights in Agriculture, convened and led by Agriculture Committee Chairman Senator Richard Lugar (R-IN). The results of research done by Rural Coalition Member groups in 1996 and 1997 were included in Zippert's statement and provided the most specific evidence the committee received to support farmers' contentions of long-standing problems of disparate treatment by the county committees that oversee most Farm Services Agency (FSA) programs.

The USDA Inspector General (IG) Roger Viadero gave impassioned testimony on the state of the complaints processing system at the Department, with supporting statements from the U.S. General Accounting Office. Viadero has posted on the IG Web page a complete county-by-county breakdown of complaints filed. He singled out the USDA Office of Civil Rights as the key barrier to USDA's civil rights record, but noted that he had studied FSA county committees and found no problems. He asked what could be wrong with the committees, because they are elected by farmers.

A diverse array of Senators then asked incisive and pointed questions of U.S. Department of Agriculture (USDA) witnesses. Senators Thad Cochran (R-MS), Kent Conrad (D-ND), and Blanche Lincoln (D-AR) joined Senator Lugar in seeking answers from USDA officials about Viadero's testimony: why USDA remained so slow to act on complaints and why civil rights office operations had not yet improved.

In response, USDA Assistant Secretary for Administration Paul Fiddick outlined his plan to professionalize the management of the civil rights operation with techniques he developed in his work in private sector businesses. He pointed in particular to his creation of a new career post in the Civil Rights office, that of Deputy Director, and he introduced David Widdingham, who is responsible for Operations. When the Senators asked Mr. Widdingham to recount his expertise for the job, he responded that he had been the long-time Director of Civil Rights for the FSA. The USDA employees who testified later had to explain to the Senators why the audience reacted incredulously upon hearing the appointment of a former FSA employee cited as a solution to USDA's longstanding civil rights problems. The real answer: FSA is widely seen as the agency with the worst record of treatment of minority producers, and the very one whose failure to address civil rights complaints for many years led to the *Pigford v. Glickman* lawsuit.

The tone of the hearing then changed, with more scrutiny placed on employment practices and program delivery within USDA. Senator Tom Harkin (D-IA) noted that he was less interested in how the Civil Rights Office was processing complaints than he was in learning why complaints were still being generated. The answer came from the third panel, which included farm and employee organizations such as John Boyd of the National Black Farmers; Lawrence Lucas of the Coalition of Minority Employees; Alexander Piries, the lead attorney on the *Pigford v. Glickman* lawsuit; and others told him why. There was marked similarity in the issues they raised. USDA programs, particularly within FSA, still do not operate fairly, and USDA employees in several agencies still work in an atmosphere of discrimination and hostility.

John Zippert provided the committee not only with evidence of problems, but with recommended solutions. He called for the complete removal of FSA employees from any action responding to complaints in the *Pigford v. Glickman* lawsuit and asked that USDA and the Justice Department be told to stop appealing cases where African American farmers had their claims accepted. He urged the Senators to assure that full funding was made for the Section 2501 minority farms outreach program. He advocated that bureaucratic barriers to the Minority Farm Registry be addressed and the Registry be implemented immediately.

Zippert also countered Viadero's assertion that he found no systemic problems with the county committee system. Zippert noted that if the IG knew so little about the problems with the county committees, perhaps his other findings were also inaccurate. Senator Lugar thanked the Rural Coalition specifically for the new details on county committee elections. Both he and Senator Harkin outlined the need for more action on county committees. After many years of work by the RC and others, attention is finally being paid to the real problems with the committees and the continuing injustices within USDA. The final RC statement will soon be available on our Web site: **www.ruralco.org**.

Update is published several times a year for Member organizations and Friends of the Rural Coalition/Coalición Rural, 1411 K St., NW Suite 901, Washington, DC 20005. Phone: 202-628-7160, fax: 202-628-7165, email: ruralco@ruralco.org; Web: www.ruralco.org. Subscriptions are $25 per year. Questions about and submissions for *Update* can be directed to our Membership Coordinator, Beth Kanter.

Rural Coalition is an alliance of regionally and culturally diverse organizations, throughout the U.S. and Mexico, working to build a more just and sustainable food system. We envision a food system which:

- brings fair returns to minority and other small farmers, as well as rural communities;
- supports just and fair working conditions for farmworkers;
- protects the environment; and
- brings safe and healthy food to consumers.

County Committees—Below is a snapshot—the last we have—of data on the number of votes cast in the county election of 2009. This election was in only one Local Administrative area.

Data on the over composition of county committees is also included in some attached statements.

Total Ballots Cast By Race, Ethnicity, and Gender in 2009 [1]

Gender	Ethnicity	American Indian or Alaskan Native	Asian	Black or African American	Native Hawaiian or Other Pacific Islander	Unknown	White	Total Ballots Cast by Gender and Ethnicity
Female	Hispanic or Latino	73	2	34	9	145	960	1,223
	Not Hispanic or Latino	172	108	408	226		3,316	4,230

Total Ballots Cast By Race, Ethnicity, and Gender in 2009 [1]

	Unknown	123	78	319	147	1,095	1,782	3,544
Female Total		368	188	761	382	1,240	6,058	8,997
Male	Hispanic or Latino	100	52	27	10	366	1,332	1,887
	Not Hispanic or Latino	392	106	823	125		44,837	46,283
	Unknown	397	175	992	113	774	40,435	42,868
Male Total		871	333	1,842	248	1,140	86,604	91,038
Organization	Hispanic or Latino	14	3	9	1	314	494	835
	Not Hispanic or Latino	142	95	448	28	277	78,620	79,610
	Unknown	116	45	607	41	1,217	66,204	68,230
Organization Total		272	143	1,064	70	1,808	145,318	148,675
Unknown	Hispanic or Latino	0	0	3		8	92	103
	Not Hispanic or Latino	3	20	43	11	416	1,325	1,818
	Unknown	6	6	6	7	1,772	454	2,251
Unknown Total		9	26	52	18	2,196	1,871	4,172
Total Ballots Cast by Race [2]		1,520	690	3,719	718	6,384	239,851	252,882

Ballot Summary

LAA Total Eligible Ballots	2,021,637
LAA Total Ballots Cast	252,494
Percentage of Eligible Voters that Cast Ballots	12%
National Total of Ballots Disqualified	13,156
Percentage of Ballots Disqualified vs. Ballots Received	5%

[1] Represents only those LAAs in which an election was held in 2009.
[2] Due to producers' ability to select more than one race, the Total Ballots Cast in 2009 may be greater than LAA Total Ballots Cast in Ballot Summary Table.

When requirements were added in the 2002 and 2008 Farm Bills to authorize the assignment of minority advisors to county committees and to update election provisions, the Congress also changed the law to tie eligibility to participate on county committees to those who participated in farm programs. This should be extended to include farmers who are eligible to participate and registered with USDA, even if they choose not to participate.

However, issues with county committees also continue. In the past 2 weeks, we were contacted by an Oklahoma farmer who is employed in another state. He has informed the County Committee a few years ago that the farm had been transferred to his name. He was seeking help because he currently has a neighbor who has been planting wheat on land that belongs to him and filing claims for payments. He has provided documentation to show that the FSA county office reached wrote to the farmer demanding he send the certified lease so the neighboring farmer could collect his payment. The farmer owner wrote a cease and desist letter to his neighbor and asked the office to address the issue of the illegal claims. He also noted that the lease given to the office by the neighbor was fraudulent. While he was seeking response from the county, he reported that the staff asked him not to report this as it would "get a former employee in trouble." A county committee member also asked him if he wants to sell his land.

We believe these issues merit a full review of the role and practices of the use of county committees and their continuing failure to include and serve the needs of all farmers but especially Black Farmers. In the next farm bill, we believe it is time that this Committee review ways to replace county committees with a more professional and accountable system.

FSA Farm Credit—Immediate Actions Needed

We have worked extensively on the issues of Farm Credit over many years and hope we can provide additional recommendations as the Committee addresses those particular issues.

At present, the two most essential credit related issues are to assure that Farm Service Agency issue regulations and implement the following:

(1) Ensure Equitable Relief Provisions to protect the farmer in the case of errors or intentional actions in loan agreements by Farm Service Agency staff members, and

(2) Implement the Heirs Property Relending Program.

With respect to the Relending program, Congress since the 2018 Farm Bill has appropriated $20 million for FSA to relend to entities qualified to lend as community development financial institution, and who have significant demonstrated experience serving the needs of socially disadvantaged farmers and ranchers.

There are such institutions available to begin working with families to resolve heirs property encumbrances which keep them out of full participation in USDA

programs. These funds are urgently needed. The pandemic has caused the loss of over ½ million members of our society. Some of them are farmers. Their families urgently need assistance in handling the difficult issues of settling estates. Making these program available will enable the groups who know how to do this work to immediately assist Black and other people of color landowners to secure land tenure in a way the addresses the rights of all interest holders, and to emerge with a succession plan to guide that family in the future.

Direct and Guaranteed Loans and Borrowers Rights

Section 1005 of the American Rescue Plan provides funds to Black farmers and other people of color borrowers to pay off loans from both FSA and Farm Credit Administration. We will have attached a brief we provided to the General Accounting Office in advance of the study they did on the availability of credit to Socially Disadvantaged Farmers and Ranchers. The report suggests several issues for the attention of the Administration and the Congress. We will prepare future input on these provisions.

It is also important to understand the issues farmers are encountering due to lack of data collection and clear procedures to assure that all borrowers rights, including the Equal Credit Opportunity are assured. We have recommended to the Secretary that clear procedures for Farm Credit Borrowers to identify themselves as socially disadvantaged and eligible for the Emergency Relief provided must be set in place.

We further refer you to correspondence between Rural Coalition and both the FSA and the Farm Credit Administration referring to the case of a young farmer. We have redacted the farmer's name. These letters show how FCA says go to the lender, the lender says to go to FCA, and FSA asserts they have no authority on guaranteed loans. These illustrate the point that there is no clarity for the borrower and no real explanation if anyone has authority to act if farmers feel they were discriminated against on a guaranteed loan.

We urge Congress to address these gaps. We further endorse the recommendations provided in the hearing by the Federation of Southern Cooperatives that a separate entity within or similar to other farm credit institutions be established to attend to the unmet needs of this sector of farmers and ranchers.

Heirs Property, Insecure Land Tenure, Climate and Rural Communities

The Federation of Southern Cooperatives/Land Assistance Fund has been identifying the importance of addressing heirs property issues for decades, beginning with a 1980 Report by the Emergency Land Fund.

In 2017, the Oklahoma Black Historical Research Project convened the 100 Farmers Summit In Oklahoma City in March 2017 for in input in advance of the 2018 Summit.[1] The 100 Summit Report: *Addressing the Needs and Concerns of the Underserved Minority Family Farming Community* is included in the attachments. The following issues raised by the 100 Black farmers on heirs property include:

(A) **Specific Issues Related to Heir Property**—The following were the key issues that needed to be addressed to restore access to programs for producers lacking clear title or lease on the land they farm or seek to farm:

Heir Property: If you have land but there is no will or document saying who will be the administrator of it, your ability to administer and use it is very difficult. If there is not an administrator for the land, you will not be able to get a loan through the USDA. For example, when you want to take out a loan, but you are the beneficiary of land along with your siblings—you have to get all other siblings to sign on to your loan. You will end up in a case with the bank and your siblings to settle your claim interest in the land. Speculators will seek out one or two siblings to see if they can buy them out, then they can petition the courts for the full property to be sold. Called a "speculating interest" in the land to cause land loss. You get a minimal amount of the value of that land.

Arkansas' law has changed—the Uniform Partition of Heirs Property Act allows an heir who is a co-owner to buy out another who wants to sell their share of a property at the market value of the property.[2]

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[1] Oklahoma Black Historical Research Project, with Rural Coalition, *et al.,*[1] The 100 Summit Report: *Addressing the Needs and Concerns of the Underserved Minority Family Farming Community,* 2017.

[2] In addition to Arkansas; Alabama, Connecticut, Georgia, Montana, Nevada, New Mexico and Texas numerous states have now adopted or have introduced versions of the *Uniform Partition of Heirs Property Act* (*http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/uphpa_final_10.pdf*). Passage of the Fair Access to Farmers and Ranchers provisions in the 2018 Farm have helped build support to enact the law drafted by the nonprofit *Uniform*

Adverse Possession is also used by white farmers, investors and property owners to take land. They pay property taxes and take ownership, even where there are not heir property issues. For example, an African American woman rented her land to a white farmer and as part of the rent he paid her taxes for 5 years. One year he did not pay rent and told he did not owe it because now he owned the land Strategies: Get more protections in place for African-American families. A lot of risk factors that can result in land loss—need to address them comprehensively.

Key point: There is a systemic lack of access to information and resources to resolve heir property issues—We see a great deal of land that is idle, land that could be productive but isn't. The legal risk varies from state to state. In some states, someone can seize rights to a property simply by paying delinquent taxes. The time in which one is considered to have relinquished their rights to their land varies by state. There was a provision in the 2014 Farm Bill to help get Black farmers' land back; but it didn't go anywhere. We need new support for education on wills and estate planning.

Heirs Property and the Ecological Costs of Discrimination

Oklahoma Black Historical Research Project worked over the past decade to engage Black farmers in NRCS programs. With Rural Coalition and the Scholars of the America University Farm Bill practicum, the researched the data and experiences of Black farmers in access USDA programs. Their findings are summarized and published in the research paper on the *Ecological Costs of Discrimination.*[*3]

Invasive species thrive in places facing climatic changes and put farmers at further risk. In Oklahoma, *eastern redcedar* is spreading at the rate of 800 acres a day. Without help for mitigation from USDA especially for historically underserved farmers who farm on heirs property, small cow and calf operations have seen their grazing land taken over by redcedar, which competes with pastureland by consuming up to 55,000 gallons of water per acre per year and puts the viability of their operations at further risk. Other risks they have faced over the past decade include severe cycles of floods, droughts, fires, freezes and tornados. Farmers who were deemed ineligible for NRCS program, the OBHRPI learned, were denied because they lacked the documentation to secure farm and tract numbers to demonstrate their control of the land on which they sought benefits.

The Fair Access for Farmers and Ranchers Act, drafted by Rep. Fudge, and introduced in the Senate by Senators Doug Jones and Senator Tim Scott, authorized the aforementioned the heirs property relending fund. It also authorized the use of alternate methods of documentation to allow access for farmers to NRCS and other programs to allow them to care for land. For the first time in Federal law, it made some of the methods consistent with the processes outlined in the Uniform Partition of Heirs Property state passed law. The third provision, Section 12607 of the 2018 Farm Bill authorized Farmland Ownership Data Collection that sought to identify the land tenure trends that may affect generational transitions, and barriers to entry for beginning and socially disadvantaged farmers and ranchers.

The data and studies compiled under Section 12607 are critical inform and guide all levels of agricultural policy making that concern the critical dynamics of heirs' property and absentee land ownership in farming communities. Appropriations of $3 million annually were authorized. **We urge this Committee to assure this important initiative is full funded. This baseline study is essential to allow the Congress to anticipate the impact of various kinds of climate interventions on farm and forest land tenure especially for Black Farmers.**

Heirs Property and Forest Land

Securing and building land tenure is also critical to protecting the intergenerational transfer of land and wealth and building a community with a healthy ecosystem and a tax base to sufficient to support quality education, employment opportunities, and a strong infrastructure. The following abstract of the paper "Taking

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Law Commission (*http://www.uniformlawcommission.com/*) to make it easier to divide property and preserve family wealth as the owners multiply over generations.

[*] *(https://www.researchgate.net/publication/336701771_Ecological_costs_of_discrimination_racism_red_cedar_and_resilience_in_farm_bill_conservation_policy_in_Oklahoma)*

[3] Fagundes, Tillman, *et al., Ecological costs of discrimination: racism, red cedar and resilience in farm bill conservation policy in Oklahoma,* October 2019, RENEWABLE AGRICULTURE AND FOOD SYSTEMS (*https://www.researchgate.net/journal/Renewable-Agriculture-and-Food-Systems-1742-1713*) 35(4): 1–15, DOI: *10.1017/S1742170519000322* (*https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.1017%2FS1742170519000322*).

Goldschmidt to the Woods: Timberland Ownership and Quality of Life in Alabama"[4] summarizes the impact of the degree of highly concentrated land ownership on children, families and the communities:

> *Abstract: We use a database of property tax records for 13.6 million acres representing every parcel of privately owned timberland in 48 rural Alabama counties to test two hypotheses inspired by Walter Goldschmidt relating land ownership and quality of life. Our data show private ownership is highly concentrated and 62 percent is absentee owned. We employed Pearson correlations alongside Poisson and negative binomial regression models to estimate influence of both concentrated private ownership and absentee ownership of timberland. Our findings support Goldschmidt-inspired hypotheses that concentrated and absentee ownership of timberland exhibit a significant adverse relationship with quality of life as measured by educational attainment, poverty, unemployment, food insecurity, eligibility for free or reduced-price lunch at public schools, Supplemental Nutritional Assistance Program participation, and population density. Low property taxes in Alabama limit the ability of local governments to generate revenue to support public education or meet other infrastructural or service needs in rural areas. We call on rural sociologists and kindred spirits to pay more attention to the fundamental importance of land ownership which shapes the foundations of power and inequality affecting rural life in America and beyond.*[5]

We look forward to other opportunities sharing our proposals to more fully full address the set of issues we have raised, including with respect to climate. We further point to a critical need to assure farmers have access to the qualified and trusted legal and technical assistance necessary to protect their land.

In October 2019, the North Carolina Association of Black Lawyers Land Loss Prevention Project authored a Continuing Legal Education (CLE) manuscript "Assisting Heir Property Owners Facing Natural Disasters: History and Overview of Heir Property Issues." We participated in person as a panelist in the collaborative CLE webinar to train NC Legal Aid volunteer attorneys on service to impacted heir property owners. The webinar took place on October 23. According to Legal Aid's coordinator, there were approximately 124 webinar participants on that date and the course will continue to be available for training purposes.

Through individual direct legal intervention, technical assistance, outreach and policy innovation and implementation, the overall outlook for North Carolina's disaster-affected families has been substantially improved. The benefits include increased property retention, removal of barriers to assistance programs, enhanced food access, heightened farm business risk management, and family engagement in multi-generational planning as a safeguard against inherent co-ownership vulnerabilities.

We project that the pandemic will continue to emphasize the need for education on what defines sustainability and how environmental, economic, health stressors are intertwined and cumulative. This highlights the importance of collaborative work we have all done to expand the framework of justice and increase the tools and resources available to communities to take direct action to promote community health. We see our engagement with Black and Brown-led coalitions and initiatives advancing sustainable environments and community-controlled food only deepening and expanding.

We will provide a letter to Chairman Scott and the Committee in upcoming weeks that better summarizes our immediate recommendations for action.

Conclusion

Today, Black farmers find themselves still seeking financial compensation from years of discrimination by the United States Department of Agriculture (USDA). This financial compensation, along with the American Rescue Plan, has been called "unfair reparations," "another handout," or some other dehumanizing term by prominent and influential elected officials and others. This continued systemic and

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[4] September 2020 *Rural Sociology* (*https://www.researchgate.net/journal/Rural-Sociology-0036-0112*) 86(1) DOI: *10.1111/ruso.12344* (*https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.1111%2Fruso.12344*) Authors: CONNER BAILEY (*https://www.researchgate.net/scientific-contributions/Conner-Bailey-36320674*), ABHIMANYU GOPAUL (*https://www.researchgate.net/scientific-contributions/Abhimanyu-Gopaul-2179969094*), RYAN THOMSON (*https://www.researchgate.net/profile/Ryan-Thomson*), AUBURN UNIVERSITY (*https://www.researchgate.net/institution/Auburn-University*); ANDREW GUNNOE (*https://www.researchgate.net/profile/Andrew-Gunnoe*), MARYVILLE COLLEGE (*https://www.researchgate.net/institution/Maryville_College*).

[5] *ttps://www.researchgate.net/publication/344021201_Taking_Goldschmidt_to_the_Woods_Timberland_Ownership_and_Quality_of_Life_in_Alabama*.

institutionalized racism is further evidence of the unrelenting discrimination that Black farmers and their communities experience on a daily basis. Furthermore, many Black farmers, their families and communities continue to be on the brink of bankruptcy, foreclosure, and homelessness. The USDA must act now to implement the American Rescue Plan and related initiatives to empower Black farmers and their communities. The American Rescue Plan and related initiatives can only be successful if the USDA pays off Black farmers' USDA farm loan debts, creates an inclusive and equitable implementation process for the $1B authorized by Section 1006, and prioritizes policies that help Black farmers and their communities to hold onto their land and protect it from further discriminatory practices.

Introduction to the Appendix

We have affixed this appendix to provide this Committee with a record of some of the research, documentation, analysis and solutions the Black, Indigenous and other People of Color farmers and ranchers we serve have recommended over the years. These reflected repeated calls to our elected leaders to hold our U.S. Department of Agriculture accountable for these continuing abuses.

And we have provided this Committee with many policy recommendations, some of which have been adopted, some adopted but not yet implemented, and others ready to be adapted for the current day. We are not the only such groups have done so. We feel it is important for this Committee to have a record of the work of this important work at a time when the will to make these changes is greater than we have seen before.

Summary of Appendices

1. Congressional Letters and Testimony

Rural Coalition, *et al.,* Letter to the Leadership of the U.S. House of Representatives and the U.S. Senate to Support Emergency Relief for Farmers and Ranchers of Color, March 3, 2021.

Quinton R. Robinson, Esq., Policy Brief on the Need for Emergency Relief for Farmers of Color, Rural Coalition, March 4, 2021.

Statement of John Zippert on behalf of the Federation of Southern Cooperatives and Rural Coalition, to the Subcommittee on Departmental Operations, Committee on Agriculture, U.S. House of Representatives, Washington, D.C., September 25, 2002.

Statement of John Zippert on behalf of the Federation of Southern Cooperatives and Rural Coalition to the Subcommittee on Conservation, Energy, Research and Credit, Committee on Agriculture, U.S. House of Representatives, Washington, D.C., March 27, 2007.

2. Research Findings and Policy Recommendations

A Time to Change: A Report by the Assessment Conversations Team (*https://drive.google.com/file/d/10rJEsuSOef1_3jOhA3HCDEkCIHJ_cDPr/view*), Sept. 22, 2010 (link only to a comprehensive 150-page report of a multi-year assessment of USDA Prog[r]ams andservices with CBO leaders and USDA Agency Staff).*

John J. Green, PhD, "Summary Results from The Financial Training Project Assessment Survey: A Report to the Rural Coalition," Institute for Community-Based Research, Division of Social Sciences/Center for Community and Economic Development, Delta State University, February 2006.

John J. Green, Lorette Picciano, Heather Fenney, *et al.,* "The Insurance Needs of Traditionally-Underserved Farmers: Framework for a Multi-Community Assessment," presented at the Annual Meeting of the Rural Sociological Society, Montreal, Canada, July 2003.

Oklahoma Black Historical Research Project, with Rural Coalition, *et al.,*[1] "The 100 Summit Report: Addressing the Needs and Concerns of the Underserved Minority Family Farming Community," 2017.

3. Issues Related to Farm Credit and Guaranteed Loans

Rural Coalition Letter to the [Government Accountability] Office (GAO) regarding Sec. 5416. GAO Report on Credit Service to Socially Disadvantaged Farmers and Ranchers, Washington, D.C., March 3, 2021.**

Farm Credit Administration response to a farmer following a request for assistance with a complaint, December 18, 2014.

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* **Editor's note:** the report entitled, *A Time to Change: A Report by the Assessment Conversations Team,* was not included as a part of the Rural Coalition/Coalición Rural for the March 25, 2021 hearing submission's appendices. It is retained in Committee file.

** **Editor's note:** the letter is dated March 3, 2019. It has been published herein as received.

Rural Coalition Letter to the Farm Credit Administration requesting information on assuring protections under the Equal Credit Opportunity Act, December 19, 2014; farmer name redacted.

Letter from FSA Administrator Val Dolcini in response to our letter related to same farmer case, January 13, 2015, which includes the quote "FSA will be carefully reviewing the action taken by Farm Credit in this case and, if irregularities are identified, any loss claims will be adjusted accordingly. Aside from evaluating Farm Credit's adherence to published regulations for the administration of a guaranteed loan, FSA has no authority to oversee nor provide direction to the Farm Credit System. If Mr. (redacted) believes Farm Credit has acted improperly, he should contact the Office of Congressional and Public Affairs, Farm Credit Administration, in McLean, Virginia, which is the oversight organization for the Farm Credit banks." ***

Congressional Letters and Testimony

[1] Rural Coalition, *et al.,* Letter to the Leadership of the U.S. House of Representatives and the U.S. Senate to Support Emergency Relief for Farmers and Ranchers of Color, March 3, 2021.

[2] Quinton R. Robinson, Esq., *Policy Brief on the Need for Emergency Relief for Farmers of Color,* Rural Coalition, March 4, 2021.

[3] Statement of John Zippert on behalf of the Federation of Southern Cooperatives and Rural Coalition to the Subcommittee on Conservation, Energy, Research and Credit, Committee on Agriculture, U.S. House of Representatives, Washington, DC, March 27, 2007.

[4] Statement of John Zippert on behalf of the Federation of Southern Cooperatives and Rural Coalition, to the Subcommittee on Departmental Operations, Committee on Agriculture, U.S. House of Representatives, Washington, D.C., September 25, 2002.****

[Congressional Letters and Testimony 1]

March 3, 2021

Hon. CHARLES SCHUMER,
Majority Leader,
U.S. Senate,
Washington, D.C.;

Hon. MITCH MCCONNELL,
Minority Leader,
U.S. Senate,
Washington, D.C.;

Hon. NANCY PELOSI,
Speaker,
U.S. House of Representatives,
Washington, D.C.;

Hon. KEVIN MCCARTHY,
Minority Leader,
U.S. House of Representatives,
Washington, D.C.

Support Emergency Relief for Farmers and Ranchers of Color

Dear Leaders Schumer and McConnell, Speaker Pelosi, and Leader McCarthy:

We, the 181 undersigned organizations are committed to improving the financial and rural development interests of this nation's Black, Indigenous, Hispanic and People of Color farmers and ranchers. We endorse and urge you to support the *Emergency Relief for Farmers of Color Act* introduced by Senator Reverend Raphael Warnock (D–GA), Senator Cory Booker (D–NJ), Senator Ben Ray Luján (D–NM), and Senate Agriculture Chairwoman Debbie Stabenow (D–MI). We further urge you to assure the emergency relief provisions drawn from this Act as included by House Agriculture Committee Chairman, Rep. David Scott (D–GA) to the Concurrent Resolution on the Budget for Fiscal Year 2021, are included in the final COVID Emergency Budget Reconciliation Package.

Our expressions of support for these family farmer provisions are rooted in fairness and equity. American agriculture has a long history of providing various forms of family farm debt and other emergency relief. Yet the troubled history of farm loan discrimination for Black, Indigenous, Hispanic, and farmers of color, coupled with their exclusion from the many farm programs other producers depend upon to survive and thrive, weakens these farm families, making it impossible to transfer farmland wealth from generation to generation.

*** **Editor's note:** the letter was not included as part of the appendices of the Rural Coalition/Coalición Rural for the March 25, 2021 hearing submission.

**** **Editor's note:** the order of the listing *Congressional Letters and Testimony* has been changed to reflect the order of the actual Rural Coalition/Coalición Rural appendices for the March 25, 2021 hearing submission.

For example, the $14.4 billion in trade adjustment assistance provided in 2019 through the Market Facilitation Program[i] did not address the needs of the small farm specialty crop and livestock sectors of the market where their production is concentrated. The emergency COVID relief provided through the Coronavirus Food Assistance Program, the Farmers to Family Food Box Program, and the Small Business loan programs have provided only minimal assistance to farmers of color. Several BIPOC-led farmers groups who did participate successfully in early rounds of the Farmers to Families Food Box Program were not included in subsequent rounds.

At the same time, these producers have worked diligently throughout the pandemic to increase production in uncertain markets and to do all they can with little to no government support to meet the urgent food needs of their communities.

Over 200 years of beneficial treatment positions the sectors of farmers, who have benefited most from historic and recent investments in Federal farm programs, with more assets under their control, more land base to leverage, and more market stability to capitalize on and mitigate the impacts of economic crises the likes of which we are currently experiencing. Farmers of color were already leveraged to the hilt prior to the crisis because their operations haven't had the same multigenerational investments. The carefully crafted support from *Emergency Relief for Farmers of Color Act* provisions provides the urgently needed debt forgiveness and technical assistance necessary to shore up this sector of producers who do not enjoy extensive Federal support and an asset base to leverage. The legislation provides:

- $4 billion in direct relief payments to help farmers of color pay off outstanding USDA farm loan debts and related taxes, and help them respond to the economic impacts of the pandemic, and
- Another $1 billion fund to root out systemic racism by expanding the capacity of USDA to provide technical and legal assistance to agricultural communities of color and to fund under-resourced programs that will shape the future for farmers and communities of color, including:
  - Grants and loans to improve land access and address heirs' property issues;
  - Support for one or more legal centers focused on agricultural legal issues of farmers of color (including succession issues made more urgent when many families have lost members to a pandemic that has claimed over half a million lives);
  - Pilot projects focusing on land acquisition, financial planning, technical assistance, and credit;
  - A racial equity commission and related activities to address systemic racism across USDA;
  - Support for research, education, and extension at Historically Black Colleges and Universities (HBCUs), 1994 Tribal Colleges, and Hispanic-Serving and other institutions of higher education that historically serve communities of color;
  - Scholarships at 1890's land-grant universities and for indigenous students attending land-grant institutions;
  - Support for outreach, mediation, financial training, capacity building training, cooperative development training and support, and other technical assistance in cooperation with the community-based organizations and institutions of higher education with the experience to provide it;
  - Assistance to farmers, ranchers, or forest landowners of color that are former farm loan borrowers and that suffered related adverse actions, or past discrimination or bias.

Black, Indigenous, Hispanic and Farmers of Color continue to play an important social and economic role in sustaining rural communities while protecting the natural resources and producing safe and affordable farm products. We, the undersigned, urge the U.S. Congress to ensure the urgently needed emergency relief for BIPOC farmers remains in the final COVID Emergency package.

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[i] **GAO Report**—*The U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) distributed about $14.4 billion in 2019 Market Facilitation Program (MFP) payments to farming operations in all 50 states and Puerto Rico . . . to 643,965 farming operations. MFP payments for 2019 also varied by type of commodity. Three types of commodities were eligible for 2019 MFP payments: (1) nonspecialty crops (including grains and oilseeds, such as corn and soybeans); (2) specialty crops (including nuts and fruits, such as pecans and cranberries); and (3) dairy and hogs. Less than ten percent went to farming operations that produced specialty crops or dairy and hogs.*

Original Signatories

Rural Coalition, Washington, D.C. (For more information contact *lpicciano@ruralco.org*)
North Carolina Association of Black Lawyers Land Loss Prevention Project, Durham, NC
Alabama State Association of Cooperatives, Epes, AL
National Latino Farmers and Ranchers Trade Association, Washington, D.C.
Environmental Working Group, Washington, D.C.

National Signatories

Agricultural Missions, Inc., New York, NY
Agroecology Research-Action Collective, Oakland, CA
Alianza Nacional de Campesinas, Oxnard, CA
American Farmland Trust, Washington, DC
American Sustainable Business Council, Washington, DC
Campaign for Family Farms and the Environment, Washington, DC
Center for Biological Diversity, St. Petersburg, FL
Center for Community Self-Help, Durham, NC
Center for Science in the Public Interest, Washington, DC
Clean Water Action, Washington, DC
Community Food and Justice Coalition, Oakland, California
Cooperative Food Empowerment Directive, Santa Rosa, CA
Domestic Fair Trade Association, Olympia, WA
Earthjustice, New York, NY
Eastern Hemp Foundation, Philadelphia, PA
Experimental Farm Network, Philadelphia, PA
Fair Food Network, Ann Arbor, MI
Family Farm Action, Mexico, MO
Family Farm Defenders, Madison, WI
Farm Aid, Cambridge, MA
Farmers Market Coalition, Albany, CA
Farms to Grow, Inc., Oakland, CA
Federation of Southern Cooperatives/Land Assistance Fund, Atlanta, GA
Feed the Truth, Washington DC
Feeding America, Chicago, IL
Food & Water Watch, Washington, DC
Food Animal Concerns Trust, Chicago, IL
Food Chain Workers Alliance, Los Angeles, CA
Food First, Oakland, CA
Food Law and Policy Clinic, Harvard Law School, Boston, MA
FoodCorps, Washington, DC
Friends of the Earth, Washington, DC
GMOToxin Free USA, Unionville, CT
GreenLatinos, Washington, D.C.
Hazon, Falls Village, CT
Health Care Without Harm, Reston, Virginia
HEAL (Health, Environment, Agriculture, Labor) Food Alliance, Oakland, CA
Heifer USA, Little Rock, AR
Hunger Free America Inc., New York, NY
Institute for Agriculture and Trade Policy, Minneapolis MN
Johns Hopkins Center for a Livable Future, Baltimore, MD
King Arthur Baking, White River Junction, VT
LEAD for Pollinators, Inc., Akron, OH
National Black Food and Justice Alliance, Atlanta, GA
National Family Farm Coalition, Washington, D.C.
National Farm to School Network, Washington, D.C.
National Organic Coalition, Arlington, MA
National Sustainable Agriculture Coalition, Washington, D.C.
National Wildlife Federation, Washington, D.C.
National Young Farmers Coalition, Washington, D.C.
Natural Resources Defense Council, New York, NY
Northwest Atlantic Marine Alliance, Gloucester, MA
Organic Advocacy, Felton, CA
Organic Farmers Association, Spirit Lake, IA
Organic Seed Alliance, Port Townsend, WA
OrganicEye, Washington, D.C.
ROCUNITED, New York, NY
Pesticide Action Network, Berkeley, CA
Public Justice, Washington, D.C.
Rural Advancement Foundation International-USA, Pittsboro, NC
Rural America Chamber of Commerce, Callicoon, NY
Rural Development Leadership Network, New York, NY
Slow Food USA, Brooklyn, NY
The Common Market, Philadelphia, PA
The Food Trust, Philadelphia, PA
The Marcus Foundation, Washington, D.C.
Union of Concerned Scientists, Washington, D.C.
Women Food and Agriculture Network, Story City, IA

Regional, State and Local Signatories

21st Century Youth Leadership Movement, Eutaw AL
Abanitu Organics, Roxboro, NC
Advance Carolina, Raleigh, NC
Advancing Collective Equity, Portland, OR
African Alliance of Rhode Island, RI
Agri-Cultura Cooperative Network, Albuquerque, NM
Alabama Rivers Alliance, Birmingham, AL
Alliance for the Great Lakes, Chicago, IL
Alliance for the Shenandoah Valley, New Market, VA
American Federation of Government Employees, Local 3354, Saint Louis, MO
Asian Pacific Islander Forward Movement, Los Angeles, California
Atrisco NM, Atrisco, NM
Atrisco Valley Farm LLC, Albuquerque, NM
Black Family Land Trust, Inc., Durham, NC
Black Farmers and Agriculturalists Association, Tillery, NC
Black Farmers and Ranchers New Mexico, Jareles, NM
Boulder County Farmers Markets, Boulder, CO
Brandworkers, New York City, NY
California Association of Food Banks, Oakland, CA
Carolina Farm Stewardship Association, Pittsboro, NC
CEO Pipe Organs, Delafield, WI
Chicago Food Policy Action Council, Chicago, IL
Golden Ponds Farm, Franklin, AR
Church Women United in New York State, Rochester NY
City Love, Philadelphia, PA
Coastal Enterprises, Inc., Brunswick, ME
Colorado Farm and Food Alliance, Paonia, CO
Community Alliance with Family Farmers, Davis, California
Concerned Citizens of Tillery, Tillery, NC
Cottage House, Inc., Ariton, AL
Cultivate Charlottesville, Charlottesville, Virginia
Cumberland County Food Security Council, Portland, Maine
Dakota Rural Action, Brookings, SD
Darden's Farm/Health Services, Littleton, NC
Democracy Green, Morganton, NC
Earth Action, Inc., Pensacola, FL
Ecological Farming Association, Soquel CA
EcoVillage Farm Learning Center, Richmond, CA
Ekar Farm, Denver, CO
Equity Advocates, Harrison, NY
Fair Farms, Takoma Park, MD
Farmworker Association of Florida, Apopka, FL
Feral Heart Farm, Sunol, CA
Food & Nutrition Innovation Institute at Tufts University, Boston, MA
Food in Neighborhoods Community Coalition, Louisville, KY
Friends of Family Farmers, Walterville, Oregon
Georgia Organics, Atlanta, Georgia
GoFarm, Golden, CO
Greater KC Food Policy Coalition, Kansas City, MO
Green State Solutions, Iowa City
Healthy Gulf, New Orleans, LA
Heartwood, Tell City, IN
High Desert Food and Farm Alliance, Bend, OR
Hempstead Project Heart, WI
Hmong American Farmers Association, St. Paul, MN
Hub City Farmers Market, Spartanburg, South Carolina
Idaho Organization of Resource Councils, Boise, ID
Illinois Stewardship Alliance, Springfield, IL
Interpret Green, Philadelphia, PA
Iowa Citizens for Community Improvement, Des Moines, IA
Johnson's Farm, Wichita, KS
Kamaria Creations Wellness Retreat, Albuquerque, NM
Kamayan Farm, Carnation, WA
Kansas Black Farmers, Nicodemus, KS
Kansas Rural Center, Wichita, Kansas
KC Farm School, Kansas City, MO
Knoxville Knox County Food Policy Council, Knoxville, TN
La Semilla Food Center, Anthony, NM
Land For Good, Keene, NH
Land Stewardship Action Fund, Minneapolis, MN
Land Stewardship Project, Minneapolis, MN
Latino Farmers of the Southeast, Crescent City, FL
Lyon County Food and Farm Council, Emporia, KS
Maine Organic Farmers and Gardeners Association, Unity, Maine
Mandela Partners, Oakland, CA
Minnow, Oakland, CA
Missouri Rural Crisis Center, Columbia, MO
Montana Organic Association, Missoula, MT
New Entry Sustainable Farming Project, Beverly, MA
New Mexico Hemp Company, LLC, Albuquerque, NM
Northeast Organic Farming Association of New York, Syracuse, NY
Northeast Organic Farming Association of Vermont, Richmond, VT
Northeast Organic Farming Association-Interstate Council, Stillwater, NY
Northeast Sustainable Agriculture Working Group, Kingston, NY
Nourish Colorado, Denver, CO
Now You Know New Mexico, Albuquerque, NM
Oklahoma Association of Conservation Districts, Oklahoma City, OK
Oklahoma Black Historical Research Project, Inc., Oklahoma City, OK
Oregon Food Bank, Portland, OR
Pasa Sustainable Agriculture, Harrisburg, PA
Pennsylvania Council of Churches, Harrisburg, PA
Pinnacle Prevention, Chandler, Arizona
Prairie Rivers Network, Champaign, IL
Providence Farm Collective, Buffalo, NY
Radical Family Farms, Sebastopol, CA
Rogue Permaculture, Yelm, WA
Roots of Change, Oakland, CA
Rural Advancement Fund of the National Sharecroppers Fund, Inc., Orangeburg, SC
San Luis Valley Local Foods Coalition, Alamosa, CO
Sanarte Healing Culture Clinic, San Antonio, TX
Slow Food Urban San Diego, San Diego, CA
Soil Generation, Philadelphia, PA
Solar Wind Works, Wellington, NV
Soul Fire Farm, Petersburg, NY
Sustainable Food Center, Austin, TX
Texas Mexico Border Coalition Community Based Organization, San Isidro, TX
The Center for Environmental Transformation, Camden, NJ
The Marion Institute, Southcoast Food Policy Council, Marion, MA
WATCH, Inc., Charlevoix, MI, USA
Western Organization of Resource Councils, Billings, MT
Winston County Self Help Cooperative, Jackson, MS
World Farmers Inc., Lancaster, MA

[Congressional Letters and Testimony 2]

coalición RURAL coalition

For More Information contact: Rural Coalition Executive Director Lorette Picciano at *lpicciano@ruralco.org* or 703–624–8869.

Policy Brief on the Need for Emergency Relief for Farmers of Color

By QUINTON R. ROBINSON, Esq., *Policy Advisor,* Rural Coalition
March 4, 2021

The Rural Coalition has submitted this *Letter to Support Emergency Relief for People of Color Farmers and Ranchers* signed by 181 organizations in support of the socially disadvantaged [1] farmer and rancher debt relief language and technical assistance provided for in the Emergency Relief for Farmers of Color sections of **S. Con. Res. 5, Concurrent Resolution on the Budget for Fiscal Year 2021.** Our expressions of support in that letter for these family farmer provisions are rooted in fairness and equity. American agriculture has a long history of providing various forms of family farm debt relief, and that history should not be denied to socially disadvantaged farmers and ranchers based on unfounded constitutional reasoning. *We are pleased that the Budget Committee in the House of Representatives continues to work with the U.S. Senate to ensure the debt relief for socially disadvantaged farmers and ranchers in the package passed by the full House.*

In this brief, we provide additional analysis of the legal underpinnings and need for this relief.

I. Introduction

After the settlement of *Keepseagle, Garcia,* and *Pigford,* socially disadvantaged producers have experienced farm loan discrimination within business transactions. The discriminatory loan transactions include inaccurate loan terms or conditions, fraud and corrupt organizational lending schemes that are sometimes developed and advanced by Federal farm loan officers. (See *Wencslause Provost* v. *First Guaranty Bank,* and *'It's not fair, not right': how America treats its Black farmers* |*World news* |*THE GUARDIAN*).

Nevertheless, some Members of Congress have challenged the constitutionality of legislative provisions designed to provide farm loan debt relief to socially disadvantaged farmers and ranchers. Weak constitutional challenges omit critical facts that highlight Congress's oversight and investigative authority over farm loan programs. The Congress has a continuing duty to improve opportunities for success in agriculture through future legislative actions. Where discrimination in farm loan programs is prevalent, Congress must exercise its charge to correct inefficiencies in farm loan programs while providing remediation and restorative justice to socially disadvantaged farmers and ranchers. The farm loan debt relief in this stimulus bill is a good start and documented examples support the narrative that commands Congressional action.

For example, in North Carolina, the U.S.D.A. Farm Service Agency issues a farm family an illegal loan based on the error and misstatements by Agency officials. Later, the Agency issues a foreclosure notice that would not be issued but for the Agency's error. In Louisiana, a family is coerced, as a condition of receiving a new farmer ownership loan, to refinance a parent's older farm equipment. As a component of the loan transaction, the guaranteed lender and FSA officials require the young, new and beginning, farmer to deliver the financed equipment to the processing mill. In Pueblo, CO, a farmer is given inaccurate farm loan servicing information which leads to foreclosure notices. In Arkansas, a farmer is given a guaranteed loan and immediately receives a request from the bank's loan officer to loan the bank officer $20,000.00 from the guaranteed loan proceeds as a condition of receiving the guaranteed loan. In Georgia, young farmers are prevented from purchasing a parent's farm from a foreclosure proceeding. These are the examples for which there is widespread awareness. Constitutional arguments against minority farm loan debt relief cannot withstand the illegalities of these substantiated examples of discrimination. Other examples will never be discovered. Hidden discrimination within farm loan programs is a disgrace to the implementation of the program, amounting to government approval of illegal foreclosures and farm land theft. S. Con. Res. 5, Concurrent Resolution on the Budget for Fiscal Year 2021 provides a solution to these hidden numbers.

The Farm Credit Act's original intent was not adequately designed to address discrimination in loan transactions. However, no provision of the Act prevents the Secretary of Agriculture from connecting other laws and regulations to the base requirements of the Farm Credit Act and the *Secretary of Agriculture should use the Farm Credit Act to build the foundation for minority farmer debt relief.*

[1] In this brief, the "socially disadvantaged" is as defined in 7 U.S.C. 2279a.

For more than *33* years, the debt relief provisions of the 1987 Farm Credit Act served as sound authority to grant emergency farm loan debt relief for our nation's farmers and ranchers. Laws and regulations that provide debt relief to farmers have not been challenged in the Federal courts nor within the administrative function of the U.S. Department of Agriculture. *Likewise, over the past 33 years, the U.S. Congress has not found reasons to discontinue family farm debt relief based on legal questions challenging the constitutionality of debt relief under key provisions of the 1987 Farm Credit Act.*

Farm loan debt relief has been granted, under appropriate circumstances, as a family farm preservation method of rescheduling debt in order to keep farmers on the land during harsh economic conditions. Thus, any attack on debt relief for socially disadvantaged farmers and ranchers during the current COVID–19 pandemic must be characterized as a mean-spirited attempt to further exclude socially disadvantaged producers from equitable participation in USDA's programs and services.

The U.S. Department of Agriculture's legal and regulatory framework used for farmer emergency financial assistance is firmly established and consistently applied to large row crop farmers and ranchers. Farm emergency loans and program payments work well for large row crop farmers. *However, the same regulatory framework escapes the emergency farm loan needs of socially disadvantaged producers during the COVID–19 pandemic.* The political support for the large farmer emergency financial assistance framework spurred the COVID–19 emergency Federal financial assistance, which totaled over $14.4 billion within the narrow time period of just 16 months. Using structured laws and regulatory authorities such as the Commodity Credit Corporation, Congress and the Administration protected the farm income and production assets owned by large row crop farmers and private investors. The payments are said to support family farmers during the COVID–19 economic emergency. The problem is that minority family farmers are consistently excluded from meaningful participation in emergency financial assistance.

Minority family farmers are a critical component of America's family farm system. The family farm system is a cherished system, receiving congressional support for more than 120 years. In fact, current law demands that the Secretary of Agriculture conduct the emergency loan programs under **7 U.S.C. 1961** in a manner that fosters and encourages the family farm system of agriculture, consistent with the reaffirmation of policy and declaration of the intent of Congress contained in section 102(a) of the Food and Agriculture Act of 1977. (**7 U.S.C. 1166(a).**) The Budget Reconciliation language again reaffirms the Congressional intent that socially disadvantaged farmers and ranchers are not to be excluded from COVID–19 emergency spending and debt relief is the best way of supporting socially disadvantaged farmers and ranchers.

II. Essence of the Minority Farmer Debt Relief

The preamble of the minority farmer debt relief language recognizes the historical, long-term negative impacts of discriminatory lending which impacts minority family farms more than any other classification of farm operations. socially disadvantaged farmers and ranchers play an important social and economic role in sustaining rural communities while protecting the natural resources and producing safe and affordable farm products. The troubled history of farm loan discrimination, when added to farm program participation discrimination, weakens minority farm families, making it impossible to transfer farmland wealth and the farming vocation from generation to generation.

The undersigned organizations recognize that all family farmers need assistance from the government during the COVID–19 pandemic. Our awareness of a broad need for emergency farm assistance must be open minded and embrace the familiar concept of family farm debt relief for socially disadvantaged farmers and ranchers as a manner of sustaining rural communities and rural economies. This is not a large ask.

The minority farmer farm debt relief accomplishes this goal in section **1005 to 1006** of ***S. Con. Res. 5, Concurrent Resolution on the Budget for Fiscal Year 2021,*** Budget Reconciliation proposal. The proposal authorizes the Secretary of Agriculture to use existing statutory authorities to develop and implement a plan of debt relief for socially disadvantaged farmers and ranchers. We are committed to working with the Secretary of Agriculture to ensure that a plan of farm loan debt relief is comprehensive, effective, and inclusive.

III. Selective Debt Relief is Constitutional, Firmly Established and Consistently Applied

Debt relief for America's family farmers has a long history. The benefits of such farmer debt relief are well documented and farm debt relief should not be prevented as a benefit inside farm gates of socially disadvantaged farmers and ranchers. Debt relief for socially disadvantaged producers adds an additional level of legitimacy for farm loan programs, especially where there is documented discrimination in farm loan servicing. There are five prominent statutory provisions that support the constitutionality of minority farmer debt relief. *Therefore, any constitutional attack on these provisions will be diffused.*

A. 7 CFR 766.401(b) Agency Exception Authority

When measured against the documented history of disparate treatment and disparate impact in farm loan programs, debt relief for socially disadvantaged producers adds an additional level of program legitimacy, especially where there is documented discrimination in farm loan servicing. Under current law, the Secretary of Agriculture has the authority to improve the financial and operational efficiency of all of USDA's farm loan programs. Minority farmer debt relief is an administrative tool to accomplish that goal while providing restorative justice for minority farm loan borrowers. Pursuant to 7 CFR 766.401(b), the Secretary of Agriculture may, to advance the financial interests of the farm loan program, relieve the debt of farmers under circumstances where by the debt relief promotes a financial interest of the Agency. We believe that restorative justice in the form of farm loan debt relief is a circumstance that promotes the financial interest of the Agency. We are not alone in our restorative justice convictions.

Congressman David Scott, Chairman of the House Committee on Agriculture ensured that Section 1005 of Budget Reconciliation proposal contained language to enumerate past discrimination against minority farm loan borrowers. 7 CFR 766.401(b) states in relevant part: "(b) the Agency's financial interest would be adversely affected by acting in accordance with published regulations or policies and granting the exception would resolve or eliminate the adverse effect upon its financial interest." (7 CFR 766.401(b).)

B. Farm Loan Equitable Relief

A provision of farm loan equitable relief may be combined with base provision within the Farm Credit Act for the purpose of developing a plan of minority debt relief.

Reported family farm foreclosures, under strange circumstances of government errors and mistakes, secured the attention of the U.S. House and Senate Agriculture Committees in 2018, leading to the passage of 7 U.S.C. § 2008a. The new law is referred to by farmers and stakeholders as "equitable relief" in farm loan programs. Notably, farm loan errors and mistakes prior to December 20, 2018 were definitionally excluded from agricultural regulatory schemes designed to grant equitable relief.

We have gathered evidence to show that loan mistakes made against socially disadvantaged producers are not mistakes, but intentional acts designed to cause foreclosure of farmland. Generally, a grant of equitable relief to a farmer is permitted, with limitations, in order to allow a producer to keep program benefits when the possession of the benefit is deemed noncompliance with statutes and regulations and such noncompliance is caused by the *misaction or misinformation* provided to the program participant by an authorized government official. See 7 U.S.C. § 2008a.; 7 U.S.C. § 7996 (d); 7 U.S.C. § 6998 (d), and 7 U.S.C. § 1339 (causation based on misaction or misinformation). It is important to note that 7 U.S.C. § 2008a. uses a different causation standard than 7 U.S.C. § 7996 (d); 7 U.S.C. § 6998 (d), and 7 U.S.C. § 1339.

Pursuant to subsection (c) of the 7 U.S.C. 2008a., the farmer must identify the government's farm loan error and provide notice of the error or mistake directly to the Secretary in a format that is acceptable to existing statute, regulation, or agency guidance. USDA's farm loan programs offer at least four different approaches of providing notice of the harmful, unlawful error. The farm loan error, for which equitable relief may be appropriate, may be noticed to the Secretary of Agriculture in coordination with four USDA's various institutional appeal or grievance processes. Subject to filing deadline restrictions, institutional coordination of requests for equitable relief are found in and included in a farmer's substantive explanations and statements offered by a farmer in support of the following appeal related processes:

(i) U.S.D.A. civil rights program and loan complaint pursuant to (*7 CFR §§ 15.1–15.12*) (*180 days from date of last act of discrimination*);

(ii) U.S.D.A. National Appeals Division (NAD) for appeal of an adverse farm program decision pursuant to 7 U.S.C. 6991 and 7 CFR 11.1 (*30 days from adverse program decision*);

(iii) Loan servicing options such as debt write down, or deed in lieu of foreclosure pursuant to (*7 CFR §§766.101–766.116–766.150*) (30 days from adverse action); and

(iv) Submission of official correspondence to the Secretary explaining the farm loan error or mistake and its attendant correlations to default, acceleration and foreclosure pursuant to 7 U.S.C. § 2008a.

Except for farm loan equitable relief under 7 U.S.C. § 2008a., equitable relief made available in civil rights complaints, NAD program appeals, and farm loan servicing, represents a forum for such relief in a program. That farm loan grievance program is firmly established and consistently implemented by the Secretary. Equitable relief language is self-executing, statutory language. It provides an additional component of the historical regulatory scheme for providing general equitable relief to farmers within USDA's programs and services. Farm loan, civil rights, NAD appeals, and form loan servicing, when analyzed collectively, represent a continuum of legal norms and standards whereby the Secretary of Agriculture may grant a provision of equitable relief.

The Secretary has authority to forgive farm loan debt pursuant to 7 CFR 766.401(b).

IV. Disparate Treatment in Emergency Farm Assistance

The cumulative effect of farm loan discrimination and exclusion from other programs has left socially disadvantaged farmers and ranchers with small landholdings comprised of more fragile and less productive land. Consequently, socially disadvantaged producers have less access to the commodity, conservation, disaster, and risk management programs. Mid-size and large-scale operations fair better under the same programs and benefits. Congress spoke clearly and provided generous emergency relief to large and mid-size producers to address market disruptions in 2019 and the pandemic and fluctuations in world markets in 2020. During this same time period, Congress was silent with respect to emergency funding provisions to help socially disadvantaged farmers and ranchers to secure the income necessary to run their operations and pay their loans.

For example, the emergency relief provided by Congress through the Coronavirus Food Assistance Program largely failed to provide relief to people of color farmers and ranchers who now seek loan forgiveness. White farmers received 97% of the $9.2 billion allocated through October 2020.[2]

In 2019, little emergency relief was provided to the farmers seeking it. USDA paid $14.4 billion in 2019 Market Facilitation Program (MFP) payments to farming operations in all 50 states and Puerto Rico. According to [Government Accountability] Office (GAO),[3] these payments were intended to offset the effects of trade disruptions and tariffs targeting a variety of U.S. agricultural products. FSA distributed these payments to 643,965 farming operations. The average MFP payment per farming operation for 2019 was $22,312 but varied by county, ranging from $44 to $295,299. MFP payments for 2019 also varied by type of commodity. Three types of commodities were eligible for 2019 MFP payments: (1) nonspecialty crops (including grains and oilseeds, such as corn and soybeans); (2) specialty crops (including nuts and fruits, such as pecans and cranberries); and (3) dairy and hogs.

Most of the 2019 MFP payments went to farming operations that produced nonspecialty crops. Less than ten percent went to farming operations that produced specialty crops or dairy and hogs. USDA made approximately $519 million in additional MFP payments in 2019 compared with 2018 because of increases in payment limits—the cap on payments that members of farming operations can receive. FSA distributed these additional MFP payments to about 10,000 farming operations across 39 states. The amount of additional MFP payments that FSA distributed for 2019 varied by location. Farming operations in five states—Texas, Illinois, Iowa, Missouri, and Minnesota—received almost half of all additional payments.

These payments followed the approximately $8.6 billion USDA announced it had distributed for 2018. USDA referred to these 2018 and 2019 payments as the MFP.

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[2] *https://www.ewg.org/news-and-analysis/2021/02/usda-data-nearly-all-pandemic-bailout-funds-went-white-farmers*.

[3] *GAO Report*—The U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) distributed about $14.4 billion in 2019 Market Facilitation Program (MFP) payments to farming operations in all 50 states and Puerto Rico) . . . Less than ten percent went to farming operations that produced specialty crops or dairy and hogs.

In comparison with 2018, USDA changed the 2019 payment structure for the three types of commodities that were eligible for payments, including increasing the payment limit for each of these three types, with more aid going to larger operations.

The debt relief and other technical assistance provided for in the Emergency Relief for Farmers of Color sections of S. Con. Res. 5, Concurrent Resolution on the Budget for Fiscal Year 2021, referred to as the COVID Emergency Budget Reconciliation Package, are urgently needed to afford this important sector of agriculture the critical type of emergency relief they require to address their debt and maintain their land and operations for the future. We urge that Congress approve the full measure of proposed relief.

[Congressional Letters and Testimony 3]

Statement of John Zippert on Behalf of the Federation of Southern Cooperatives/Land Assistance Fund and the Rural Coalition/Coalición Rural to the U.S. House of Representatives, Committee on Agriculture, Subcommittee on Conservation, Credit, Energy, and Research*

Washington, D.C.
March 27, 2007

Excerpt: [beginning on p. 5 of the testimony].

Program Participation Report
Program National Summary
Fiscal Year: 2003
Farm Service Agency
Beginning Farmer Down Payment Loan Program

	Male		Female		Unknown		
	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Undiscloded Ethnicity
	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator
White	<3%	99.5%	<3%	3.9%	0%	<3%	
Black	0%	<3%	0%	0%	0%	0%	
AI/AN	<3%	<3%	0%	0%	0%	0%	
Asian	0%	<3%	0%	<3%	0%	0%	
HPI	0%	0%	0%	0%	0%	0%	
Other	<3%	<3%	<3%	0%	0%	0%	
Multi	0%	<3%	0%	0%	0%	0%	
Unclass							0%
Total	<3%	94.2%	<3%	4.0%	0%	<3%	0%

We believe that the Congress should further investigate why this is so, and what factors in the design and delivery of the program are responsible for the very low participation by socially disadvantaged producers, especially because Hispanic producers, for example, constitute one of the fastest growing populations of new entrants into agriculture. **Also, the very low proportion of women producers who participate also warrants examination, as this is another example of a population whose participation in agriculture is growing.**

As we have researched this question, we have several suggestions: the definition of beginning farmer still requires 3 years of management of experience. How this experience is defined and accounted for by the department may have a bearing on who is accepted into the program. We recommend, for example, that experience as a farmworker be counted towards the qualification for beginning farmers. In addition, the standards for credit worthiness are as stringent or more stringent than the standards used by commercial lenders.

As this Committee considers the recommendations to target all credit to beginning and socially disadvantaged farmers, it will be important to consider how this recommendation may ultimately affect the availability of credit. For example, farmers who have left the peanut and tobacco programs or who are otherwise transitioning to different crops may be in need of credit for this transition. Also, directing resources generally to beginning and socially disadvantaged farmers and ranchers

* **Editor's note:** the statement submitted as part of the appendices of the Rural Coalition/Coalición Rural for the March 25, 2021 hearing is incomplete (it does not include pp. 1–4). The link for the testimony submitted for the hearing, in its entirety, is: *https://www.govinfo.gov/content/pkg/CHRG-110hhrg36367/pdf/CHRG-110hhrg36367.pdf*, pp. 185–203. **Further note:** the published hearing, 110–8 does not include *Appendix B* of this testimony (Information Required From Non-governmental Witnesses).

without more specific direction with respect to the proportions of funds for either population may have the impact of disadvantaging one or the other of these populations, most likely socially disadvantaged producers.

It is also important to realize that socially disadvantaged producers have historically had very low participation rates in commodity and conservation programs. The billions of dollars in Federal support provided for these programs only reaches a small percentage of these producers. The reasons for lack of access to Federal farm programs are also complex. However, the net impact of this exclusion has often affected the size of operations and the quality of the land accessible to socially disadvantaged producers, leaving less equity in the hands of socially disadvantaged farm families. As a result, credit scores may be lower and it may be more difficult for these families to at first meet the stringent creditworthiness standards FSA requires.

We believe that special attention will need to be paid to these definitions and situations in order for USDA to fulfill its mission as lender of last resort, and in order to assure access to credit for socially disadvantaged farm families who wish to enter or continue in agriculture.

Transparency and Accountability in Farm Loan Programs—In recent years, the Farm Service Agency has routinely reported that loans to socially disadvantaged farmers are made in 30 days or less, and on par with loans to other farmers. FSA staff throughout the nation can report these statistics with respect to their own county and state. With these statistics as a sole reference point, it would appear that all is well with respect to access to credit and delivery of services.

We believe these statistics are not a true picture of the actual situation. We urge the Committee to look further and to establish some of the measures we have long proposed in order to move beyond the appearance of equity to real equity in services, and the establishment of new generations of people of color farmers on the land.

Over the years, we have observed and documented many practices that serve to discourage and separate minority farmers from the programs and services they need. We will briefly review some examples of these practices and some solutions we recommend.

Discouragement of Applications and Services—At the National Immigrant Farming Initiative meeting in February in Las Cruces, New Mexico, a Hmong farmer approached our Executive Director from Wisconsin. "How big is a farm?" she asked the ED. In attempting to understand the reason for her question, we determined she had been turned away by the local FSA office after being told her operation was not a farm. However, this producer reported that she owned land and sold more than $1000 of produce a year. She did not understand why she was turned away and had not been asked to provide information to be listed on the County SCIMS list.

In the aftermath of [H]urricanes Katrina and Wilma, we held a training session for some 50 Latino producers in Dade County, Florida. Four members of the FSA staff attended the session at our request. The producers present reported a typical pattern: following these and previous disasters, they called the county office to request disaster assistance. The office confirmed reports that they producers were told there was no assistance available. The answer was technically correct at the time, as it is usually long after a disaster that Congress approves aid.

However, the producers were not told to come into the office to sign up on the SCIMS list, or to begin the application process for any available programs, or of requirements to take out crop insurance. The FSA staff reported that they were too busy to schedule appoints and have the farmers come in. As a result, the farmers—some repeatedly and after multiple disasters—were never informed of the many services FSA might provide, of the need to have crop insurance in order to qualify for most emergency aid, and of records they needed to keep to qualify for the emergency conservation program. They also were not included on the county list to receive newsletters and other important information and notifications, including loan and insurance deadlines and notification of funds available. As a result of not being included on the SCIMS list, farmers were also being missed in the Census of Agriculture.

During the training, the FSA staff registered over ¼ of the farmers who attended who had not previously been included on the SCIMS list or received any service from USDA. Other farmers were informed of the documents they needed to bring and of the need to go into the office in the future to register. However, the outreach function that FSA needs to perform routinely was only completed because the Farm Aid supported training and organizations, including ours, went to the county to inform farmers of the services to which they are entitled.

FSA should be required to tell all farmers who request any service of the need to be listed on the SCIMS list and of their right to make an application whether or not the office is inclined to view them as qualified.

First Come, First Served Standard—FSA credit program funds are delivered by state and county based on the number of farmers, the size of operations, *etc.* Previous investigations by GAO and IG have found that despite the fact that socially disadvantaged farmers had been denied credit, this practice did not constitute discrimination because the applications were only denied due to lack of funds.

However, this standard is manifestly unfair when farmers are discouraged from applying for programs, are not included on county lists or otherwise informed in a timely manner of the availability of funds. If a local office wished to assure funds for some farmers over others, there is the risk that a conflict of interest is created without some independent verification that all farmers receive the same information and ability to access the funds.

We believe this situation is especially serious with regard to the provision of disaster loans. While we do believe loan limits need to be raised, we caution the Committee that increasing these limits without increasing the level of funding may in fact exacerbate the potential inequities of accessing limited pools of loan funds.

What Constitutes an Application—FSA does not consider a farmer to have applied for loan until the loan application is complete. While improvements have been made in informing farmers what documentation is necessary for an application, we have heard many stories of lengthy processes where additional information is requested. For some farmers—*e.g.,* American Indian producers who often live long distances from county offices, the need to return to the office with additional documents greatly lengthens the application process.

However, the final rule 12CFR Part 202, Regulation B, Docket No R–1008, implementing the Equal Credit Opportunity Act states:

> *(e) Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit . . .*
>
> *(f) Application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.*

According to this regulation, an applicant includes a person who has requested credit, and an application includes oral and well as written requests for credit. While an application is defined as made in accordance with procedures used by a creditor, the regulation makes a distinction between an application and a completed application.

Thus, in order to evaluate the fairness of the system FSA has in evaluating applications, we recommend that Congress direct that FSA revise its reporting system to reflect the period of time it takes to process a credit application from the first submission of an application to the completion of the process. This would be a fairer reflection of the time period needed for processing.

We also recommend that Congress amend the 10708 requirements of the farm bill to require FSA to report on the national, state and county level by race, gender and ethnicity, the months in loan funds were disbursed under each type of loan program.

It makes a great deal of difference whether a loan is disbursed early in the planting season or at a later date.

Receipt for Service—Since 2002, we have proposed to the department and to Congress that USDA be required to provide to all farmers and ranchers a time and date stamped "receipt for service." This receipt should be provided whenever any farmer requests an application or service. The receipt should details the name of the farmer or prospective farmer, the location of the office by county, what was requested, what was provide and not provided, if a request was not met, why the application or service was not provided, and what follow-up action is recommended or required. A copy of the receipt, which could be generate electronically, should be given to the farmer, and one maintained in the office. Because these receipts would not be used to evaluate applications for programs and services, Congress should also

include authority and require FSA and other agencies to collect data by race, gender and ethnicity using both self-identification, and identification by the agency when the first is not provided, in order to evaluate its responsiveness.

This receipt would be critical to assuring equity for programs that are provided on a first come first serve basis, and to document situations where farmers and prospective farmers are discouraged from seeking and applying for benefits.

In addition, it would also document and allow Congress and the Department to review to the county level the actual dates on which all applications were received by the agency, and to identify places where some farmers and ranchers may receive information, services and approval more immediately than others.

USDA responded to our recommendations for a receipt for service by instituting a Customer Comment Card. This card does not serve the same purpose as a service receipt and goes back to the same complaint generated system of accountability that has hampered fairness for many years.

Creditworthiness—Many of the laws that govern farm credit arose from the agricultural credit crisis in the 1980's. While borrowers rights and other protections were included, the experience of losses by the government, primarily with respect to emergency loans, led to the inclusion of good faith provisions and stringent creditworthiness standards.

In the present time, evaluation by FSA of creditworthiness is a factor that prevents many socially disadvantaged producers from securing credit. Our member organizations have reported that FSA's system of determining creditworthiness is often a factor that results in the denial of applications. We believe the FSA scoring system should be reviewed based on the following standards in ECOA (final rule 12 CFR Part 202, Regulation B, Docket No R–1008):

> *(p) Empirically derived and other credit scoring systems—(1) A credit scoring system is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be:*
>
> > *(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;*
> >
> > *(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);*
> >
> > *(iii) Developed and validated using accepted statistical principles and methodology; and*
> >
> > *(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.*
>
> *(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.*

Congress should review the FSA credit scoring system and the methods that it has used to develop and validate this system. It should determine if this system is periodically reviewed and maintains predictive ability. As the lender of last resort, FSA standards for all loans should be less stringent when compared to commercial lending. Congress should request that FSA compare its standards with those of commercial lenders.

Because of this history of discrimination that has held this agency liable for hundreds of millions of dollars of losses caused by the practices of the agency itself, Congress should assure that this system take into account the influence of these practices on the creditworthiness of the producers who now seek loans.

Congress should also determine to what extent approval of credit rests on access to income from other Federal farm programs, and the degree to which the creditworthiness of socially disadvantaged farmers is affected by the degree of access they have to other programs.

The 10708 Transparency and Accountability Requirements should be amended to include a report on the number and percentage of farmers by race, gender and ethnicity who participate in multiple USDA programs, and the level of total benefits that are provided to producers by race, gender and ethnicity.

Waiver of Interest—In the wake of entreaties to declare moratoriums and take other action to resolve the crisis facing socially disadvantaged farmers who have suffered discrimination and all farmers who have faced serious losses as a result of the hurricanes of 2005, repeated drought and other national disasters, FSA has repeatedly asserted that it lacks the authority to waive interest

We recommend that this Committee determine in fact whether any additional authority is required to provide this authority to FSA. For example, are the Standards for the Administrative Collections of Claims, 31 CFR 901.9 on Interest, penalties, and administrative costs adequate for this purpose?

> *(g) Agencies shall waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30 day period on a case-by-case basis.* ***In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt,*** *either under the criteria set forth in these standards for the compromise of debts,* ***or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.***
>
> *(h) Agencies shall set forth in their regulations the circumstances under which interest and related charges will not be imposed for periods during which collection activity has been suspended pending agency review.*

The fair resolution of all outstanding claims related to discrimination by the Farm Service Agency certainly should be considered a matter of equity and good conscience, and in the best interest of the United States. We recommend the Committee review this authority, and also require FSA to report on its compliance with paragraph h of this section.

We also urge that the Committee review the regulations instituted following the disasters in 2005 that allowed the suspension of payments on loans for farmers in declared disaster areas, but without any waiver of interest, and that required a balloon payment of all the deferred payments and interest in January 2007. A report on the number and location of loans that may be forced into acceleration because of an inability to make this balloon payment should be made, and Congress should undertake any retroactive and remedial action necessary to prevent additional loss of farms in the wake of disasters.

Appraisals—Over the years, we have received continued complaints for farmers on the fairness of the appraisals used for loan approvals. Standards for appraisals should be reviewed and assurance of equal credit opportunity protections be established.

While in small rural communities, testing programs such as those widely used in mortgage lending are more difficult to establish, the Congress should consider ways to work through the Comptroller of the Currency to provide funding and guidance for some measure of testing to bring to light problems in both direct and guaranteed lending programs of the department, especially with regard to appraisals.

Right of First Refusal on Inventory Property—In the 1987 Agriculture Credit Act, this Committee wrote the very first provisions designed to begin assisting socially disadvantaged farmers and ranchers. On provision of this law afforded socially disadvantaged farmers and ranchers the right of first refusal on inventory property. When Congress subsequently instituted programs for beginning farmers and ranchers, it replaced the right for socially disadvantaged farmers and ranchers with the right of first refusal for beginning farmers.

This situation is instructive and illustrates why in the 2007 Farm Bill debate, careful attention needs to be paid to securing an appropriate balance in credit law (and other areas of the farm bill) to the needs of these two populations. At a minimum, we suggest that the right of first refusal be restored first for socially disadvantaged farmers and ranchers, and then for other beginning farmers and ranchers.

Loan Limits—We agree with proposals to increase loan limits especially for farm ownership loans to more accurately reflect the current costs farmers face. But at the same time, we encourage this Committee to consider the impacts we have outlined above, and the need to provide more funding for direct loans.

Transparency and Accountability—The Federal Government has been held liable for hundreds of millions of dollars of payment to farmers who won discrimination claims primarily in credit programs. While we would argue that most socially disadvantaged farmers were also denied access in many ways to other Federal farm programs, their right to seek damages is only secured for credit programs.

Virtually all actions to assure fair service by FSA and other USDA actions arise from individual complaints made by farmers and ranchers. In Section 10708 of the 2002 Farm Bill, Congress adopted Transparency and Accountability requirements that require the department to provide data at the national, state and local level on participation rates by race, gender and ethnicity for each program that serves farmers.

FSA has been the most responsive agency in providing the data required under this section.

However, the usefulness of this data has been severely compromised by the matter of presentation used in the reports that are compiled by the Office of the Assistant Secretary for Civil Rights. Instead of providing searchable databases, the Office of the Assistant Secretary has presented the participation rates down to the county level as 120,000 separate PDF charts.

Ostensibly, the reason for this method or presentation is in order to protect the privacy of the lone socially disadvantaged farmer who may participate in a particular program of the department in a particular county. The U.S. Census and the Census of Agriculture have developed other methods and defaults to protect privacy that do not compromise the integrity and usefulness of the data.

In addition, USDA has not provide, as required in 10708, a report that compares the participation of farmers by race, gender and ethnicity in programs as compared to their representation in the Census of Agriculture

Earlier in this testimony, we provided the 10708 report for the Beginning Farmer Down Payment Loan Program. In the appendix we have provided 10708 reports for other programs. A review of all of these programs would show that the participation rates of socially disadvantaged producers are abysmally low. Only in programs specifically constructed, for example, to serve American Indian farmers, is participation assured. The highest level of participation in any other program we found in our review was participation of 8% to 9% by African American producers—in the peanut buyout program.

The 10708 requirements are a very important tool for the department and Congress to develop an independent assessment of the problems in service delivery and program structure that may present barriers to equitable participation of producers. This data should be presented in a format that will allow real comparisons between similar counties and states that would allow service delivery issues to be identified and rectified, and would also allow Congress to determine where program structures and rules may be responsible for barriers to service.

County level data, and comparisons at that level to Agriculture Census numbers will allow agencies, farmers, and the organizations that represent them not only to identify programs where participation is inadequate. It will also allow outreach services and remedial actions to be taken. In addition, Congress should require that this data be utilized in the evaluation of all programs and in performance reviews of staff. In the 2002 hearing in the House Agriculture Committee, USDA testified that in the wake of the massive discrimination liabilities against the department, only an handful of staff received reprimands or any other personnel action. The lack of accountability to agencies and staff continue to foster a climate that leaves no consequence for actions that are contrary to the interests of socially disadvantaged producers, taxpayers and the United States.

We recommend that USDA be asked immediately to provide the required report comparing Agriculture Census data to the participation reports, and for its proposals on how immediate changes can be made in order to provide 10708 data in a useful form. We will provide to the Committee proposed language to amend 10708 in order to assure this requirements provide the system of review that is vital to assuring quality programs and fair service.

Interest Subsidies—FSA has authority and does provide subsidized interest for farmers. Congress should assure that funds are adequate for this program, which is important to farmers. In addition, FSA should provide a 10708 report on participation in this program.

Farm Loans and Disasters—Emergency loans are critical to producers in the face of disasters. In addition, measures to protect the ability of farmers to manage current loans are also needed. However, in order to allow these to help farmers in a manner that will prevent placing them later in a precarious situation, we recommend the following measures:

- ➢ Review and provide any additional authority to allow FSA to suspend the accrual of interest in times of disaster, and take additional measures as necessary to allow delay in payments.
- ➢ Add payments to end of loans and allow extension of loans.
- ➢ Extend PL 108–324 to remove the limit of coverage for farmers who have experienced multiple disasters.
- ➢ Set in place an automatic disaster set aside for payments on direct FSA and RHS loan installments due in January 2007. Enable and encourage private lenders with guarantees to do the same.
- ➢ Complete suspension of offsets.
- ➢ Expand servicing for 90 days past due loans.
- ➢ Provide Loan forgiveness for those who will never be able to pay or who have suffered losses that reduce the value of collateral.
- ➢ Allow appeal between agencies—when denied by Farm Service Agency and Small Business Administration, allow appeals to both.

Credit and Indian Agriculture—The United States Government through Farm Service Agency remains the largest source of lending for Indian Reservations. Farm lending programs need to increase their focus on youth lending as well as new farmer lending. The present beginning farmer program needs to be modified to realistically fit a beginning farmer. Present criteria limits participation to only those that have adequate capital that would allow borrowing at any commercial credit source.

- Increased effort must be put forth to facilitate the insurance that trust lands stay in trust during the debt servicing process of FSA. The new Administration of the Department of [the] Interior may be receptive to the transfer of trust title between Interior and FSA. The options presented by the 98 Credit Amendments need to be utilized by FSA, BIA and Tribes.
- Increased participation in FSA lending programs would take place if qualifying Tribal Credit Branches were allowed guaranteed lender status.
- The Tribal Credit Outreach Program should be expanded to cover a minimum of 18 states, where the largest Indian populations exist. The Extension Indian Reservation Program must be expanded to its original authorization and design that was 85 extension agents and a minimum budget of $6 million.
- Offices on Indian Reservations—In Section 2501 of the 1990 Farm Bill, Congress prohibited USDA agencies from paying the cost of offices on Indian Reservations. Authority should be restored to FSA and other agencies to cover the cost of offices on Indian Reservations.
- The Indian Land Acquisition Program, which allows protection of Tribal lands, should be expanded, and a similar program established for other socially disadvantaged producers.

Experience—Many new entry producers have strong experience in agriculture either as farmworkers or in the case of many refugee and immigrant farmers, experience as producers in other countries. While legal residents are eligible for loan programs, it is critical that FSA recognize farm and management experience gained as farmworkers or as producers in other countries as experience in qualifying for a loan.

Moratorium on Accelerations and Foreclosures for Socially Disadvantaged Farmers and Ranchers—African American producers have experienced a stunning 97% loss of farms since 1920. Special strategies and emergency action to stem this loss, and to reduce land loss for American Indian and other socially disadvantaged producers. The most urgent need is an immediate moratorium to protect African American farmers and ranchers who now face imminent foreclosure following inadequate protection and outcomes of civil rights complaints and individual and class action lawsuits. This immediate stay should be applied as well to other filed discrimination cases and administrative complaints that are pending for all socially disadvantaged farmers and ranchers.

In the farm bill, we propose that Congress declare a moratorium that provides an immediate stay on all accelerations and foreclosures against all socially disadvantaged farmers and ranchers and establish a review commission to be charged with reviewing all pending actions against socially disadvantaged farmers and ranchers. In addition, Congress should provide clear authority requiring the Secretary to waive interest and offsets, and to write off interest for all such cases during the review; and to forgive loans in cases where government action or inaction led to the foreclosure action.

This Independent Socially Disadvantaged Farmer Foreclosure Review Commission should:

- Determine whether farm land foreclosed and accepted for review by the commission complies with applicable laws or regulations, and
- Determine if actions or inactions of the government led to the foreclosure action.
- Review and improve upon the credibility and accuracy of the USDA Farm Credit Foreclosure process and procedures,
- Report programmatic inefficiencies to the House and Senate Agriculture Committee that include recommendations for legal remedies to address wrongful foreclosures against African American and any other socially disadvantaged producers.

Culturally Appropriate Service Delivery—FSA should conduct outreach and deliver service in a manner that is culturally appropriate and language accessible for socially disadvantaged producers, and should retain adequately trained loan program staff with the linguistic and cultural background adequate to serve farmers in the region.

Proposals for New Programs to Restore Equity—In order to begin the process of restoring access to socially disadvantaged producers who have been severely compromised in their ability to access land and operate viable operations, we propose a new credit program, and we encourage the Committee to support and endorse a more comprehensive approach to assist this population of farmers to engage with the full range of USDA programs and Services.

New Low Documentation Loan Program for Socially Disadvantaged Farmers and Ranchers—Many socially disadvantaged producers with small-scaled diversified operations could achieve real viability with more flexible financing tools. We recommend that this Committee establish a new socially disadvantaged farmers and rancher flexible loan program. We recommend that this be established at a maximum level of $50,000 per loan and that it be operated as a renewable line of credit that the producer may draw on again in future years when the balance is reduced below the limit.

We recommend that the interest rates be below market rates, and that a quick approval low documentation process be used. The lower loan rate reduces risk to the agency, but allows the flexibility that many producers need. Authority should also be provided to make individual loans for members of cooperatives of groups of farmers in order to allow development of value added and cooperative businesses that can best be conducted beyond the level of the individual.

Socially Disadvantaged Producers Risk Management and Market Access Initiative—We recommend that Congress establish a new comprehensive program to assure protections and market access that socially disadvantaged farmers need to attain financially viable operations that benefit also the poor rural communities where many of the live.

We share this recommendation with this subcommittee because we believe a comprehensive approach to service for this population would reduce the risk and increase opportunities for socially disadvantaged farmers with respect to loan programs as well.

This initiative is a comprehensive legislative approach designed to:

- preserve and build land ownership by Socially disadvantaged farms and ranchers
- bring socially disadvantaged producers into USDA programs and assure more accurate counting of this population in the Census of Agriculture;
- contribute to rural communities, and
- to address the following challenges socially disadvantaged farmers and rancher face:
  - risk management and disaster protection,
  - Secure access to land, credit and markets
  - Facilitate transition from tobacco and peanuts and other crops and to organic productions, value added,
  - Improve record keeping, general farm and financial management practices and meeting all regulatory requirements

Under this initiative, funding and technical assistance will be provided directly to farmers and ranchers, including beginning socially disadvantaged producers and farmworkers seeing to become farmers and ranchers, and who meet the criteria in order to carry out the applicable functions. Community Based organizations would receive direct support from RMA to supply the technical assistance

Eligibility: A socially disadvantaged farmer or ranchers.

- Qualification level—The producers is awarded an Initial payment of $5,000, half paid in advance. The producer must within 1 year prepare IRS schedule F or a qualified substitute for members of Indian Tribes. The producer must also sign up for any crop insurance or NAP programs for which he or she is qualified, and must register at the FSA office, and FSA must provide his or her name to the National Agriculture Statistics Service for inclusion in the next Census of Agriculture. A qualified Technical Assistance Provider will receive $2,000 to assist the farmer in preparing these documents and accessing these services and in preparing a plan to apply for participation in Tiers I, II and III. The producer is also encouraged and may use technical assistance to be included in the Minority Farm Registry or complete the Census of Agriculture if applicable in that year.

  The producer must remain qualified at this level in order to participate in Tiers I, II or III.
- Tier I Direct payments of $10,000 per year to complete at least three of the following:
  - A farm and home plan,
  - Applications for any USDA program for which he or she is eligible
  - An estate plan,
  - A risk management plan, including accessing family health insurance
  - A conservation plan
  - Land acquisition
  - Disaster protection or mitigation
  - Plan to transition to another crop or crops
  - A qualified Technical Assistance Provider will receive $3,000 to assist the farmer in accessing these services
- Tier II—Direct payment of $25,000 per year to complete at least three of the following:
  - Meet standards for GAP, Organic certification
  - Make a marketing plan
  - Access liability or other expanded insurance, including revenue insurance
  - Access farmers[’] markets or improved marketing contracts
  - Make a plan to meet other regulatory requirements, including labor and pesticide health and safety standards, Livestock and Animal ID
  - Mentor another farmer
  - Qualifies for SARE
  - Irrigation and other production assistance
  - Waste management
  - A qualified Technical Assistance Provider will receive $4,000 to assist the farmer in preparing these documents and accessing these services
- Tier III—Direct payment of $45,000
  - Cooperative development and the development of value-added enterprises.
  - Infrastructure development
  - Enter nutrition programs such as school lunch, WIC, farmers[’] market, senior nutrition, *etc.*
  - Energy
  - Rural Development
  - A qualified Technical Assistance Provider will receive $5,000 to assist the farmer in preparing these documents and accessing these services

Additional Provisions

- Make this a program under the commodities title and locate in RMA Outreach and Civil rights office.
- Community-based organizations would provide technical assistance.
- Provide Funds for additional staff for RMA regional offices and at headquarters.

- Authorize and Support the Small Farms Emphasis Program to work across agencies at USDA to assure coordination of services for socially disadvantaged farmers under this program.
- Include automatic entry into some USDA programs for completion of certain tiers.

Conclusion

We appreciate this opportunity to share our insights and recommendations with you. We are most willing to answer now or in the future any questions you may have or to offer any assistance we are able to the Committee or to the Secretary to make USDA-Farm Service Agency Credit programs and services more equitable.

Appendix A—Samples of USDA 10708 National Program Participations Reports

Program Participation Report
Program National Summary
Fiscal Year: 2003
Farm Service Agency
Peanut Quota Buyout Program

	Male		Female		Unknown		
	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Undiscloded Ethnicity
	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator
White	<3%	46.3%	<3%	32.8%	<3%	<3%	
Black	<3%	8.4%	<3%	9.5%	0%	<3%	
AI/AN	0%	<3%	0%	<3%	0%	<3%	
Asian	0%	<3%	0%	<3%	0%	<3%	
HPI	<3%	<3%	0%	<3%	0%	<3%	
Other	<3%	<3%	<3%	<3%	<3%	<3%	
Multi	0%	<3%	0%	<3%	0%	<3%	
Unclass							0%
Total	<3%	54.1%	<3%	42.7%	<3%	<3%	0%

Program Participation Report
Program National Summary
Fiscal Year: 2003
Farm Service Agency
Guaranteed Farm Operating Loan Program

	Male		Female		Unknown		
	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Undiscloded Ethnicity
	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator
White	<3%	40.9%	<3%	<3%	<3%	54.7%	
Black	<3%	<3%	0%	<3%	<3%	<3%	
AI/AN	<3%	<3%	0%	<3%	0%	<3%	
Asian	<3%	<3%	0%	<3%	0%	<3%	
HPI	0%	<3%	0%	<3%	0%	<3%	
Other	<3%	0%	<3%	0%	<3%	<3%	
Multi	0%	0%	0%	0%	0%	0%	
Unclass							0%
Total	<3%	41.8%	<3%	<3%	<3%	55.8%	0%

Program Participation Report
Program National Summary
Fiscal Year: 2003
Farm Service Agency
Non-Recourse Marketing Assistance Loan and Loan Deficiency Program

	Male		Female		Unknown		
	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Undiscloded Ethnicity
	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator
White	<3%	71.2%	<3%	24.9%	<3%	<3%	
Black	<3%	<3%	0%	<3%	0%	<3%	
AI/AN	<3%	<3%	<3%	<3%	0%	<3%	
Asian	0%	<3%	<3%	<3%	0%	<3%	
HPI	0%	<3%	0%	<3%	0%	<3%	
Other	<3%	<3%	<3%	<3%	<3%	<3%	

Multi	0%	<3%	0%	<3%	0%	<3%	
Unclass							0%
Total	<3%	72.3%	<3%	25.8%	<3%	<3%	0%

Program Participation Report
Program National Summary
Fiscal Year: 2003
Farm Service Agency
Conservation Reserve Program

	Male		Female		Unknown		
	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Hispanic or Latino	Not Hispanic or Latino	Undiscloded Ethnicity
	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator	Participation Indicator
White	<3%	68.9%	<3%	27.6%	<3%	<3%	
Black	0%	<3%	0%	<3%	0%	<3%	
AI/AN	<3%	<3%	<3%	<3%	0%	<3%	
Asian	<3%	<3%	0%	<3%	0%	<3%	
HPI	<3%	<3%	<3%	<3%	0%	<3%	
Other	<3%	<3%	<3%	<3%	0%	<3%	
Multi	0%	<3%	0%	<3%	0%	<3%	
Unclass							0%
Total	<3%	69.9%	<3%	28.2%	<3%	<3%	0%

Appendix B

Information Required From Non-governmental Witnesses

Biographical Sketch

JOHN ZIPPERT,
Federation of Southern Cooperatives/Land Assistance Fund,
[**Redacted**],
Epes, Alabama
Email: [**Redacted**] Phone: [**Redacted**]

Mr. John Zippert, Director of Program Operations of the Federation of Southern Cooperatives/Land Assistance Fund is a community organizer and a tireless advocate of economic and rural development for Black farmers. He has a BA degree in history from the City College of New York and has participated in numerous training sessions and courses to enhance his skills in rural development.

The Federation of Southern Cooperatives/Land Assistance Fund currently has over 70 active cooperative member groups, themselves with a membership of more than 20,000 families working together across ten southern states, with a concentration in Mississippi, Alabama, Georgia and South Carolina.

John has held a number of positions in the Federation of Southern Cooperative including co-founder and field leader. In his current role as Director of Program Operations, he is assisting in the development of programs designed to save, protect and expand the landholdings of Black family farmers in the South. He also works to develop, advocate and support public policies to benefit the membership of Black and other family farmers and low-income rural communities. He has fought for economic justice for more than 40 years. John has worked in distressed communities in cooperative and credit union development to provide technical assistance and training to individuals from low-income rural communities who have determined a need for low cost, community controlled consumer credit.

The Federation has participated in policy and advocacy and organized in rural communities to build a base for change. With hard work, collaboration with many other groups, and a consistent program of community and civic education, the Federation was able to get portions of this advocacy agenda incorporated in national farm legislation.

On October 10, 2002, John testified before the U.S. House of Representative's Agriculture Committee on issues pertaining to civil rights programs at the U.S. Department of Agriculture (USDA). He told Congress that "injunctive relief provided in the settlement has not been clearly translated in Federal regulations and actual practice at county level FSA offices. A number of farmers," he said, "have reported to me that they were laughed at, ridiculed, or told 'no such benefits existed', when they attempted to secure this most important forward-looking benefit of the settlement of the law suit." One of the benefits for class members includes priority consideration in USDA offices for receiving assistance in loan packaging. The response at FSA offices is part of the general pattern of continuing discrimination and retaliation against Black farmers.

Zippert has served on the boards of many national, regional, state and local organizations. He is currently the elected chair of the Board of the **Rural Coalition/ Coalición Rural.** He has also served on the boards of Association for Community Based Education, Rural Development Leadership Network, Alabama Black Belt Action Commission, Alabama Council on Human Relations, Alabama Organizing Project, Alabama New South Coalition, Greene County Industrial Board, Greene County Hospital and Nursing Home and the Greene-Sumter Enterprise Community to name a few. John and his wife Carol are co-publishers and editors of the *Greene County Democrat,* the weekly newspaper in Eutaw, Alabama since 1984. The Zipperts have three children, Rachel, Alexandria and Simon and nine grandchildren.

[Congressional Letters and Testimony 4]

Statement of John Zippert on Behalf of the Federation of Southern Cooperatives/Land Assistance Fund and the Rural Coalition/Coalición Rural to the U.S. House of Representatives, Committee on Agriculture, Subcommittee on Departmental Operations

Washington, D.C.
September 25, 2002

My name is John Zippert. I am Program Director of the Federation of Southern Cooperatives/Land Assistance Fund and Chairperson of the Rural Coalition. I personally have worked on promoting equity in poor rural communities for more than 35 years, starting in St. Landry Parish Louisiana with the Congress of Racial Equality. I have worked with the organizations I represent today for many years.

I have personally assisted over 650 farmers in Alabama in the preparation of claims and other documents in response to the *Pigford* v. *Glickman* Consent Decree. I have done this work in a paralegal capacity, under the auspices of the Chestnut, Sanders and Sanders law firm in Selma, one of the law firms connected to the class counsel in the lawsuit.

I assisted over 200 farmers to file initial claims in the case; I assisted another 200 to file for reconsiderations with the Monitor, when their initial claim was rejected by the adjudicators; and I have helped 350 farmers to file late claims and additional documentation on late claims.

According to statistics supplied by the court monitor, of the five states with the highest number of responses, Alabama has the highest rates of approval at 67%.

Relevant Experience of Our Organizations to Address the Questions in this Hearing

We appreciate this opportunity to speak candidly to you on behalf of both of these organizations to address the question of "**Resolving and Removing the Need for Litigation Against USDA.**" The organizations I represent are uniquely qualified to answer this question. Collaboratively and for many years, these groups have served as the primary and often only source of technical assistance and support to a significant proportion of the minority farmers in this nation.

The ***Federation of Southern Cooperatives/Land Assistance Fund*** has for more than 30 years worked with African-American farmers and landowners in some of the poorest counties in the nation. Our membership includes over 75 cooperatives and credit unions. Through our outreach program, we provide land and agriculture-related assistance to over 12,000 rural families.

The Federation implements its various programs throughout the southeast but is concentrated primarily in Alabama, Mississippi, South Carolina, Georgia and north Florida. Over the years, we have worked one on one with minority farmers and their cooperatives to develop new enterprises. A great deal of our work has had to be focused on saving Black-owned farms and assisting their owners to fairly access farm credit and other farm programs and services. We have assisted hundreds of farmers in seeking redress for discrimination and in responding to the class action settlement in *Pigford* v. *Glickman.* Of necessity, we have also sought legal and legislative remedies to assure fair and equitable service to minority producers, including the Minority Farmers Rights Act, which passed as part of the 1990 Farm Bill.

The ***Rural Coalition/Coalición Rural,*** of which the Federation is a founding member, is an alliance of over 80 culturally and regionally diverse rural community-based organizational in the U.S. and Mexico. We have served minority and other limited resource producers for almost a quarter century. The members of our Coalition include some of the most diverse and experienced minority farm organizations including the Intertribal Agriculture Council, the Rural Advancement Fund, which has worked with African American producers for more than 50 years; the North Carolina Association of Black Lawyers Land Loss Prevention Program, the Concerned Citizens of Tillery, as well as Rural Community Development Resources in

Yakima Washington, and the Hmong American Community in Salinas, CA, who serve the growing population of new Latino and Asian-American farmers.

In recent years, we have worked actively to develop new methods with our members to help USDA fill service gaps. In 1996 and 1997, in collaboration with USDA, we trained our members on the roles and election procedures for FSA county committees. With FSA support, we held two outreach trainings to help our members better understand the purposes and eligibility requirements of a wide range of USDA programs.

Collectively, the Federation, and the Rural Coalition and its members and allies, have assisted thousands of farmers with the intricacies of their dealings with USDA. We have attempted on many occasions to see that USDA was held accountable for its discriminatory practices that we have observed, and to seek structural change both administratively and in policy. We have written letters and proposed policy changes, including an entire Minority Farmers Rights Act, portions of which were instituted into law in the 1990 Farm Bill.

In the past several years, we have supplied reams of documents, analysis and testimony to the Civil Rights Action Team, the National Small Farms Commission, the U.S. Congress and the U.S. Civil Rights Commission. A half dozen of us served on the National Small Farms Commission, and we have also participated on other committees and in many sessions with the Secretary and the staff of the Department.

Our collaborative legal and legislative work included the 1987 Agriculture Credit Act, the 1990 Farm Bill, the 1994 Agriculture Reorganization Act, and the Waiver of the Statute of Limitations which removed a critical barrier to the settlement of the longstanding class action lawsuits.

We have also worked with you on the most recent 2002 Farm Bill. We appreciate the support the Members of this Committee who helped assure that the first of the structural changes instituted to prevent future discrimination were passed in that bill.

Introduction to Our Findings

In my years of work with the Federation of Southern Cooperatives/Land Assistance Fund, I have never met a Black farmer who was not discriminated against. I believe the same is true for most of the diverse group of African-American, Latino, American Indian, Asian and female farmers represented within the Rural Coalition.

In this statement, I will first address issues surrounding the settlement of the *Pigford* v. *Glickman* class action lawsuit. I will then turn my attention towards the essential and fundamental changes USDA must make in order to prevent the actions that necessitated legal action in the first place.

We want to express the full willingness of our organizations to cooperate with this Committee and the U.S. Congress to root out discrimination and change unjust structures at USDA. We want to help bring about the day when African American and other minority farmers can turn their attention to growing crops and revitalizing rural communities instead of filing complaints and lawsuits to secure the equitable service to which they are entitled in the first place.

It is time to close this chapter of discrimination in farm programs and move to a new one that supplies justice and equity that are our rights in a democratic society.

I. Resolving Litigation and Redressing Wrongs: ***Pigford*** *v.* ***Glickman***

USDA has admitted past wrongs in its practices. The court has ruled on the *Pigford* v. *Glickman* case. The new Secretary of Agriculture should instruct Farm Services Agency in particular to stop denying that they did something wrong, and to cease interfering in the implementation of the Consent Decree. She should also instruct FSA and particularly the Office of General Counsel to stop obstructing justice in the other farmer and employee class action lawsuits now facing the department.

At the present time, the injustice facing Black farmers is being compounded at the taxpayers expense by allowing USDA employees, and particularly FSA county employees any role in responding to the court in the *Pigford* case. We have also learned that USDA employees are also assisting in appealing decisions of the arbitrator that are favorable to the farmers. We find it abhorrent and a misuse of the public trust that those reviewing cases and answering the courts are the same people who caused the problems in the first place. Congress should consider it retaliation and a violation of the "zero-tolerance" policy that FSA county employees have any role at all in *Pigford* response, and order this interference to cease immediately.

After the court ruled, the agencies responsible are still using our taxpayer money to fight against and deny this discrimination, saying it did not happen, and even exerting pressure to deny rulings made in favor of the farmers. Extremely high paid

individuals continue to argue against cases they have already lost, actively subverting the entire justice process at taxpayer expense. In our interactions with FSA staff at all levels—national, state and count—we continue to encounter blatant denial that anyone ever did anything wrong.

The fact is that discrimination did happen, both in credit programs and in the old ASCS programs, where farmers rarely gained enough access to the programs to generate complaints. Unless that reality is accepted and addressed, it is highly unlikely that forward progress can be made in creating a system that serves all farmers fairly.

Pigford v. *Glickman* Concerns

As of August 29, 2002, according to a report on the USDA website, there were a total of 22,829 claims filed, of these 21,583 were deemed eligible claims filed in the case. Of these 181 are Tract B and 21,358 are in Tract A. As more late claims are qualified and other claims are re-evaluated, there may be additional claims added to the totals.

There were 69,265 late claims filed by the September 15, 2000 deadline. To date 58,747 late claims have been rejected and only 1,350 (1.9%) have been accepted.

Of the 21,358 eligible Tract A claims that have been adjudicated, 12,865 (60.2%) have been approved for payment; and 8,493 (39.8%) have been rejected. 12, 597 adjudicated claims have been paid totaling $629,850,000; 222 claims we paid for non-credit benefits only; these claimants, although discriminated against received only $3,000 each.

An addition $17 million in loans, directly from FSA or other Federal agencies, were canceled.

Of the more than 8,000 claims that were rejected, 6,000 have requested a reconsideration by the Court appointed Monitor in the case. The Monitor has reviewed a quarter of these and ruled for a reconsideration for the farmers in 55% of these cases.

We have a number of grave concerns with the process in this Black farmer class action lawsuit, that Congress can help illuminate and correct, among them are:

- The process in this settlement has been too complicated and difficult for farmers to follow and comply with, which has reduced the full number of people joining the class
- There was insufficient outreach to Black farmers to explain the settlement, during the original sign-up period, which resulted in many eligible farmers being eliminated from the class; the 69,265 late claims filed are an indication of this problem. At the Federation, we are still receiving inquiries from farmers, who felt that were left out of the case.
- The claim denial rate of almost 40% has been inordinately high and does not reflect the actual record of discrimination by the USDA. Many farmers are being denied based on recommendations and records of USDA "task-force employees" who were involved in the original record of discrimination and should not be involved in the process. We suggest Congress direct USDA and USDOJ to pay all eligible claims in this case, including those denied by adjudicators based on questionable information from the government.
- The process of paying the farmers is entirely too slow. This case was settled in April 1999 and farmers were promised and expected payments in time for the 1999 crop season. Most farmers were not paid in time for the 2000 crop season. Now three crop seasons later, many farmers who were denied and have filed for reconsideration; and many of the late claims have not yet received a determination on their claim, as we head into the fourth crop season since the settlement.
- The approval of less than two percent (1.9%) of late claims by Michael Lewis, the Court appointed Chief Arbitrator in the case, should be reviewed by Congress. Lewis has failed to inform farmers of the specific conditions and circumstances he is accepting to find that people had "extraordinary circumstances beyond their control" to allow him to approve late claims. Initially, he rejected almost all the late claims with no basis for appeal. Subsequently, at the urging of the Court, he set up a review process where late claim farmers can submit additional documentation to explain and justify their late claims. This again is a long involved process, with many delays and no clear due process or procedures. Congress should take a close look at this process to insure its fairness and equity to farmers.
- The claims of some Black farmers who were discriminated against for "program benefits", *i.e.,* conservation benefits, disaster livestock feed, adverse acreage de-

cisions; and not credit claims, have now been paid at a compensation of only $3,000. This amount is not fair. These claimants have a finding of discrimination by the independent adjudicators and they should be paid the full $50,000 settlement amount.

- The Track B process has been fraught with delays, technical problems and procedural difficulties. Only 54 of 182 of these cases have been adjudicated to date. Where the farmers have prevailed the government is challenging the arbitrators' decisions and ultimate payments to farmers will be years away.
- There remain farmers who did not get full debt relief under the settlement, even though a previous act of discrimination may impede their ability to pay subsequent debt. They should receive full payment.

Finally we note that injunctive relief provided in the settlement has not been clearly translated in Federal regulations and actual practice at county level FSA offices. A number of farmers have reported to me that "they were laughed at", ridiculed, or told "no such benefit existed" when they attempted to secure this most important forward-looking benefit of the settlement at the local FSA office.

The Federation is working with a large group of these farmers, who are seeking to exercise their injunctive relief benefits and not receiving support from the government's representatives at the local level. This is also part of a general pattern of continuing discrimination and retaliation against Black farmers who participated in the lawsuit. Moreover, the injunctive relief requested and provided fails to address the many changes USDA still needs to make to prevent future problems for recurring.

II. Removing the Need for Litigation Against USDA

The United States Department of Agriculture, and in particular, the Farm Services Agency and its predecessor agencies, have been responsible for discrimination and neglect that to date has cost the U.S. taxpayers more than $700 million. Other class action lawsuits by the Hispanic, Native American and Women producers, in addition to many more employee lawsuits, will cost the taxpayer still more.

Instead of acting to remove the vestiges of discrimination and prevent it from happening again, USDA has chosen to deny, in court and in settlements, that it has discriminated. The fact is that the Department and its agencies continue to discriminate. In the next section of my testimony, I will discuss what the department could do if it truly wanted to assure fair service to farmers.

In the 2002 Farm Bill, with the support of the House and Senate Agriculture Committees, and on the full House and Senate, Congress took additional steps to begin making the structural changes that are necessary. We worked closely with you on these changes:

➢ A new post for an Assistant Secretary for Civil Rights, who will report directly to the Secretary, was created, although it has not yet been established or filled.

➢ The authority for the Minority Farm Outreach and Technical Assistance Program was expanded to allow more coordination among agencies, and eligible participants were more clearly defined. The funding authority was expanded from $10 million to $25 million.

➢ USDA is required to publicly report to the county level the participate rate of producers in every program serving farmers. These participation rates will be detailed by race, ethnicity and gender. The Secretary must report changes in participation to Congress after each Census of Agriculture.

➢ The Secretary is required to establish uniform election procedures for FSA County Committee elections and to publicly report participation data and results by race, ethnicity and gender. Organizations representing minority producers are authorized to nominate eligible producers to stand for elections. Ballot counting must be open to the public and ballots must be opened and counted at that time only.

➢ Budget authority for minority serving institutions was increased, as was authority for the Extension Indian Reservation Program.

➢ FSA Loan Eligibility was restored to producers who received debt forgiveness because of a natural disaster or emergency, and any action provided as part of a resolution of a discrimination complaint was excluded from the definition of debt forgiveness.

We urge Congress to fulfill its oversight authority by assuring all of these provisions are quickly implemented and the results regularly reviewed. These measures alone, however, are insufficient to root out discrimination and prevent future law-

suits. We also urge you to take notice of additional problems and recommendations offered today, including those noted below.

A. Invest in Collaborative Outreach

By the time all the lawsuits are settled, the cost to taxpayers may exceed $1 billion. These settlement costs do not include the many losses to African American, Asian, Hispanic and American Indian producers who lost their lands and livelihood unjustly with no compensation. For example, in 1997, our Rural Coalition Board member Greg Smitman, now the former Executive Director of the Intertribal Agriculture Council, detailed to the Civil Rights Action team how farm foreclosures accounted for the greatest loss of land from Indian Reservations. Nor do these estimates include the cost of the lost opportunity for hundreds of people of color who seek access to the land, but who for many reasons are excluded and denied.

For many years, we in the minority farm community have together sought relative minor investments, totaling in the tens of millions of dollars, to secure effective outreach and equitable access to programs. Had Congress provided since the 1990 Farm Bill the full $10 million then authorized each year for the Section 2501 Minority Farm Outreach and Technical Assistance Program, we would now have more farmers on the land. This program and others that serve minority producers remain an afterthought rather than a fundamental priority.

We urge Congress and especially this Committee to invest in equity and to make the following programs a priority:

The Minority Farm Registry—An investment of around $1 million a year would allow full implementation of the minority farm registry, which I will discuss further later in this statement. The Registry, as recommended in the Civil Rights Action Team Report as well as the report of the USDA Commission on Small Farms, has been approved by the Office of Management and Budget. Its implementation remains bogged down in budgetary negotiations in USDA. This impasse should be solved immediately.

The Extension Indian Reservation Program and Consolidated USDA Offices on Indian Reservations—Cooperative Extension serves virtually all counties in the United States, including urban counties. However, Indian Reservations have long been excluded unless they pay for services. In 1990, the Extension Indian Reservation Program was established, and funds provided to extend Extension Services to some Indian Reservations. In the 2002 Farm Bill, the spending limit on this program was removed. However, a serious inequity will remain until this program is made mandatory and until services are extended to all Indian Reservations that request services. Likewise, USDA agencies cover the cost of running their offices in virtually all farm counties in the United States. But authorization language passed in 1990 for consolidated offices on Indian Reservations requires the Tribe to pay for these offices. This barrier should be removed, and USDA should cover the costs of these offices.

Equitable Funding for Minority Serving Educational Institutions—We have supported over the years many initiatives, including one awaiting floor action in the House of Representatives, to make more equitable and sufficient the support for minority serving institutions, included the 1890 Universities, the 194 Indian Tribal Colleges and Hispanic Serving Institutions. Adequate funding for these institutions is essential, and a matter of justice. Once again, the additional $20–$30 million required is a small investment compared to the costs of litigation and continued injustice.

Minority Farm Outreach and Technical Assistance—(*See Section E for a fuller discussion of the accomplishments of this program*) The new farm bill has gone into effect, with new programs and program requirements. Without technical assistance, minority producers will once again be excluded from the benefits of these programs. At a time the Minority Farm Outreach and Technical Assistance is more necessary than ever, the Administration has yet again relocated the program. The $3 million Congress provided for FY 2002 has not been expended, and existing contracts for outreach will expire at the end of this month.

The Administration has expressed some willingness to move towards 3 year contracts under this grant round. However, moving towards a full appropriation is essential to assure that this change does not eliminate for several years some ongoing programs. More funding is also needed for organizations who for many years have been working with minority farmers but who have not yet received funds to provided services similar to those available through current grantees. Likewise, there is an urgent need for more funding to existing grantees that are now unable to serve all the farmers in their region.

The Administration has been talking about combining FY 2002 and FY 2003 funds to assure a larger funding pool to make the transition to 3 year grants, which in each round will be funded in a single year appropriation.

However, we now face an emergency situation. The FY 2003 Agriculture Appropriation remains stalled, and may not see action before Congress recesses or adjourns. At present, the House Agriculture Appropriations Committee provided an additional $5 million to raise FY 2003 expenditures to some $8 million for the coming fiscal year. An amendment to supply a similar increase in the Senate is being drafted whenever that bill comes to the floor.

This Committee should lead efforts in Congress to invest in the handful of programs that can lay the groundwork for making USDA programs and services more equitable. For less than $50 million in new funds, Congress could accomplish all of the recommendations listed below.

We recommend the following action if the FY 2003 Appropriation is not passed before Congress recesses for the elections:

(1) Upon passage of whatever resolution that continues the operation of the USDA, USDA be urged to take the current level of $3 million in FY 2003 funds and combine them with the $3 million carried over from FY 2002. These funds should be used to continue existing Minority Farm Outreach Contracts for the coming year.

(2) This Committee should support a floor amendment to the FY 2003 Agriculture Appropriations Bill when it is considered that would increase total funding for FY 2003 to $25 million. With the funds supplied beyond those included in any continuing resolution, a second grant round for the Minority Farm Outreach and Technical Assistance Program should be completed before the end of FY 2003.

(3) The Committee should also support the floor amendment now being drafted to expand funding for the 1890 Universities, the 1994 Land-Grant College, and eligible Hispanic Serving Institutions by $5 million each and call upon the Senate to provide similar action.

(4) The Committee should further support additional funding of at least $5 million for the Extension Indian Reservation Program in the coming year.

Additional Recommendations:

(5) In future years, this Committee should regularly request and strongly that the Appropriations Committee supply the full authorized level of $25 million. Alternately, the Committee should make the program and the funds mandatory at a level of at least $25 million, and a regular and critical priority among farm programs.

(6) The provision in Section 2501 of the 1990 Farm Bill requiring Tribes to provide office space for Consolidated Offices on Indian Reservations should be removed. USDA agencies should pay for these offices.

(7) Extension Indian Reservation Programs should be provided for all Tribes who request them. The Committee should support adequate funding to meet al[l] needs, or make the program mandatory.

(8) This Committee should assure that adequate funds are allocated for the implementation of the Minority Farm Registry.

B. Make Farm Programs More Equitable and Assure They Reach and Meet the Needs of Minority and Other Small Farmers.

Before the implementation of the new farm bill, approximately 75% of farm program benefits went to 10% of largest and most prosperous farmers. The same was true of bailout funds and AMTA payments. However, support for 10 acre intensive vegetable farmers who were equally devastated should be equitable. Most such farmers have not, and in this year will not, receive disaster payments. Crop insurance has also failed to serve the ongoing and disaster needs of small-scale producers, including the vast majority of minority farmers.

In recent years, we have often heard FSA farm program employees lament the way lawsuits involving credit programs were unfairly giving a negative view of farm and commodity programs. We maintain there was nothing unfair about a perception that farmers were also unfairly treated and excluded from commodity programs.

A legislative anomaly that waived the right of sovereign immunity only under the Equal Credit Opportunity Act restricted the ability of farmers to seek damages from USDA in other than credit programs. As the 1992 Program Participation data in the table below illustrates, minority farmers had very low participation rates in

commodity and other farm programs. Their exclusion from these programs certainly reduced their ability to secure credit and maintain viable operations.

Under the 1992 Corn Loan program, 99.88% of participants were white. Only in the cotton program, where 4.64% of the participants were African American, was participation even close to the proportion of Black farmers. However, most participants in the cotton program are concentrated in the Southeast region, where, according to 1992 ASCS statistics, 7.52% percent of producers were African American.

In the Conservation Reserve Program, where counties had limited amounts of funds to allocate among producers, participants in 1992 were 99.3% white. Of 22,368 participants, 96 were African American, 30 Hispanic and 24 American Indian. In Oklahoma, the state with the largest number of American Indian producers, there were only three American Indian participants in the 1992 CRP program.

1992 Program Participants, Selected Programs

Agriculture Conservation and Stabilization Service

(Compiled from data provided by ASCS to the Rural Coalition)

Year	White	Black	Hispanic	Asian Amer./ Pacific Isl.	Amer. Ind./ AK Native	Total Minority	Total All
Total Producers							
#	7,392,430	202,969	64,893	7,478	82,534	357,874	7,750,304
%	95.38%	2.62%	0.84%	0.10%	1.06%	4.62%	
Conservation Reserve Program							
Midwest	11,964	10	1	2	5	18	11,982
Northeast	224	—	—	—	—	—	224
Northwest	3,940	—	2	2	16	20	3,960
Southeast	3,279	81	1	2	—	84	3,363
Southwest	2,705	5	26	—	3	34	2,739
#	22,112	96	30	6	24	156	22,268
%	99.30%	0.43%	0.13%	0.03%	0.11%	0.70%	
Emergency Conservation Reserve Program							
Midwest	1,549	—	—	—	—	—	1,549
Northeast	52	—	1	1	—	2	54
Northwest	920	—	1	1	19	21	941
Southeast	496	21	157	—	—	178	674
Southwest	641	5	18	8	1	32	673
#	3,658	26	177	10	20	233	3,891
%	94.01%	0.67%	4.55%	0.26%	0.51%	5.99%	
Adjusted for Puerto Rico							
Puerto Rico				*155*			
Other							
#	3,658	*26*	*22*	*10*	*20*	*78*	*3,736*
%	*97.91%*	*0.70%*	*0.59%*	*0.27%*	*0.54%*	*2.09%*	
Corn Farm and Warehouse Loan *Selected Regions*							
Northwest	25,833	—	1	1	5	7	25,840
Southeast	3,600	97	—	—	5	102	3,702
Southwest	2,695	—	4	—	2	6	2,701
Total Program (All Regions)							
#	106,411	107	6	2	17	132	106,573
%	99.88%	0.10%	0.01%	0.00%	0.02%	0.12%	
ASCS Upland Cotton Farm and Warehouse Loan *Total Program*							
#	32,306	1,576	89	8	8	1,681	33,987
%	95.05%	4.64%	0.26%	0.02%	0.02%	4.95%	

The statistics in the table above were provided to the Rural Coalition by then FSA Administrator Grant Buntrock. He routinely provided these numbers with complete breakdowns by state and region when we requested them. I am providing an expanded version of these tables to you for the record. In them, you can also find state by state breakdowns. However, since 1997, USDA has not supplied any data in any usable form to help us monitor the need for outreach and the results.

The new farm bill provisions on Transparency and Accountability would make the release of such data, down to the county level, routine. It is our hope that USDA websites could include this data for every county in the nation, for only at that level

is it truly meaningful. In the table above, for example, the relatively large participation of Puerto Rican farmers in the 1992 CRP program is large enough to affect the national level data on minority farm participation. However, participation rates for other minority farmers remain very low when the figures are adjusted.

This is not to say that better participation in Puerto Rico is not important. It is to say that equitable participation everywhere is essential, and it will take state and county level data to make sure that is happening in Alabama and Mississippi and Georgia, and Montana and Texas and California, *etc.*

The low participation of minority farmers in the 1992 CRP program underscores the point that is raised in the testimony of Mr. Burkett. Where programs are discretionary and supplied on a first-come, first-served basis, the injustices of the county committee system we will discuss below are underscored. In my home county in Alabama, for example, over 99% of CRP payments go to white farmers even though the vast majority of producers are African American.

Minority farmers are often the last to hear about programs and sign up windows. When they do request applications, they are often told the program is not for them, or else the applications are not yet available. When they return weeks later, the applications are gone and the funds already allocated to white farmers. The same problem exists in the allocation of disaster aid.

USDA agencies in general could begin to cure this program and initiate accountability by taking two important steps.

- ➢ If agencies are required to release county level data on participation rates in each program, they will be more careful in assuring that minority farmers hear about programs. If their participation rates differ greatly from similar counties, the USDA Civil Rights operation will have data that allows them to prioritize where to investigate disparities.
- ➢ The other critical step that Congress should require of USDA is the recommendation that Mr. Burkett makes to establish a "request for service" receipt. Whenever any farmer requests an application or service and he or she is not supplied it, USDA agencies should be required to provide a receipt that details the name of the farmer, what was requested, why it was not provided, and what action is recommended. A copy should be given to the farmer, and one maintained in the office. In this way, data would exist that could also make evident any differences in service provided to minority and other farmers.

Forest Service and NRCS and other conservation similarly better serve largely non-minority producers. FAS programs not designated for small farmers. Credit programs need vast improvements. Rural cooperative programs should better serve minority producers throughout the nation. Congress should highlight equity issues as it reviews these programs, particularly but not only before reauthorization.

- ➢ To understand the specific problems in these programs, there must be funding for research conducted with the community based organizations and educational institutions that know how to reach minority producers.

In *Appendix A,* we have provided a copy of the testimony provided earlier this year to the House Agriculture Committee Subcommittee on General Farm Commodities and Risk Management. In this testimony, we share results from research the Rural Coalition conducted in cooperation with the Missouri Action Research Connection, based in the University of Missouri Department of Rural Sociology. The findings of this research, supported by the USDA Risk Management Agency and focused on largely minority farmers, shows very low participation in program crops. Of the farmers surveyed, over 30% had been denied a loan by FSA.

We also found that less than 20% of the farmers had used crop insurance. Many farmers did not know where to find crop insurance. If they did, often the products were unsuitable for their diverse farming operations. In cooperation with RMA, we are working on a new project to learn what kinds of insurance of all types minority farm families use, and where they purchase it. We will also look at what types of crop insurance products minority farmers may find worth the price.

We encourage the Agriculture Committee to continue its oversight on risk management and crop insurance. We would further note that where an agency, such as Risk Management Agency, makes a commitment to provide resources and work with community based groups, there is a much greater chance that gaps in services can be identified and methods to remediate them can be derived without the need for litigation.

- ➢ We urge this subcommittee to focus on whether or not current programs and insurance products have the potential to serve minority and other small farmers.

➢ Congress should also monitor the role of crop insurance companies to assure that they make a more concerted investment and effort to work with community based groups and educational institutions in a meaningful way to identify and remedy gaps in service to minority producers.

Transparency and accountability are essential if Congress and the public are to have the tools to improve how USDA conducts business.

➢ The Administration should report fully to Congress on the implementation of the requirements of the farm bill, Section 10708 on Transparency and Accountability for Socially Disadvantaged Farmers and Ranchers. According to this requirement, the participation rates of minority farmers in all of USDA's farm, credit, conservation programs should be publicly disclosed on an annual basis to the county level.

Finally, we note that USDA has failed to provide programs and services that meet the needs of small producers and diversified operations. Congress and the Administration should work with groups experiences in serving these populations to invite dialogue and specific program proposals on how the needs of small farmers should be addressed in the next farm bill. We will discuss this topic further in a future section of this testimony.

C. FSA County Committees and Transparency and Accountability

The existing FSA county committee system must be substantively reformed to assure it provides fair delivery of services everywhere, or else it should be eliminated. Only when FSA discloses participation data as well as information on the cost of operating this system, can Congress and the public begin to assess if the funds expended are a good use of Federal dollars to accomplish the work the committees are supposed to accomplish.

It is the opinion of most minority and limited resource farmers that they will not be fairly served through the existing system. We believe it is also of paramount importance that the election process be revised and fully monitored to reflect completely the spirit of the Voting Rights Act and other civil rights laws with respect to minority participation.

Below and in *Appendix B,* is a sampling of data that would be available if the new county committee election data disclosure requirements in the 2002 Farm Bill were implement. Data shown below are incomplete; a FOIA request for the complete data for every county and state sent by the Rural Coalition to USDA in December 1998 has never been answered.

Data on FSA County Committees

*(See **Appendix B** for more information)*

- The litigation of the past decade has held USDA liable for its many failings in providing service to farmers. Minority farm loss in previous decades progressed at a rate more than three times that of other farmers. Between 1987 and 1997, an additional 20% of African American farms were lost.
- Hispanic farmers remain one of the largest new group of entrants to agriculture, increasing from 17,476 in 1987 to 27,717 in 1997.
- Figures compiled for the Intertribal Agriculture Council estimates that FSA eligible voter lists underrepresented the number of Indian producers by 80% in the ten largest states.
- The County Committee system was devised in the 1930's as a way to involve farmers in managing USDA programs and services. The democratic model intended has often instead served as a barrier to service for farmers in some areas. *The fact that nothing has been done to correct the problems in some regions casts a negative light on the whole system.*
- The County Committee system is totally federally funded, and as such, the Federal Government should assure that farmer-elected county committees are chosen in fair elections and that minority and women producers have a chance at assuring equitable representation.
- According to information provided to Rural Coalition by Farm Services Agency, of *8,378 elected FSA County committee members elected in 1996, only 20 were African American, 33 American Indian, and 50 Hispanic.*
- Where county committees have not been successful, the result has been costly lawsuits, and substantial increases in the rate of minority and small farm land loss. Inconsistencies must be addressed in order to maintain the integrity of local participation and decision-making procedures of USDA.

- Many county committee election ballots are disqualified (up to 25% in some places) but FSA has not released the data it collected in 1997 on disqualified ballots.
- Inadequate participation of minority, socially disadvantaged and other small farmers and rancher in county committees elections has contributed to the widely variable service provided to these producers in many counties. Election procedures must be consistent and public information available in order to ensure that all county committees operate in an equitable manner.
- In a number of places, groups have found that ballots are opened as they arrive, with an informal count begun. This procedure leaves open the possibility that if the numbers are not as anticipated, committee members or staff can go out and selectively seek additional ballots from others who have not voted yet. *New Public Disclosure for County Committee Elections provisions passed in the 2002 Farm Bill require that ballots be opened and counted at the same time and this counting be announced and open to observer. Implementation of Section 10708 of the farm bill should help cure the previous problems.*

We have recounted one specific instance in the 1990's of an election overturned in Georgia when a Black farmer won a second term on the committee. The results were thrown out on a technicality, and when the election was redone, more absentee landowner ballots were cast. The Black farmer lost by a handful of votes.

- There are wide discrepancies between the number of farmers and the number of eligible voters on FSA lists, with wide regional and state discrepancies. ***In New Jersey there was one eligible voter for every farmer; in NC the ratio was six eligible voters for every farmer.*** (See *Appendix B, Table 1*)

In 1997, there were:

- 5,728,024 eligible voters for farmer elected county committees compared to 1,911,859 farmers.
- About 17.6%, or 382,725 of these eligible voters cast ballots at the following rates:

  17.7% of white farmers
  10.8% of African American Farmers
  28.1% of Asian/Pacific Islander Farmers
  7.0 % of American Indian/Alaska Native Farmers (Other statistics indicate that FSA figures undercount American Indian producers by at least 80%)
- In Wayne County, North Carolina, there were 902 farms and 6079 eligible voters. (See *Appendix B, Table 2*).
- An election in NM showed that only 84 votes were cast, with the winner receiving only 25 votes. In this county with more than 3,500 eligible voters, just 25 farmers cast votes for a county committee member to hold a 3 year seat.

Minority Farm Representation on County Committees

Some data from USDA on the 1996 and 1997 elections:

- In Alabama, one of 189 county committee members, or 0.53%, were African American.
- In NC, 2 of 273, or 0.73%, were African American.
- In South Carolina, 2 of 121, or 1.65%, were African American.
- In Massachusetts, 2 of 35 committee members, or 5.71%, were African American.
- USDA has since 1997 stopped releasing comprehensive data on county committee composition and election participation instead releasing reports showing an aggregated and meaningless 30% increase in minority county committee membership, from about 200 and some to 300.

In outreach trainings the Rural Coalition put together in 1996 and 1997 with support from and in collaboration with the FSA Outreach Office, the 40 representatives of community-based organizations present articulated unanimously the lack of confidence minority producers have in the county committee system and in the willingness of FSA to serve them at all. However, the groups conducted outreach following the event that helped producers better understand the role of county committees and enabled them to increase participation.

Building a new climate of trust and confidence, redressing these concerns, and assuring fair participation in USDA programs will take time. While these changes are made, outreach programs and collaboration such as that noted above are essential

to assure underserved producers know how to access urgently needed the services of FSA and other programs.

Our recommendations are as follows:

- ➢ Outreach funds in all programs are essential to provide the assistance necessary now to help minority farmers. We urge Congress to supply adequate funds for outreach to FSA, RMA, NRCS and other programs to reach minority producers and supply adequate and coordinated outreach that supplements the basic outreach structure supported by the Minority Farm Outreach Program.
- ➢ Congress should monitor closely the Secretary's plans and progress relative to the implementation of Section 10708 of the farm bill. In particular, Congress should make sure the new county committee election procedures are implemented in time for the 2002 County Committee elections, and that within 90 days of the election the Secretary conducts an analysis to determine if more action is needed to assure fair representation. The results of this analysis should be reviewed by congress.
- ➢ Election participation data should also be disclosed each year to the public on existing FSA websites for the county, state and national level. We would note that the Congressional Budget office scored the cost of this amendment at zero because USDA already collects the data required.
- ➢ Revised election procedures and disclosure requirements should also be required by Congress with respect to all other Boards and Committees that are associated with USDA programs, including Soil Conservation Districts, Extension and elsewhere.
- ➢ In the case of County Committees, the Department must have in place responsible and accountable staff members who are Federal employees. New recruitment should emphasize diversity in the delivery workplace.
- ➢ Congress should continue oversight to assure the county committee system works fairly for all producers. If results are not achieved, the system should be abolished.

D. The Need for a Minority Farm Registry

The Minority Farm Registry is an essential tool to reach and serve minority farmers and to monitor the progress of USDA agencies in reaching these farmers. It should be implemented immediately with the support from multiple USDA agencies under the existing missions of their programs.

The Registry promised by the Department and approved in 2000 by the Office of Management and Budget has not yet been officially instituted. Nor has its use as a vehicle to collect baseline data and monitor progress in serving minority farmers been articulated.

The registry implements recommendation #28 of the CRAT report. We fear the approved program has fallen victim to bureaucratic bungling within the department. Apparently, agencies cannot agree on where funds should come for the implementation of the registry. Because the registry would help many agencies better deliver and accomplish the purposes of their program, we believe multi-agency support should be provided, and the funds for data collection should not be supplied from the scarce resources of the Section 2501 minority farm outreach program.

As the registry was being developed, we worked actively with staff members of several agencies to develop an outreach plan for the registry. It is critical that USDA work in partnership with organizations that have credibility with minority producers if the registry is to be used and USDA to develop new credibility.

The agencies have reported the process is stalled over the mechanisms forfunding the registry. We recommend that

- ➢ Congress urge the Secretary to resolve the bureaucratic issues, establish the registry with appropriate support and collaboration from those agencies which deliver services to farmers, and work as proposed in partnership with community based groups to educate minority farmers about the registry, its purposes and use.

E. Integration of Outreach Efforts and the Need for a Coordinated Small Farms Program or Agency

USDA and many of its agencies have failed to work appropriately and strategically with the groups that are the legitimate representatives of its underserved constituents. It has missed the opportunity to create partnerships with them to assure fair and equitable service is provided in all USDA programs. As the information provided later in this section illustrates, the Minority Farm Outreach and Technical Assistance Program has created results.

In addition, the partnerships in research and outreach with Risk Management Agency, NRCS and FSA cited elsewhere have similarly been effective for USDA agencies and minority farmers alike.

This Committee is well aware that the groups appearing before you today have all diligently represented the needs and interests of their minority farm members. They have demonstrated their capacity to assist the department and the Congress in identifying solutions to the problems we have discussed today.

At the present moment, the Minority Farm Outreach Program is being moved for the sixth time since 1990. Those of us who have helped create and have long supported this program have not as a group been involved in the decisions surrounding this program. From what we can understand, the grant-making functions are being separated from the program functions as defined in the new farm bill.

In the 2002 Farm Bill, Congress expanded authority for the Minority Farm Outreach and Technical Assistance Program as follows:

The law defines in Section 10707(b)(a)(1) that "the Secretary of Agriculture shall carry out an outreach and technical assistance program to encourage and assist socially disadvantaged farmers in owning and operating farms and ranches and participating equitably in the full range of agricultural programs offered by the Department." This program "shall enhance coordination of the outreach, technical assistance and education efforts authorized under various agriculture programs . . ."

We believe that in addition to the outreach functions already supported under this program, that the Minority Farm Registry belongs here as well as a critical tool to assist these farmers in owing and operating farms.

One, but only one, function of this program is to "enter into grants and contracts with the eligible entities to provide information and technical assistance." The law makes clear that this authority is in addition to any other authority provided in the farm bill or elsewhere. In addition to the funds appropriate, any other agency of the department is authorized to contribute funds to participate in any grant contract or agreement if the objectives of that contract further the authorized programs of the contributing agency.

In the past year, the community based organizations and educational institutions who that designated as eligible entities under this law have collaborated more closely than ever to secure a more coordinated program. It is our common hope that the myriad outreach and small farm functions of the department can over time, and in consultation with this important group of stakeholders, be more strategically integrated and coordinated.

We believe strongly that these functions should be separate from those of the new Assistant Secretary for Civil Rights whose function is to assure that all programs are fairly delivered according to the law.

The farmers we serve strongly support the Minority Farm Outreach Program. However, as we prepared for the farm bill, our members also strongly supported a new program to serve the diverse needs of small farmers. Many also suggested a separate agency or program to deliver these services.

Minority and small farmers need a real home at USDA. They need programs to serve their unique needs and special value to rural communities and our society. These groups should not be excluded, but instead should be involved as a group as the Secretary makes decisions that are critical not only to the grant-making portion of the Outreach Program but to the eventual coordination and integration of outreach, program and services that are essential to finally assuring a future for minority farmers.

In the following section, we provide more information on what the program is now accomplishing.

The Minority Farm Outreach and Technical Assistance Program

The Minority Farm Outreach and Technical Assistance Program helps minority and other small farmers gain access to USDA's credit, commodity, conservation and other programs. Under this program, community-based organizations and educational institutions with long experience in serving minority farmers provide them with training in farm management, production, marketing and other key assistance critical to accessing USDA programs and managing viable farm operations.

The Facts:

- Minority farmers receive fewer farm program payments, fewer and lower-valued loans, and less outreach and training than do their non-minority peers.
- These disparities have led to conditions whereby minority producers are losing land at a rate three times that of other producers.
- Many minority producers, especially new-entry farmers, have little knowledge of or access to USDA programs that should be available to help them.

- The Minority Farm Outreach Program is the only program created by Congress to address the disparate land loss by minority producers by providing them with meaningful assistance.
- Minority farmers who have received services from the educational institutions or community-based organizations supported by this program have higher rates of participation and understanding of USDA programs.
- Since its inception this program has been continually funded far below its authorized level of $10 million. It has never been funded at more than $3.2 million.
- Increased funding is needed for this program to reach the countless number of farmers and ranchers who are in need of support.

The Outreach program serves minority communities that have been historically underserved and are in vital need of services. The program has provided outreach to more than 100,000 rural constituents and has been an invaluable resource for the more than 400 counties where it has been implemented, among them some of the poorest in the country, where minority and under-served small and family farmers are concentrated.

Technical and outreach staff understand their clients' needs. This program offers minority farmers direct technical assistance and training on farm management, production, and marketing assistance, and cooperative and credit union development; from organizations that have experience working with minority producers and have established themselves as members of the community.

The Minority Outreach Program WORKS! Communities where this program operates have seen a dramatic increase in the number of minority producers participating in farm programs and staying on the land. Producers in communities with no outreach program have little to no knowledge of USDA programs. Additional funds are needed to extend Outreach services to more eligible organizations to reach more communities and farmers where resources have never been allocated.

In order to adequately meet unserved needs, Congress expanded funding authority for the Minority Farm Outreach Program to $25 million in the 2002 Farm Bill. We urge that the appropriation for the program be expanded to **$25 million for FY 2003.**

Addressing the Myths about the Minority Farm Outreach Program

Myth: All Farmers Have Equal Access to USDA Programs

Fact: *The majority of USDA farm program funds benefit the largest farmers. Without technical assistance through the Minority Farm Outreach and Technical Assistance Program, there is little chance many minority farmers will know about, qualify for, or benefit from USDA farm programs.*

Fact: *In 2001, the scant $3 million provided by Congress helped USDA support 32 outreach programs in 23 states and Puerto Rico, reaching* ***hundreds of minority farmers and ranchers.*** *A funding increase to $25 million would allow the expansion of current programs to reach more farmers, and would allow more eligible institutions with demonstrated experience to reach the thousands more eligible farmers they seek to serve.*

Fact: *Under the new farm payment limitations in the 2002 Farm Bill, the same $25 million that could reach thousands of minority farmers would reach only about 50 of the largest producers.*

Myth: The Program is Just a Subsidy for the 1890 Land-Grant Universities

Fact: *Hundreds of African American and other farmers receive critical services under this program through the 1890 Land-Grant Institutions. In addition, the program serves a diverse group of African-American, Latino, Asian and Native American community-based organizations that have assisted socially disadvantaged producers for many years, and in some cases, decades without Federal support. These groups have provided services substantially similar to those provided with Federal support in other outreach and extension programs for mainstream farmers.*

Fact: *In 2001, an improved outreach and peer review process resulted in grants to more than a dozen CBO's and Tribal and Community College, and six programs west of the Mississippi.*

Myth: The Program Has Not Produced Results

> *"Since 1995, we have helped African-American farmers save more than 4,000 acres of land valued at more than $3 million, and helped to secure financing for the purchase of more than 1600 acres, valued at more than $1 million. In 2000 our outreach efforts helped 192 farmers participate in*

USDA programs. In 2000 87% of our farmers grew alternative crops, 92% had developed record keeping systems, and 8% were using computers. Average gross income of our farmers has increased by $15,000 since1995. Only 52% continue to depend on off-farm income, down from 64%."

JERRY PENNICK, *Federation of Southern Cooperatives/Land Assistance Fund.*

"Since 1998 we have worked with over 150 new immigrant farmers to help them adapt their agrarian skills to provide food for their families as well as to provide an avenue to self-sufficiency. The New Immigrant Agriculture Project (NIAP) has helped add over 40 new immigrant farmers onto the FSA records and helped the first Hmong farmer in Minnesota to own land get an FSA farm loan and purchase 56 acres."

MELISSA MACKIMM—*Minnesota Food Association.*

"The Center for Latino Farmers' primary focus is on farm worker to farm owner initiatives. The Project is providing outreach and assistance to 150 Latino farmers to increase their access to USDA programs, develop the farmers' understanding of computers and train them in how to set up their own computerized accounting systems."

LUZ BAZAN GUTIERREZ, *Rural Community Development Resources, Yakima, Washington.*

"H.A.C. is the first CBO of its kind that focuses on economic development in the Hmong immigrants in California's central valley. HAC helped establish the Hmong American Farming Cooperative and is working with 100 farmers to cooperatively market specialty Asian vegetables. Our Small Farm Resource and Training Center offers producers one-stop assistance in farm planning, using new technology in their operations, and in navigating USDA programs and services, as well as training and assistance in their native language."

CHUKOU THAO,—*Hmong American Community, Inc., Fresno, CA.*

Discrimination and neglect still exist, and the community groups working in the field are among the best equipped to cooperate with the department in bringing about a new responsiveness and spirit of service in the delivery of USDA programs.

- ➢ It is our hope that this Committee will recommend to the Secretary that the groups represented here and their counterparts in educational institutions and community based organization who work with minority farmers be included as a group in a dialogue about how an integrated outreach and technical assistance program could be housed and operated within USDA.
- ➢ We further hope the Committee will hold hearings to hear our proposals for programs to serve small farmers so that pilot efforts may be instituted and evaluated well in advance of the next farm bill.

F. The Need for the Establishment of the Assistant Secretary for Civil Rights and the Institution of Real Accountability Throughout USDA

The USDA Leadership has failed to (a) redress and remove vestiges of past discrimination, (b) create a system which rewards or does not undercut or punish those agencies and individuals who are making changes, and (c) hold top level managers accountable for the performance of their subordinates.

To those of us who have done all we can to work with USDA to improve services, it is no surprise that structural change has not occurred.

The same people who have created discrimination or allowed discrimination to continue among their subordinates remain in place at USDA. At the same time, employees with the courage to attempt to make change have either been removed or are penalized for what they do.

After $700 million has been paid in settlements under the *Pigford* v. *Glickman* Consent decree, we are astounded that no high level managers in FSA credit have been retired or replaced. We have seen no data that shows managers, or USDA employees, have been reprimanded and removed. No retired employees have had their pension benefits re-evaluated. The failure to demonstrate that discrimination has consequences in fact constitutes permission to employees to continue business as usual.

USDA a week ago put out a new press release that among other things announced still more civil rights training for its employees. USDA has repeatedly instituted Civil Rights training for employees since 1997. If the same employees who have been trained before are still not delivering services adequately, it is long past time that they be evaluated and removed!

Employees who have discriminated are retiring with pension benefits while settlements for farmers are denied or delayed. In the county where the Federation of Southern Cooperatives has its training center, I know 100 people who were discriminated against by the County Supervisor. His actions directly cost the more than $5 million in settlements that have been paid out to these farmers. The consequences of his actions: none. He has retired with full benefits at the expense of the taxpayer.

For some years, USDA employees have reported that a high level manager who for an extended period of time had a hangman's noose in his office and who displayed this noose to at least one African American employee is still in his position. It does not increase confidence that this individual is the same person who for years has been in charge of loan servicing for FSA. Consider, however, the message transmitted to field personnel when this individual remains in place.

Worse still is the fact that his former supervisor, Lou Ann Kling, who has for many years been one of the most ardent supporters of minority and other small farmers, was removed for her position as the head of farm credit at the same time she tried to hold the manager with the noose accountable. She was transferred to the FSA Outreach Office.

Many other people whom we respect and who have done their utmost to support equity and accountability at USDA have similarly been rewarded with demotions or lack of promotions. We note particularly that Pearlie Reed, former chief of the Natural Resources and Conservation Service, has been moved to a post of regional conservationist for the west. The post of NRCS chief has been made political once more, which is the prerogative of this Administration. However, we would note that at the same time, the post of Administrator of Farm Services Agency has in recent years been returned to a career position, now filled by Mr. James Little.

Throughout the whole county committee system, and in headquarters as well are people who have been a part of discriminatory practices.

While the civil rights program complaints system at has failed on many levels, the most egregious is that it has not been insulated from the agencies being investigated. Farm Services and other agencies remain far too involved in the process of reviewing complaints. Quite apart from the skills of the individual involved, it does not increase confidence in the area of program complaints that the former Director of Civil Rights for Farm Services Agency is now the Director of the Department's Office of Civil Rights. USDA has simply not yet earned a reputation for fairness in this area necessary to avoid the suspicion that the fox has been assigned to guard the chicken coop.

Discrimination and disparity in service has not stopped at USDA. However, farmers are so frustrated with the complaints process that they fail to file complaints until situations deteriorate beyond easy rectification. The failure of USDA to get on with the business of processing complaints, rectifying injustice, and fixing problems with service delivery to prevent future problems is grossly unfair not only to farmers and employees who try to do their jobs well, it also risks new liability and taxpayer expense to solve problems that should no longer be occurring.

USDA, to our knowledge, still lacks any comprehensive and consistent monitoring and compliance review system. Even data collected on a regular basis that would allow USDA officials to monitor performance of agencies and employees at the county level are not reviewed from the framework of preventing disparate treatment. It is not clear that these factors are considered specifically in monitoring the performance of employees.

As a result, complaints are the only evidence USDA has to take corrective action. Were program complaints reviewed in a consistent and unbiased manner, completely insulated from the agencies against whom the complaints are filed, USDA Office of Civil Rights could focus more on the accountability mechanisms and corrective actions that are essential to instituting a fair system of service delivery.

The failure to adequately and fairly address complaints only delays the time it will take to end the history of past discrimination by USDA. We recommend that the complaint resolution process be divorced from any USDA staff involvement. Any employee who meddles should be dismissed and be made liable as a criminal offense for their actions.

Congress has responded to these concerns by establishing an Assistant Secretary for Civil Rights that reports directly to the Secretary.

- ➢ We recommend that Congress urge the Secretary to move rapidly to create this post and consolidate all Civil Rights functions there.
- ➢ Congress should also urge the Secretary to announce a well-qualified and audacious candidate for this position and a plan for structuring this new office.
- ➢ The Assistant Secretary for Civil Rights should also assure that public disclosure is instituted to show action taken to hold employees accountable for dis-

crimination. Reports should summarize the types of action taken (reprimand, removal, *etc.*), categorized by agency, state, and grade level.

Conclusion

We appreciate this opportunity to share our insights and recommendations with you. We are most willing to answer now or in the future any questions you may have or to offer any assistance we are able to the Committee or to the Secretary to make USDA services more equitable.

Appendix A

The Implementation of Title I of the Agricultural Risk Protection Act with Respect to the Needs of Socially Disadvantaged and Other Limited Resource Producers

Statement of John Green, M.S. on behalf of Rural Coalition and Missouri Action Research Connection (MARC) to the U.S. House of Representatives Committee on Agriculture Subcommittee on General Farm Commodities and Risk Management

February 13, 2002

Executive Summary. The Rural Coalition, a Washington D.C.-based coalition with more than 80 community-based member groups serving small farmers, and the Missouri Action Research Connection (MARC) at the University of Missouri-Columbia conducted thirteen focus groups with small, limited resource and minority farmers in the United States to obtain their input on agricultural programs and services.* As part of this effort, *participants were specifically asked to discuss crop insurance.* Among the culturally and geographically diverse focus groups:

- Participants indicated the least familiarity with and moderately low use of crop insurance, relative to other agricultural programs and services.
- Participants who reported not using crop insurance argued that they did not know how, it was too expensive, their farm was not large enough and/or that the produce they grow/livestock they raise are not covered.
- In not a single group did participants mention crop insurance without facilitator prompting in discussions of who and/or what organizations and agencies are helpful or not helpful to their farming enterprise.
- Participants generally supported crop insurance and the need for disaster assistance and risk protection in concept, but noted the need for change.

Introduction to the Focus Group Project. In order to obtain program input from small, limited resource and minority farmers, focus groups were collaboratively conducted by the Rural Coalition and MARC. Thirteen focus groups involving a total of 130 participants were held during 2001 in California, Maine, Mississippi, New Mexico, North Carolina, South Carolina, Vermont and Washington. Topics covered were farmers' hopes for the future, the challenges they face, and their recommendations for future agricultural programs. Of particular interest in these discussions were issues related to disaster protection, risk management and crop insurance.

The participants in this research project represented a diverse array of agricultural producers. Over ⅓ of the participants were women. Age was centered in the 44 to 59 years category. Concerning race/ethnicity, the largest group of participants identified as Black/African American, followed in prevalence by White/Euro American and Hispanic/Latino. Other participants identified as Asian, specifically Hmong, or American Indian. The largest percent of participants had farms ranging in size from 10 to 49 acres (33.6 percent), followed by those who had less than 10 acres (24.8 percent). Concerning farm sales in 2000, over ¼ of the participants were in the $1,000 to $4,999 range, followed in frequency by those who reported over $50,000 in sales (23.5 percent). There were a considerable number of participants, 18.6 percent, that reported farm sales less than $1,000, while a combined 32.4 percent fell in one of the three categories ranging from $5,000 to $50,000 in sales.

Farmers' Discussions of Crop Insurance. To begin, it is important to note that many focus group participants were generally unfamiliar with government agricultural agencies and programs. For example, there were those who were unsure

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*This research was conducted by the Rural Coalition and Missouri Action Resource Connection with support from the USDA Risk Management Agency, Oxfam America, Jessie Smith Noyes Foundation, Presbyterian Hunger Program, and additional support from the Department of Rural Sociology in the College of Agriculture, Food and Natural Resources, University of Missouri-Columbia. The findings may not represent the policies or positions of the funding agencies. For the complete report, contact John Green, Missouri Action Research Connection, Department of Rural Sociology, 203 B Sociology Bldg., University of Missouri, Columbia, MO 65211, phone [**Redacted**], email [**Redacted**].

of the distinction between agencies and specific programs, particularly after the 1994 USDA reorganization, while others simply had little experience with them. Participants attributed this lack of knowledge and contact as resulting from inadequate outreach efforts to small, limited resource and minority farmers on the part of agricultural agencies, or previous negative experience with these or other USDA agencies.

In a survey of their knowledge of and participation in various USDA programs and services, focus group members indicated the least familiarity with crop insurance (43.6 percent) relative to other USDA programs (see *Table 1*). In comparison, they indicated the most familiarity with Cooperative Extension, Farm Services Agency (FSA) and the Natural Resources Conservation Service (NRCS). However, there were numerous instances where participants had not taken part in the programs offered by these or any of the other agencies. Less than ½ of participants who reported being familiar with crop insurance had ever sought assistance, a significantly lower rate of engagement than for the other programs and agencies discussed.

Table 1: Participant Familiarity with Crop Insurance in Comparison to Other Government Programs/Services from Focus Group Survey

Programs/Services	Aware of Program/Service		Ever Sought Assistance *	
	Frequency	Percent	Frequency	Percent
Crop Insurance				
Yes	41	43.6%	17	44.7%
No	53	56.4%	21	55.3%
FSA Credit Programs				
Yes	62	62.0%	38	62.3%
No	38	38.0%	23	37.7%
FSA Farm and Disaster Programs				
Yes	63	62.4%	42	67.7%
No	38	37.6%	20	32.3%
FSA County Committees				
Yes	56	56.6%	36	67.9%
No	43	43.4%	17	32.1%
Natural Resource Conservation Service				
Yes	62	62.0%	35	58.3%
No	38	38.0%	25	41.7%
Cooperative Extension Service				
Yes	72	75.8%	55	84.6%
No	23	24.2%	10	15.4%

Source: Rural Coalition/MARC Focus Group Project, 2001.
* Question only asked of those who were aware of program/service.

Approximately 20 percent of focus group participants reported actual participation in crop insurance (*Table 2*). In comparison, less than ¼ of the participants had ever received an USDA loan, and over 30 percent reported having been denied such a loan. Thirty-two percent of focus group participants indicated that they had ever received USDA Disaster Assistance. Even fewer participated in annual commodity programs (15.3 percent). Participation in conservation programs was higher at 27.4 percent.

While most groups emphasized the importance of disaster assistance, the reasons cited in the survey for not participating in crop insurance included "I don't know how" and "I do not have enough money." Others said that crop insurance is "too costly" and reported that they "don't have a large farm," that their "level of production is insufficient" or that what they produce "is not covered." Some of these statements reflect a general misunderstanding of how crop insurance programs operate, while others reflect problems with the current structure of these programs.

Table 2: Participant Involvement in Crop Insurance in Comparison to Other Government Programs/Services from Focus Group Survey

Programs/Services	Frequency	Percent
Participate in Crop Insurance		
Yes	22	19.8%
No	89	80.2%
Ever Received an USDA Loan		
Yes	28	24.3%
No	87	75.7%

Table 2: Participant Involvement in Crop Insurance in Comparison to Other Government Programs/Services from Focus Group Survey—Continued

Programs/Services	Frequency	Percent
Ever Been Denied an USDA Loan		
Yes	33	30.3%
No	76	69.7%
Ever Received USDA Disaster Assistance		
Yes	36	32.1%
No	76	67.9%
Participate in Annual Commodity Programs		
Yes	17	15.3%
No	94	84.7%
Participate in Conservation Programs		
Yes	31	27.4%
No	82	72.6%

Source: Rural Coalition/MARC Focus Group Project, 2001.

When asked in the focus groups who and/or what organizations and agencies are helpful or not helpful to their farming enterprise, neither crop insurance nor crop insurance agents were mentioned by any of the focus groups without facilitator prompting in discussions, and few of the participants knew their crop insurance agent or where to find him/her. In the end, focus group participants were generally supportive of the "idea" of crop insurance, but they felt that significant changes were needed to make it applicable to their farms.

Conclusion and Points to Consider. Based on the results taken from this research and the outreach work undertaken by the Rural Coalition more generally, there are a few points that should be considered in review of crop insurance as it concerns small, limited resource and minority farmers:

- Information: These farmers often do not know what programs and products are available, how to apply or who to contact.
- Price: Participation in some programs may be prohibitively expensive.
- Limited Coverage: Many small farm products (especially vegetables) are not covered.
- Program Structure: Programs tend to be more responsive to larger-scale producers and often do not meet the needs of small, limited resource and minority producers.

Appendix B: County Committee and Eligible Voter Data

Table 1: Number and Ratio of FSA Eligible Voters Compared to Number of Farmers, By State

State	Number of Farmers 1997 Agriculture Census	Number of Eligible Voters—Farm Service Agency 4/96 *	Ratio: Number of Eligible Voters to Number of Farmers
Alabama	**41,384**	**167,794**	**4.05**
Alaska	548	1,579	2.88
Arizona	**6,135**	**30,563**	**4.98**
Arkansas	**45,142**	**143,247**	**3.17**
California	74,126	97,276	1.31
Colorado	28,268	59,147	2.09
Connecticut	3,687	5,292	1.44
Delaware	2,460	7,594	3.09
Florida	34,799	63,633	1.83
Georgia	**40,334**	**156,941**	**3.89**
Hawaii	5,473	2,917	0.53
Idaho	22,314	56,106	2.51
Illinois	**73,051**	**240,739**	**3.30**
Indiana	**57,916**	**194,145**	**3.35**
Iowa	90,792	245,897	2.71
Kansas	**61,593**	**208,485**	**3.38**
Kentucky	**82,273**	**302,567**	**3.68**
Louisiana	**23,823**	**116,732**	**4.90**
Maine	5,810	15,296	2.63
Maryland	12,084	30,408	2.52
Massachusetts	5,574	11,036	1.98
Michigan	**46,027**	**173,801**	**3.78**
Minnesota	73,367	205,548	2.80

Table 1: Number and Ratio of FSA Eligible Voters Compared to Number of Farmers, By State—Continued

State	Number of Farmers 1997 Agriculture Census	Number of Eligible Voters—Farm Service Agency 4/96 *	Ratio: Number of Eligible Voters to Number of Farmers
Mississippi	**31,318**	**174,338**	**5.57**
Missouri	98,860	236,865	2.40
Montana	**24,279**	**94,345**	**3.89**
Nebraska	**51,454**	**160,626**	**3.12**
Nevada	2,829	4,710	1.66
New Hampshire	2,937	4,336	1.48
New Jersey	9,101	9,082	1.00
New Mexico	14,094	40,039	2.84
New York	31,757	68,404	2.15
[**North**] **Carolina**	**49,406**	**301,325**	**6.10**
North Dakota	**30,504**	**110,769**	**3.63**
Ohio	**68,591**	**217,684**	**3.17**
Oklahoma	74,214	146,618	1.98
Oregon	34,030	48,059	1.41
Pennsylvania	45,457	118,536	2.61
Rhode Island	735	1,400	1.90
[**South**] **Carolina**	**20,189**	**114,673**	**5.68**
South Dakota	**31,284**	**113,812**	**3.64**
Tennessee	**76,818**	**250,824**	**3.27**
Texas	194,301	589,461	3.03
Utah	14,181	23,902	1.69
Vermont	5,828	12,043	2.07
Virginia	**41,095**	**160,646**	**3.91**
Washignton	29,011	61,458	2.12
West Virginia	17,772	46,929	2.64
Wisconsin	**65,602**	**273,345**	**4.17**
Wyoming	9,232	19,328	2.09
Total	**1,911,859**	**5,940,300**	**3.11**

* Last figures made public.
Figures in **bold** exceed the National Average.

Table 2: FSA Eligible Voter Numbers and Election Participation, Selected Counties, 1996

*Eligible Voter Information by County for FSA Election Years 1996 Selected Counties (From County level FSA Forms 681)**

County	Year of Elec.	Total Farms	Eligible Voters			Voters/Open LAA's					Voter Partic.	
			Total	Minority		Total	Total	Minority		Total	Minority	
			(#)	(#)	(%)	(#)	(#)	(%)	(#)	(%)	(#)	(%)
Alabama												
Autaga	95		1,875	315	17%				151	8%	14	4%
	96		1,935	308	16%	699	76	11%	47	7%	1	1%
	97											
Bullock	95		1,789	574	32%							
	96		1,789	574	32%	836	304	36%	92	11%		
	97											
Butler	95		2,343	917	39%				309	13%	131	14%
	96		2,343	917	39%	776	311	40%	90	12%	32	10%
	97											
Chilton	95		3,488	128	4%				101	3%	11	9%
	96		3,127	127	4%	136	14	10%	61	45%	2	14%
	97											
Conecuh	95		2,231	1,022	46%				384	17%	178	17%
	96		2,245	1,023	46%	826	374	45%	134	16%	61	16%
	97											
Dallas	95		3,632	1,247	34%				303	8%	31	2%
	96		3,632	1,247	34%	1,035	251	24%	50	5%	18	7%
	97											
Greene	95		1,507	568	38%				525	35%	188	33%

* **Editor's note:** the statement submitted as part of the appendices of the Rural Coalition/Coalición Rural for the March 25, 2021 hearing is incomplete (it cuts off part of the original document's table). **Further note:** the published hearing, Serial no. 107–23 does not include the cover page, p. 1, of this testimony. To aid in clarity, the table has been recreated, in its entirety, pp. 182–184, from the previously published hearing. The current extant link for an electronic copy is a Digitized by Google pdf *https://books.google.com/books?id=Pzv8-I5YZcoC*.

Table 2: FSA Eligible Voter Numbers and Election Participation, Selected Counties, 1996—Continued

*Eligible Voter Information by County for FSA Election Years 1996 Selected Counties (From County level FSA Forms 681)**

County	Year of Elec.	Total Farms	Eligible Voters				Voters/Open LAA's				Voter Partic.	
			Total	Minority		Total	Total	Minority		Total	Minority	
			(#)	(#)	(%)	(#)	(#)	(%)	(#)	(%)	(#)	(%)
	96		690	334	48%	690	239	35%	334	48%	175	73%
	97											
Marengo	95		2,314	1,163	50%				287	12%		12%
	96											
	97											
Perry	95		1,794	691	39%				272	15%		
	96		754	219	29%	754	219	29%	104	14%		
	97											
Sumter	95		1,625	572	35%				365	22%	100	17%
	96											
	97											
Wilcox	95		1,581	622	40%				364	23%	73	12%
	96											
	97											
California												
Santa Cruz	95											
	96		344						58	17%		
	97											
Monterey	95											
	96		1,531						101	7%		
	97											
New Mexico												
McKinely	94		3,371	3,168	94%							
	97								84			
North Carolina												
Lenoir			4,039	305	8%	1,008	113	11%	186	18%	26	23%
	96	531										
Wayne												
	96	902	6,079	749	12%	1,955	292	15%	231	12%	8	3%
South Carolina												
Chas	95		955			86						
	96		850						95	11%		
	97											
Clarendon	95		1,383	690	50%				136	10%		
	96		1,319						180	14%		
	97											
Florence	95		4,096	1,803	44%				203	5%		
	96		4,199						268	6%		
	97											
Horry	95		2,064	745	36%				338	16%		
	96		1,943						217	11%		
	97											
Lee	95		777	319	41%				106	14%		
	96		833						121	15%		
	97											
Sumter	95		1,217	526	43%				124	10%		
	96		1,247						172	14%		
	97											
Williams	95		2,579	1,036	40%				209	8%		
	96		2,640						159	6%		
Washington												
Adams	95		2,851	13					0	0%	0	
	96		2,917	3		724	0	0%	0	0%	0	
	97											
Chelon	95		1,397	449	32%				353	30%		
	96		1,411	474	34%	472	151	32%	79	10%	27	18%
	97											
Douglas	95		1,960	10					513	30%	0	
	96		1,989	8		579	4		160	10%	2	50%
	97											
Grant	95		4,048	78	2%				745	20%	13	17%
	96		4,205	69	2%	1,224	37	3%	257	10%	8	22%
	97											
Okanagan	95		1,464	64	4%				277	20%	14	22%
	96		1,457	63	4%	737	20	3%	205	14%	0	0%
	97											
Yakima	95		6,634	201	3%				752	11%	53	26%

Table 2: FSA Eligible Voter Numbers and Election Participation, Selected Counties, 1996—Continued

*Eligible Voter Information by County for FSA Election Years 1996 Selected Counties (From County level FSA Forms 681)**

County	Year of Elec.	Total Farms	Eligible Voters				Voters/Open LAA's				Voter Partic.	
			Total	Minority		Total	Total	Minority		Total	Minority	
			(#)	(#)	(%)	(#)	(#)	(%)	(#)	(%)	(#)	(%)
	96		6,585	311	5%	2,428	157	7%	325	5%	28	9%

Compiled by Rural Coalition.

2. Research Findings and Policy Recommendations

[1] John J. Green, PhD, "Summary Results from The Financial Training Project Assessment Survey: A Report to the Rural Coalition," Institute for Community-Based Research, Division of Social Sciences/Center for Community and Economic Development, Delta State University, February 2006.

[2] John J. Green, Lorette Picciano, Heather Fenney, *et al.*, "The Insurance Needs of Traditionally-Underserved Farmers: Framework for a Multi-Community Assessment," presented at the Annual Meeting of the Rural Sociological Society, Montreal, Canada, July 2003.

[3] Oklahoma Black Historical Research Project, with Rural Coalition, *et al.*,[1] "The 100 Summit Report: Addressing the Needs and Concerns of the Underserved Minority Family Farming Community," 2017.

[Research Findings and Policy Recommendations 1]

Summary Results from the Financial Training Project Assessment Survey—A Report to the Rural Coalition

JOHN J. GREEN, PH.D., Institute for Community-Based Research, Division of Social Sciences/Center for Community and Economic Development, Delta State University

February 2006

Introduction

Through applied research and input from partner organizations, the Rural Coalition recognized a need for financial training that is appropriate to the interests and concerns of small-scale, limited resource and minority farmers. In collaboration with representatives from several diverse community-based organizations, the RC worked to develop a training program to improve the risk management strategies and record keeping practices of their members and other farmers. Following a participatory process of sharing and synthesis of best practices, a training curriculum was designed and piloted. Starting in fall 2004 and running through mid 2005, eight organizations conducted training sessions with farmers from nineteen states.[1] The curriculum begins with basic information on planning, budgeting and the importance of keeping receipts, and it culminates with more complex matters such as the records needed to file an Internal Revenue Service Schedule F Form or complete a Farm Services Agency Farm and Home Plan. A follow-up to a previous report from winter 2005, this summary analysis presents the results from an assessment survey of training participants.

Methods

At the end of each financial training session, an assessment questionnaire was distributed to all participants. Items focused on their personal and farm characteristics, risk management strategies and perceptions of the training. Data presented in this preliminary report were obtained from the survey. The data represent the characteristics of those people who participated in the financial training. Although this aggregation of samples is not representative of all small-scale, limited resource and minority farmers, respondents may represent the people most likely to first participate in future programs aimed at providing assistance to the traditionally underserved.

Responses from 1142 participants were entered into SPSS (Statistical Package for the Social Sciences), a software program for data analysis. It is important to recognize that a few of the training sessions used a questionnaire that only had assess-

[1] These organizations were: Homeworkers Organized for More Employment, Intertribal Agriculture Council, Minnesota Farmers Association, Minority Agricultural Producers, Operation Spring Plant, Rural Advancement Fund, Small Farmers Resource and Training Center, and United Farmers.

ment items, and some questions were not applicable to all respondents (for example, if the participant was a beginning farmer).

Summary Results

Socio-Demographic and Farm Characteristics

The financial training participants who completed questionnaires were from nineteen states: Arizona, California, Florida, Georgia, Idaho, Maine, Minnesota, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Texas, Utah, Washington, Wisconsin and Wyoming. *Table 1* shows the socio-demographic characteristics of training participants. Nearly ⅓ of the participants were women. Black/African American participants constituted the largest racial/ethnic group (54.9 percent), followed in frequency by American Indians, Hispanics, Whites and Asian Americans (primarily Hmong). Almost 30 percent of participants reported their highest level of education as being less than high school, while 34.8 percent reported a high school degree. A combined 35.6 percent reported some college, a bachelor's degree or higher.

Farm income was generally low among the training participants. Asked about their total farm income minus expenses in 2003, 54.0 percent of producers reported less than $5,000. The next largest groups were those with total farm incomes between $5,000 and $9,999 (23.5 percent) and $10,000 and $19,999 (13.9).

Over ⅘ of the training participants owned land, and 38.8 percent rented land (*Table 2*). Those who reported owning *and* renting land totaled 28.1 percent. The average amount of land in agricultural production was 85.2 acres in 2003, and average anticipated land in production in 2004 was 87.4. However, the median was 15 acres. This substantial difference from the mean suggests a skew in farm sizes across the group of participants. The range was over 2,000 acres. Much of the variation was due to region of the country and the type of production.

More than ½ of the training participants who reported some type of farming activity indicated that they produced commodity crops, 54.6 percent produced vegetables, and 47.1 raised livestock. Over 14 percent of respondents did all three. They produced commodity crops *and* fruits/vegetables *and* raised livestock. Many of the western/southwestern respondents grew hay and raised cattle and/or horses, while a majority of those from the southeast reported growing vegetables and fruit. The most frequently produced vegetables and fruits were watermelon, okra, squash, tomatoes, cucumbers and greens.

Close to 4.7 percent of producers had a risk management plan for their farming enterprise (*Table 3*). A much larger group (42.7 percent) of respondents indicated that they used a tax accountant. Only 18.6 percent reported using the IRS Schedule F Form in their tax preparation. Nearly 85 percent of respondents never used crop insurance.

Approximately 18 percent of the farming respondents said that someone in their family (in addition to themselves) received wages from the farming enterprise (*Table 4*). Beyond the family, a large majority of the respondents did *not* have full-time (85.4 percent), regular part-time (80.5) or seasonal/migrant employees (83.6). Almost ½ of the 16.4 percent who reported seasonal or migrant workers indicated that these employees held H–2A Visas/participated in the guest worker program. Just over 14 percent of total respondents said they understand tax laws for hired farm labor.

Investigating awareness of government agricultural programs, training participants were most familiar with the Cooperative Extension Service (58.1 percent). The Farm Services Agency Disaster Program (54.4) and FSA Credit Program (52.5) had similar levels of familiarity. The Natural Resources Conservation Service (48.7), Rural Development (42.0) and Risk Management Agency (35.7) followed in consecutive rank order.

Concerning program participation, over ¼ of participants reported having ever applied for a loan from the U.S. Department of Agriculture (*Table 5*). Of those, 91.3 percent indicated that they had ever been denied a loan, and 32.0 percent of those who ever applied also reported having received a loan. *Those who had ever been denied and those who had ever received a loan often overlapped.* Over ⅓ of participants said that they had ever received disaster assistance, while a smaller percent participated in annual commodity programs (13.5 percent) or conservation programs (8.1).

Financial Training Assessment

Charged with assessment of the financial training sessions, participants appeared to be generally pleased with the process and curriculum (*Table 6*). A large majority of respondents agreed/strongly agreed that the materials were informative, trainers were helpful and the system applied to their needs. Although the group as a whole

was highly supportive, it is important to point out that a sizable minority were not quite sure that they were better prepared to manage the farm or prepare tax forms. Provided with the opportunity to list additional trainings they would like to participate in, respondents mentioned taxes and computer use most frequently.

Summary

The summary results presented here show that a diverse group of farmers participated in the financial record keeping training sessions developed and implemented by the Rural Coalition and its partner organizations. Similar to the characteristics of those people who were involved in prior action research studies headed by the RC,[2] these small-scale, limited resource and minority producers operate a broad range of farm types. Furthermore, they are underserved by existing programs. Having low incomes, few risk management plans, and limited awareness of and participation in government agencies and programs, greater attention is needed to better understand and respond to their interests and concerns. Services must be provided in culturally appropriate ways that also matches farm production and marketing characteristics. Training for risk management and financial record keeping is one step in the right direction, but there is still much work to be done.

Table 1: Socio-Demographic Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)

Characteristic	Percent
Gender	
Male	67.5
Female	32.5
	(1,048)
Race/Ethnicity	
American Indian	24.8
Asian American	3.5
Black/African American	54.9
White	5.0
Hispanic/Latino	10.7
Other	1.1
	(1,052)
Highest Level of Education	
Less than High School Degree	29.6
High School Degree	34.8
Some College, No Bachelor's Degree	29.6
Bachelor's Degree or Higher	6.0
	(1,050)
Total Farm Income (after expenses) in 2003	
Less than $4,999	54.0
$5,000–$9,999	23.5
$10,000–$19,999	13.9
$20,000–$29,999	4.3
$30,000 or More	4.3
	(814)

Table 2: Farm Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)

Characteristic	Percent
Own Land	84.5
	(911/1,078)
Rent Land from Others	38.8
	(409/1,053)
Own and Rent Land	28.1
	(295/1,048)
Acres in agricultural production in 2003 *	
Mean	85.2
Median	15.0

[2] Reports from Rural Coalition action research studies are available online at: *http://ntweb.deltastate.edu/vp_academic/jgreen/Research_and_Outreach_Underserved_Farmers.htm*.

Table 2: Farm Characteristics of Participants from Rural Coalition Financial Training Project (2004/2005)—Continued

Characteristic	Percent
Minimum–Maximum	0–2,400
	(937)
Acres in agricultural production in 2004*	
Mean	87.4
Median	15.0
Minimum–Maximum	0–2,600
	(935)
Produced Commodity Crops in 2003 or 2004	54.5
	(561/1,030)
Produced Fruits/Vegetables in 2003 or 2004	54.6
	(553/1,013)
Raised Livestock in 2003 or 2004	47.1
	(480/1,020)
Produced Commodity Crops, Fruits/Vegetables *and* Livestock in 2003 or 2004	14.3
	(137/960)

*Ranchers often did not include grazing acreage in their estimates of land in agricultural production. Therefore, the numbers presented here are conservative estimates.

Table 3: Risk Management Strategies of Participants from Rural Coalition Financial Training Project (2004/2005)

Risk Management Strategy	Percent
Have Risk Management Plan	4.7
	(45/961)
Use a Tax Accountant	42.7
	(439/1,029)
Make Use of IRS Form Schedule F	18.6
	(165/886)
Ever Purchased Crop Insurance	
Yes, Currently Have Policy	9.6
Yes, But No Current Policy	5.8
No, Never	84.6
	(971)

Table 4: Labor Use of Participants from Rural Coalition Financial Training Project (2004/2005)

Risk Management Strategy	Percent
Spouse, Children or Other Family Members Receive Wages from Farm	17.7
	(154/869)
Number of Full-Time Employees	
None	85.4
1–10	14.0
11–20	0.3
21 or More	0.3
	(988)
Number of Regular Part-Time Employees	
None	80.6
1–10	17.9
11–20	0.9
21 or More	0.6
	(987)
Employed any Seasonal or Migrant Employees in the Past Year	16.4
	(127/773)
Any Seasonal or Migrant Employees Participate in H–2A Program	*50.4*
	(64/127)
Understand Tax Rules for Farm Labor	14.5
	(126/870)

Table 5: Awareness of and Participation in Government Programs Among Participants from Rural Coalition Financial Training Project (2004/2005)

Agency/Program	Percent Aware
Farm Services Agency Credit Programs	52.5 (533/1,015)
Farm Services Agency Disaster Payments	54.4 (522/959)
Natural Resources Conservation Service	48.7 (465/955)
Cooperative Extension Service	58.1 (567/976)
Rural Development	42.0 (400/953)
Risk Management Agency	35.7 (335/939)
Program	**Program Participation**
Ever Applied for a Loan from USDA	27.9 (234/839)
Ever Been Denied a Loan from USDA	*91.3 (210/230)*
Ever Received a Loan from USDA	*32.0 (72/225)*
Ever Received USDA Disaster Assistance	36.2 (354/977)
Participate in any Annual Commodity Program	13.5 (113/839)
Participate in any Conservation Program	8.1 (84/1,040)

Table 6: Participant Rating of Financial Recording Keeping Training Session—Rural Coalition Financial Training Project (2004/2005)

Statement	Strongly Disagree	Disagree	Agree	Strongly Agree
Materials were informative (1,020)	2.2	3.3	57.5	37.0
Trainers were helpful (1,023)	1.6	4.7	52.4	41.3
Training related to my specific needs (1,013)	1.5	7.2	58.7	32.6
I am better prepared to manage my farm (1,007)	2.2	13.9	53.8	30.1
I am better prepared to complete tax forms (1,010)	3.6	16.6	53.4	26.4
Overall, the training was helpful (1,019)	2.0	4.0	56.4	37.6
I would recommend the training to others (1,017)	2.3	2.8	45.8	49.1
Statement	**Not Helpful**	**A Little Helpful**	**Helpful**	**Very Helpful**
Discussion of the importance of keeping records (1,008)	0.6	6.5	54.5	38.4
Concepts and definitions (1,003)	1.2	12.1	55.2	31.5
What records to keep and how to do it (1,001)	0.9	11.3	51.1	36.7
Exercises and examples (993)	1.2	13.2	53.1	32.5
Record keeping worksheets (1,003)	1.3	9.7	55.1	33.9

[Research Findings and Policy Recommendations 2]

The Insurance Needs of Traditionally-Underserved Farmers: Framework for a Multi-Community Assessment

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The insurance needs of individuals, families and their businesses are of critical importance for livelihood security. Although often overlooked in community and economic development initiatives, small-scale, limited resource and minority farmers are continuously faced with the challenge of finding strategies to manage risks in the realms of agricultural production, marketing and everyday life. In an attempt to address this issue, a community-based research effort—including partner organizations from across the United States—was established to collect survey data concerning the risk management and insurance needs of traditionally-underserved populations. The information garnered from the research will be used to inform the development of a model cooperative insurance program. This paper reviews the position of traditionally-underserved farmers, discusses the theoretical framework of community-based research and describes the methods utilized for this ongoing study. Preliminary research findings are shared for illustrative purposes.

Draft Paper for Presentation—Do Not Cite Without Permission

Introduction: The Position of Traditionally-Underserved Farmers

The dominant political economic system is characterized by further industrialization and expansion of free market relations. This entails a continued push by corporate firms to harmonize socioeconomic policies and create a global playing field conducive to capital mobility and accumulation. These developments are taking place within the agrifood sector in conjunction with a shift in the dominant system from protection of national agricultures supported under the "development project" to further free trade promoted as part of the "globalization project" (McMichael 1996). Strategies include the creation of "food chain clusters" through horizontal and vertical integration of agribusiness firms to control food from the gene to the store shelf (Heffernan 2000; Heffernan, *et al.,* 1999; Hendrickson, *et al.,* 2001). These changes come at a significant cost to agricultural producers as they are exposed to international competition, removal of government protections and increasing corporate control over decision making. Within this process there are winners and losers, with small, limited resource and minority farmers facing intense pressure.[1]

There are many facets of the dominant agrifood system that have presented challenges to these producers throughout recent history. In the past, the exploiter (such as a large-scale landowner, merchant or local banker) was typically located in the community or, at the least, had a recognizable identity (*e.g.,* the railroad). However, dominant/subordinate relations in the global era are increasingly separated spatially as economic management occurs at higher levels, is abstracted and made to appear "natural." Globalization, however, does not necessarily equate with the removal or even scaling-up of national challenges. Rather, complex interactions take place and problems are often compounded, with those groups who historically bore the greatest burdens being placed in even more problematic positions.

Synthesis of research endeavors (*e.g.,* Dismukes, *et al.,* 1997; Federation of Southern Cooperatives 2000; General Accounting Office 2001; Gilbert, *et al.,* 2001; Green and Picciano 2002; Grim 1996; Jones 1994; Wood and Gilbert 1998) supports the argument that small, limited resource and minority farmers face a variety of challenges, some of which are inherent to farming and others which result more from social inequality. Challenges include environmental production constraints such as low soil fertility and disasters (*e.g.,* floods and droughts) which are partially attributable to these producers' disproportionate reliance on relatively small and often marginal landholdings. Also problematic are constraints to landholding, including high land prices, loan interest rates and property taxes, and predatory actions by other farmers and commercial lenders. Additionally, limited financial resources and

[1] There are a variety of labels used in reference to such farmers. Although the term "small farmer" is typically used as a part of mainstream nomenclature, the label only differentiates along lines of scale and often structure (*i.e.,* "small farmer" usually, but not always, implies "small family farmer"). The term "limited resource farmer" refers to producers who have both low farm sales and low overall household income, and "minority" is typically used in reference to traditional ethnic and racial groupings. These labels are often used in reference to "socially disadvantaged farmers," defined by the U.S. Department of Agriculture as those farmers historically subjected to prejudice because of their membership in a particular group, by race and ethnicity. Also sometimes included in this realm are women producers. In this paper, we use "small, limited resource and minority farmers" in reference to all of these groups, recognizing both their similarities and differences. The term "traditionally-underserved" is used in reference to the fact that these producers have been disadvantaged by dominant social institutions.

restricted access to markets and subjugation to low prices are troubling. More specific to group identity,

> American Indian and Alaskan Native producers face challenges coupled with the complexities of dealing with the myriad of Federal bureaucracies involved in the governance and control of Tribal lands and resources. In addition, Indian producers have been specifically excluded from resources and support afforded other producers.
>
> A large proportion of the nation's remaining Black/African American producers have faced tremendous barriers to maintaining their operations. From slavery to the 1999 settlement of the *Pigford* v. *Glickman* class action lawsuit, these producers have struggled with discrimination at the personal and institutional levels.
>
> During the early 1940s the now infamous "Bracero Program" brought in Mexican farm laborers to work in fields across the country. After termination of the program, farmwork continued to be performed by immigrants and migrants. Many of them have attempted to obtain a more secure position in agriculture through operation of their own farms. Within the last 5 years they have become one of the fastest growing groups of small farmers. They have used their hard earned money to buy some acreage for farming, all the while maintaining other jobs.
>
> Following the Vietnam War, immigrants from Southeast Asia included a large sector of Hmong people. Hundreds of new Hmong producers have entered agricultural production in the United States. Although they have survived, these producers often face barriers related to their minority status in an often hostile environment.

Small, limited resource and minority farmers have faced many challenges in the structure of the dominant agrifood system. Furthermore, they have been underserved by the institutions supposed to mediate between the macro-level of global, regional and national political economic forces and the micro-level of everyday life. For instance, government agencies such as the United States Department of Agriculture (USDA) have made few authentic attempts to assist these producers in mitigating challenges or taking advantage of new opportunities.

Although the Federal and state governments have developed numerous programs to assist farmers, much of their work has followed a highly problematic and biased path. A variety of barriers keep these farmers from fully participating and/or receiving the benefit of potentially helpful programs. Problems include agencies' preferential attention to large-scale producers employing technologically complex and capital intensive strategies, personal and institutional discrimination, and insufficient outreach.

Dismissal and outright hostility toward these producers has led to skepticism on the part of farmers concerning government agricultural programs and agency personnel (Grim 1996). Farmers are also often confused by the different agencies and programs that exist. Given past experience, it is generally expected that without targeted research, outreach and advocacy efforts, these groups will continue to under-participate in government programs and continue to be lost, thereby offsetting hard won gains.

A recent focus group project (Green and Picciano 2002) involving farmers in fourteen communities across the United States asked participants about their familiarity with various programs and services. The 130 focus group participants indicated the most familiarity with Cooperative Extension, their respective State Department of Agriculture, Farm Services Agency (FSA) (credit programs and farm and disaster programs) and the Natural Resources Conservation Service (NRCS). Some of the lowest levels of awareness were reported for Soil and Water Conservation District Boards and FSA County Committees. There were numerous instances where focus group participants had not taken part in the programs offered by these agencies. Less than ¼ of the participants had ever received a loan through USDA, and over 30 percent reported having been denied such a loan. Thirty-two percent of focus group participants indicated that they had ever received USDA Disaster Assistance. Even fewer reported participation in annual commodity programs.

While there has been much research attention directed toward inequality in government policy and programs, less interest has been directed toward other arenas of activity of concern for small, limited resource and minority farmers. Still, rural sociologists have directed attention toward the political economy of credit (Mooney

1986), a crucial aspect of agriculture. Unfortunately, few researchers have turned their attention to the insurance needs of these traditionally underserved farmers.[2]

Risk has always been a part of the agricultural business. Widely considered an important aspect of risk management, crop, liability, health, disability and life insurance are sometimes seen as luxuries for the small farmer. Just as they tend to be ignored by the banking community, small farmers are often overlooked by insurance companies and agents. This is particularly problematic given the ever-expanding focus on insurance as a risk management tool under the auspices of advanced capitalism. Furthermore, the increased control awarded to for-profit insurance companies with the Federal Government's partial privatization of crop insurance programs is of concern.

The industry cites perceived barriers to serving small, limited resource and minority farmers. These include: (1) the smaller the acreage the less profitability for the insurance agency, (2) the lack of multilingual and multicultural employees to deal with new markets, (3) the lack of available agents to serve culturally diverse and regionally isolated populations (*e.g.,* new immigrants, or producers on isolated Tribal lands), and (4) the complexity of the insurance business for the average person due to the required paperwork and expertise.

Interestingly, agricultural producers offer a somewhat different view of participation/nonparticipation in insurance. The previously cited focus group project (Green 2002; Green and Picciano 2002) involved a discussion of crop insurance. Producers said that although they recognized insurance as an important risk management tool, they either knew very little about the system, insurance was too costly or it was inappropriate for their type of farm. Concerning the latter, participants reported that they did not have a large enough farm, their level of production was insufficient or what they produced was not covered under most policies. Further discussion revealed their support for crop insurance in general, but only with the caveat that vast improvements are needed.

It is worth noting that insurance as a risk management tool is important for agricultural producers beyond crop or whole farm insurance. Similar to the situation faced by individuals and families in general (including those operating family businesses), small, limited resource and minority farmers must also consider how to address issues of liability insurance, car insurance, health and life insurance.[3]

Despite the many hardships that exist, these farmers continue to struggle forward. Considered together as a diverse group of traditionally-underserved farmers, they have already overcome great odds to remain in agriculture and on the land. Dedicated to cooperative ideals in the effort to improve their livelihood security, many individuals and groups have the potential to revive their historic connection. Small businesses in agriculture are likely to become more diverse if they are able to develop assets to address the many historic barriers that have served to exclude them from the economic benefits available to their more powerful counterparts. Their ability to do so is important not just for them, but for the sustainable development of their communities (Clancy, *et al.,* 2003).

Community-based organizations, including nonprofits and cooperatives, have long attempted to fill the gap in providing assistance to traditionally-underserved producers, and they have been successful in many cases. However, in order to further impact the viability of these farms over the long-run, it will be necessary for organizations to work together and with government agencies in the development and implementation of programs based on their actual needs and interests.

Community-Based Research for Developing a Cooperative Model

Recognizing this need, the Rural Coalition, several of its member groups and University researchers are involved in a collaborative project to identify the current situation faced by these producers in respect to risk management and insurance. This is being done using the community-based research model.

Community-based research is a framework for pursuit of grassroots empowerment. It brings together those research approaches described as "participatory" and "action" oriented in nature (*e.g.,* Chambers, *et al.,* 1989; Reason and Bradbury 2001; Selener 1997; Stringer 1999; Voth 1979). Building from an assorted background of theory and method, these various approaches share several common principles, in-

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[2] Economists have conducted research on the role of crop insurance in risk management (*e.g.,* Harwood, *et al.,* 1999; Makki and Somwaru 2001). Much of this work, however, narrowly assesses farmer selection of and participation in crop insurance markets. What is needed is a more general and critical assessment of traditionally-underserved farmers and their relationship to insurance as an institution.

[3] Health coverage was once part of the New Deal programming channeled through the USDA. From 1932 to 1947, the Farm Security Administration sponsored comprehensive medical care for poor farmers, sharecroppers and migrant workers (Grey 1994).

cluding collaboration through meaningful participation, acquisition of knowledge and pursuit of social change (Reason and Bradbury 2001). The primary goal of such research is to generate knowledge and thereby redistribute power (Selener 1997).

According to Ernest Stringer's interpretation and synthesis of the framework, community-based research consists of three primary components in a cyclical and dialectic relationship: (1) look, (2) think and (3) act. At the looking stage, research participants are invited to witness the world around them by gathering data, defining issues of importance and describing them in an effort to construct "pictures" of the community. The thinking stage calls for exploration, analysis and interpretation of these pictures for the purpose of explaining the state of the world and developing theories to effectively inform action. This action may entail reporting research findings as well as planning, implementing and evaluating programs of social change. Over the course of any particular attempt to address a social issue, it is assumed that this cycle will be repeated over and again, each time spiraling to a heightened level of collective consciousness and efficacy.

The Rural Coalition—a nonprofit organization providing advocacy, outreach and technical assistance to community-based organizations in the United States and Mexico—is working with several groups to conduct an in-depth survey of traditionally-underserved farmers on their socioeconomic background, farm characteristics and economic situation, with special attention to their use of insurance. This effort explicitly builds from a past project to better understand the concerns and interests of these agricultural producers to help inform policymaking and program development (Green 2001; Green and Picciano 2002). Project partners include the following organizations.

CASA del Llano is a community-based organization working with two unincorporated Colonias near Hereford, Texas. The organization consists of members from these Colonias and members of a church community with a volunteer staff serving as an Advisory Board. The project initiated from The Promised Land Network, an ecumenical rural ministry dedicated to shaping southern plains agriculture and communities toward sustainability based on sound land stewardship and ethical principles. The program serves Latino farmers and new entry immigrant produces.

Growing Power is a not-for-profit organization and land trust supporting people from diverse backgrounds and the environment they live in through the development of community food systems. Growing Power serves the nation through three offices in Alaska, where it assists Alaska Native producers, and Wisconsin and Illinois, where it serves diverse urban producers. Growing Power seeks to develop and preserve resources and programs that support community self reliant food systems through education, conservation, networking, advocacy, marketing, growing and processing.

Homeworkers Organized for More Employment (HOME), a cooperative community in Orland, Maine dedicated to economic and social reconstruction, began as an outlet for homeworkers' crafts and has expanded to include pottery, leather and weaving shops, greenhouse gardens, a farmers market and a sawmill/shingle mill.

The Minnesota Food Association (MFA) is a statewide nonprofit organization with members who represent urban and rural perspectives, various income levels and many different interests. Its mission is to form a coalition of informed, connected and active people to work together to build a more sustainable food system. Over the last several years, the Minnesota Food Association has been working to develop comprehensive strategies to address economic, health, safety and nutrition concerns related to food production and agriculture for new immigrant residents in Minnesota. This long-term project has helped to educate new immigrant farmers on many aspects of agriculture, as well as to assist them in becoming a permanent part of the rural economy.

Operation Spring Plant (OSP) is a grassroots organization started and operated by farmers in North Carolina. OSP serves small, limited resource and African America producers through technical assistance workshops and training; developing on-farm demonstration projects that focus attention on modern and sustainable production techniques; owning and operating a retail marketing facility for farm and agribusiness products; and assisting area farmers through financial hardships. OSP has been very active in advocating for the civil rights of Black farmers. The organization also operates a Harvest for the Hungry Program that provides food for low-income people.

Rural Advancement Fund of the National Sharecroppers Fund (RAF–NSF), founded in 1937, is based in Orangeburg, South Carolina and works to uplift small, primarily African American farmers and rural organizations in North

and South Carolina. RAF provides training and one-on-one technical assistance in crop selection, management, cash flow analysis and loan packaging, crop diversification and marketing.

Rural Community Development Resources, based in Yakima, Washington, has helped over 100 limited resource Hispanic producers enter agriculture and build successful collaborative businesses. RCDR administers a revolving loan fund for its members and is training them in the formation of cooperatives. It assists them in qualifying for loans and completing USDA farm and home plans. With support from the USDA Minority Farm Outreach Program, RCDR now reaches more than 190 farmers with technical assistance and other support.

Institute for Community-Based Research (Center for Community Development, Delta State University) works with nonprofit organizations and cooperatives to assist in the design, implementation, and analysis of research in pursuit of livelihood security and improved quality of life. Substantive areas of focus include: (1) underemployment and persistent poverty, (2) environment, health and food security, and (3) organizing cooperative alternatives. Housed within the Center for Community Development at Delta State University, the Institute is closely affiliated with the Division of Social Sciences. A central component of this effort is to provide an avenue through which DSU students, especially those pursuing a Master of Science degree in Community Development, are able to collaborate with faculty and communities to engage in timely and meaningful research.

The objectives of this collaborative project include:

(1) Strengthening the capacity of the community-based organizations to meet their members' needs by expanding their knowledge and understanding of how insurance works and the structure of the industry.

(2) Ensuring the risk management needs of small, limited resource and minority producers are equitably met by developing new strategies to improve the content, marketing and delivery of appropriate insurance products.

(3) Developing and testing the feasibility of a model cooperative business venturethat recognizes the value of community-based organizations and providesappropriate incentives to secure their equitable participation in the delivery ofinsurance and other risk management tools.

(4) Sharing project results with the participating groups and familiarizing them with insurance, how it works and ways to use insurance tools to increase the livelihood security of traditionally-underserved farmers and invest in their communities.

Research partners have worked together to develop the survey instrument, construct guidelines for selecting samples, collect data and analyze results. After several drafts of the questionnaire had been circulated and revised, the partners met in Washington, D.C. to review the document and participate in an interviewer training workshop. Following this meeting, changes were made to the data collection instrument.

With the final version of the survey in hand, individuals from the community-based organizations began selecting agricultural producers to interview. Because this project is focused on improving access to risk management services for traditionally-underserved populations in an applied and strategic manner, a purposive systematic sampling strategy was utilized. Use of this technique was also justified on the basis of the project being exploratory in nature. A list of qualifying criteria was used in selecting purposive samples in each of the six communities where surveys were to be conducted (see *Appendix* for sampling criteria).

The organizations agreed to complete a minimum of thirty surveys. Four of the six groups involved in collecting data had met this threshold by the time of submitting this paper (June 2003). Two of the groups are still in the process of conducting interviews. (See *Appendix* for preliminary survey results). Future analysis will involve aggregate and across group descriptive statistics. Also, nonparametric statistical strategies will be utilized for group comparisons and to identify the relationships between farmers, their communities and insurance needs and interests.

During the same time period as the survey has been developed and implemented, partners have been participating in crop insurance training sessions to better understand the industry and the types of alternatives to traditional insurance programs that could be created. This will help to inform the construction of more applicable and targeted insurance packages and cooperative models of delivery. In conjunction with the Rural Coalition, Rural Development Resources is developing model business plans for cooperative insurance ventures to help better serve small, limited resource and minority producers. These business plans will then be taken back to

partner organizations for review and revision before being presented to RMA for possible test implementation.

Discussion

This paper argues that small, limited resource and minority farmers have been underserved by social institutions important to mediating the pressures of larger scale forces (*e.g.,* market control by agribusiness, harmonization of national agricultural policies, and adverse environmental conditions). Relative to larger, capital-intensive and corporate controlled entities, these producers have faced inequality in accessing markets, long and short-term capital, government outreach and technical assistance. With the ever increasing role of insurance in managing risk, traditionally-underserved farmers face additional challenges, such as limited access to applicable information, insurance companies and policies that are not responsive to their needs, and cost prohibitions.

Although these are difficult challenges, the collaborative partners in this project, led by the Rural Coalition, are utilizing community-based research to inform program planning, implementation and evaluation. They are in the process of identifying and documenting the needs and interests of traditionally-underserved farmers in regard to insurance. This information is being used in the development of a cooperative approach to managing risk that benefits the participants, their organizations and communities.

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Appendix A: Survey Recruitment Guidelines

The following guidelines were used in selecting and recruiting people to complete surveys on the Risk Management and Insurance Needs of Small, Limited Resource and Minority Farmers.

(1) Survey participants **must** be:

Farmers or ranchers (established or entering) who were involved in agriculture during the year 2002.

(2) Survey participants should reflect the composition of the constituency your organization serves.

Attention should be given to recruiting survey participants that generally represent your organization's constituency, including ethnicity and race.

Survey participants **do not** have to be formal members of your organization. If possible, a minimum of half the participants should be nonmembers.

(3) Survey participants should include gender diversity.

A serious attempt is needed to find and survey women farmers as a part of this project.

(4) Survey participants should include age diversity.

A serious attempt is needed to find and survey farmers of various ages eighteen years and above.

(5) Survey participants should **not** be recruited based on existing knowledge of their operation or past involvement with crop insurance.

Appendix B: Preliminary Results from Rural Coalition Survey on the Risk Management and Insurance Needs of Small, Limited Resource and Minority Farmers

Meeting the Risk Management and Insurance Needs of Small, Limited Resource And Minority Farmers

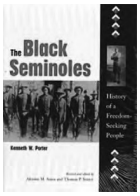
2003 Survey

The following tables were constructed using data collected in the 2003 survey on the risk management and insurance needs of small, limited resource and minority farmers. This survey was developed and implemented by the Rural Coalition and its partners, including: CASA del Llano, Growing Power, Homeworkers Organized for More Employment (HOME), Minnesota Food Association (MFA), Operation Spring Plant, and Rural Advancement Fund (RAF). The Institute for Community-Based Research (Center for Community Development, Delta State University) is a collaborating partner, and Rural Community Development Resources will utilize data in cooperative business plan development.

Four of the six groups collecting data have completed their work. However, two of the groups are still engaged in this process. Therefore, the data presented in the following tables represent preliminary results in aggregate form. No group comparisons are made.*

Funding for this project was provided by the Risk Management Agency, US Department of Agriculture. The findings presented here do not necessarily represent the views of this agency.

[Research Findings and Policy Recommendations 3]



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100 Farmers Summit Report—Addressing the Needs and Concerns of the Underserved Minority Family Farming Community

March 16–17, 2017
Oklahoma City, OK

Produced by the Oklahoma Black Historical Research Project
In cooperation with the Rural Coalition
And the Scholars of the American University School of International Service 2017 Farm Bill Practicum

July 3, 2017

Dear 100 Farmers Summit Participants:

On behalf of Oklahoma Black Historical Research Project, I want to thank each and every one of you for contributing your wisdom, insights and experience to our March 2017 100 Farmers Summit We also thank the Socially Disadvantaged Farmers and Ranchers Policy Research Center, our Speakers, and our small group session leaders for their assistance. And we thank the scholars of the American University School of International Service 2017 Farm Bill Practicum taking notes and Rural Coalition for compiling this report of our proceedings.

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*__Editor's note:__ Appendix B of the report entitled, *The Insurance Needs of Traditionally-Underserved Farmers: Framework for a Multi-Community Assessment*, as submitted by the Rural Coalition/Coalición Rural for the March 25, 2021 hearing is incomplete (there are no corresponding tables of data tables). It has reproduced herein as it was submitted.

We now present to you this report which summarizes the findings and recommendations of producers representing farmers, Community Based Organizations and 1890 leaders. We believe we successfully met our goal of directly engaging farmers in identifying what changes they need at the farm level to make agriculture program better serve their needs and help them build their local economies.

The process we employed included three elements:

(1) Brainstorm needs and concerns of historically-underserved farmers.

(2) Record the major needs, concerns, recommendations and solutions presented.

(3) Develop a document with compiled results for review and endorsement of each represented community-based organizations' president or representative.

We look forward to engaging our historic producers to build our power anew in this current political climate. We will cooperatively translate our ideas and proposals into policy and programs that serve our needs and allow us to build a prosperous and sustainable future for our communities.

Respectfully submitted,



WILLARD TILLMAN, *Executive Director*,
Oklahoma Black Historical Research Project, Inc.

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I. Introduction

The meeting was opened with a **welcome by Oklahoma Black Historical Research Project Executive Director Willard Tillman.** He provided a brief introduction to the history of the 100 Farmers Summit, followed by an introductions icebreaker.

Former United States Department of Agriculture (USDA) Secretary Mike Espy, PLLC, presented the keynote address *"Improving Success of Socially Disadvantaged Farmers and Ranchers Through Policy."* He provided a brief overview of the challenge presented by the recently released Administration budget, noting that it contains 21% cut in funding to the Department of Agriculture, with risks for nutrition and other programs. He pointed out that African American producers had survived administrative racism and discrimination, drought and many other challenges, some of which were summarized in the DJ Miller report (year). That report, the purposes of which was to determine if minority farmers were denied credit found that the top 1% of loans went to 65% of corporate farms and white male farmers. Only 1% of disaster payments were given to Black male farmers.

However, he continued, the numbers are increasing on the farms and ranches. In 1920—there were 1 million Black farmers with 15 million acres = 14% of farms in the nation. In 1982, there were only 30,000 Black farmers—2% of all farmers. In 2012—the number of Black farmers had increased to 44,000 Black farmers or 15% of all farmers.

We face a daunting environment to negotiate the 2018 Farm Bill, Espy continued, with both opportunities and challenges:

Opportunity 1 is to grow Farmers['] Markets to counter the defunding of Supplemental Nutrition Assistance Program (SNAP) (also known as food stamps) and still provide quality food to impoverished people. It is important for the group to work on what can be done to grow and produce foods that are recognized as eligible by the SNAP program, and to reduce the cost of the electronic benefits program.

Challenge 1 is to save the farm bill and the 20% of funds not directed to nutrition programs. The lack of moderate Congress members leaves little room for negotiation. Thus, it is critical to be more aggressive in outreach to Congress and to assure that farm safety nets do not disappear.

Opportunity 2 involves preparing to increase in food production to meet the demand of the growing population. Congress recognizes that the farm bill must provide tools and research to increase efficiency of farms. He noted that even the current budget has not proposed cuts to research, conservation, trade. Since the North American Free Trade Agreement (NAFTA) passed in 1993, US sales of farm goods

has increased by 300%, with $21.8 billion to China, and $18.3 billion to Mexico. He further pointed out that there are new trade opportunities in other places, including Cuba.

Mr. Espy concluded his remarks by challenging the group to take their proposals to Congress. *"Make sure your elected representatives know who you are, know you aren't going away, and know that you need to be reckoned with."*

Following Secretary Espy's remarks, Ms. Eloris Speight, Director of the Socially Disadvantaged Farmer and Rancher (SDFR) Policy Research Center, and retired USDA leader Lloyd Wright presented an overview of the background, goals, strategies, of the Center and its work on Farm Bill Planning.

The center, based at Alcorn State University, is to conduct and coordinate research for the purpose of informing policy. They want to make sure that the center's recommendation are data driven and consistent literature reviews. Most of these programs relate to participation in USDA programs. RFP's have been issued for priority research areas.

The work of the center is intended to reflect ongoing dialogue between academic community and stakeholders. The advisory board held an inaugural meeting in August 2016 and is seeking input on policy priorities for Fiscal 2017. The board advises President of Alcorn State University on SDFRs, assists the Policy Research Center. SDFRs are more actively involved now; haven't always had a seat at the table.

The USDA Civil Rights Executive Summary of 2011 is being used as opening research. Four priority areas of research were identified. The Policy Research Center will make recommendations directly to Agriculture Committees and to the Congressional Black Caucus to prepare for the 2018 Farm Bill. It has issued a challenge to CBOs to provide these issues/recommendations on the fast track, as soon as possible.

She closed by noting that most "new problems" are old problems in disguise. We also need to figure out how handle conflicting information from CBOs and farmers, and set a process in place to make the best decisions about recommendations for the majority, the through the technical working group (formed of 1890 groups and USDA experts) and the Advisory board. A concern remains that USDA does not have an accurate count of SDFRs.

A group discussion followed, noting the endemic lack of appropriations and funding for programs already established to address critical issues. Of particular importance was securing expanded funding for the Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program (also known as 2501, after the section of the 1990 Farm Bill in which it was originally authorized).

There is a need for more Senators and Representatives to support the growth in funding for 2501 and other programs, and to show what the program has accomplished. Preserving funding for other programs is als0 important in the face of a proposed FY 2018 Budget that puts $95 million on the chopping block for rural development initiatives, and which cuts out 19 government agencies/commissions.

We need to be documenting and sharing success stories in a new paradigm: Instead of feel-good stories, provide examples of how the program helps communities to get the job done, to document the good have you done with the little bit you've been given, and especially how many jobs were created. Also important is to show that your work has increased applications for projects.

The group also discussed the need to assure we have an accurate count of socially disadvantaged producers in agricultural census conducted every 5 years, with the next beginning at the end of 2017. If the count is not right, it was pointed out, the money is not right.

Mr. Tillman then concluded with a reflection on the challenges faced now by farmers in Oklahoma, which is low on water, with droughts and a plethora of climate challenges. He concluded that it is important to assure that policy better addresses 5 key risk forming factors (health, institutional, marketing, financial, and production risk) to get farmers into business and to stay in business.

The group then proceeded to the small group and plenary discussions that generated the analysis, and policy and strategies present in this report for your review, input and action.

II. Issues, Needs and Concerns of Socially Disadvantaged Farmers and Ranchers (SDFR's)

The Small Group discussions identified several similar overall issues, needs and concerns of SDFR's, as summarized below:

1. Lack of Knowledge by SDFR's—of what programs are available and how to participate.

2. Lack of Trust—The long history of racism and discrimination by USDA has resulted in a deep lack of trust for the agency. The African American, American Indian and Hispanic farmers have all been disenfranchised for so long by this government—we don't trust them—don't want to deal with the frustration and discrimination—we are left bruised and batter. Many SDFR's don't trust the government or think they want to take your land away.
3. Lack of Time—Most farm and ranch families have multiple jobs and responsibilities off the farm, with little time to meet all the demands of production, marketing, record keeping and seeking program participation.
4. Lack of Funding—Less staff and less money for programs leads to more disappointment and erodes trust when qualified farmers can't get conservation and other benefits.
5. Lack of Faith—Farmers who are tired of getting denials and doubt any positive outcome will result from efforts to apply for or seek assistance.
6. Lack of Timely Access to Information—With too many things to do, and without access to hands on technical assistance and to technology, SDFR's often miss opportunities to meet deadlines and access resources. All producers need to know important dates.
7. Lack of Technical Assistance—Funds for technical assistance do not come close to meeting the needs of farmers for direct hands on assistance from qualified Community Based Organizations and Extension and other University Programs.
8. Lack of Accountability—SDFR's participate in much lower rates in most USDA programs, and there is still discrimination in the county offices and at extension offices with no accountability or consequences.
9. Lack of Representation on County and State Committees, and among agency and local office staff and leadership means fewer opportunities to learn the intricacies of programs and to develop the relations and knowledge necessary to secure access to critical resources.
10. Lack of Access to and Use of Technology—Broadband, Internet and Web, and On-Farm Technology are unavailable, too costly, require advanced skills and/or are too expensive to access.

The following specific issues were also identified by topic area:

(A) **Specific Issues Related to Participation in United States Department of Agriculture (USDA) Programs**—The following were the key issues that needed to be resolved to increase access to USDA programs:

Equitable Access to Programs—You're supposed to be eligible for these programsonly to find out that there is no money left.

- If the 'person' in the seat doesn't change, you might change the policy, but your interests will still not be represented. How is the person at USDA Farm Service Agency (FSA) hired?
- Broader questions—What programs are we not participating in USDA Program?
  - One producer did not look at USDA "which could have been a good resource—to make my business venture better—because I was on the outside looking in on the lawsuit.["]
  - If we had a community based organization—if there was access to funding for one—that would have been a really great tool—now you have a diminishing resource in USDA—not enough to help me.
  - Even now when I can get through the process myself—do I want to be encumbered with this USDA. I am a small ranch I am in competition with the big ones—not saying I am wasting time here—I need to be preparing my land—and all the things I need to do as a small farm. Time is a factor of what we need—for USDA and outreach, we have to take away time from our work.
  - Funding cuts have led to Agency starvation—if they don't have the staff to reach everyone, the staff is drawn to one 10,000 acre contract—don't care about small landowners—not smaller one—agencies starved for years down. In one southern state there used to be four district conservations and there now only two with only one for outreach.
  - Community based organizations are understaffed and over worked and outreach grants are hard to get than others.

- County committee representation—don't even know what it is? Lack of information—what do we mean by representation? If you are not members on the local boards—you don't know ahead of time—need to increase participation on USDA boards and committees—but farmers have to give up time to do that—it is more profitable than farming—didn't know that County Committee members get reimbursed expenses and time. Each has 3–5 farmers on county committees—the farmers elect them with a mail ballot.
- You have to have farm number—someone gave a farmer a packet but she didn't know anything about what it was—and put it to the side.
- USDA does not put enough funds in the funding pools to cover SDFR's and limited resource producers—so farmers get disappointed and do not participate.
- Some of the loans require you to put up everything you own for a loan that is less than the value of collateral.
- New and beginning farmers need someone to help you, but it is not as complicated as you think it is—"If you really want that land—make three copies of the application and scratch on one."

- Native American (trust) land is leased by white farmers/ranchers.
  - Gap in information of what Tribal/trust land is by other farmers.
  - Want a person of color (not only white) to help in FSA office.
- Different racial groups are set up against each other.
- Important to document the situations you encounter and hold people accountable.
- Why does the disaster funding available for a county only go to a few farmers who have the larger land plots?

Increasing Engagement in Partnerships to Expand Participation—A primary issue is how to get individuals engaged in the organizations, cooperatives and outreach programs that are skilled in providing services. If they aren't involved in that first step of being in the organization, how can we get them to participate at the USDA level?

- Strategies needed to promote involvement at all levels of engagement (cooperative, program, Community Based Organizations (CBO), and USDA).
  - Partnerships are very important.
  - More information needed about the USDA programs and process.
  - Informational sessions on programs, criteria, and how to apply.
  - Sign up for monthly USDA newsletters (Natural Resources and Conservation Services (NRCS) will send a hardcopy of the newsletter to overcome the absence of internet).
  - Try to make extension and other outreach meetings more specific to make participation more attractive. Advertise topics that would be of particular interest to farmers, such as flood relief during flood.
  - General updates can also be useful and timely, changing herbicides, recommendations, varieties, and keep updated.
  - Conduct USDA survey of SDFRs ("empowered data") to better understand lack of participation—Could be done by SDFRs Policy Research Center.

Importance of Achieving Results in Outreach and Service by USDA: One farmer noted "I've been coming to these meetings for years and nothing is getting better." He got on a program that asked him to put in a pond but he hasn't heard from them since. He's never seen Black people there. People that are farming in other areas are getting help, he's saying he's not getting help with his livestock. He caught a little help for with some stuff . . . $1,200 for tree removal for under 4″ trees, but only some acres. Still needs 70 acres cleared, and they wouldn't cover bigger stuff.

Increasing Lack of Technical Assistance: Reduced resources for outreach leads to fewer experienced and dedicated staff with USDA, the 1890's, and CBO's to assist producers. This leads to less onsite assistance to help you directly on your farm and no follow-up to help you sign up. There is an urgent need for experienced assistance in resolving eligibility issues—such as Heir Property/New and beginning farmers also don't know how to participate.

Strategies: Producers need direct hands on assistance to get farm and tract number and resolve eligibility issues.

Reallocation of Bases and Yields: SDFR's receive lower commodity and disaster payments because these they have historically lower bases and yields that emerge from decades of discrimination. Farmers are paid based on their allotted acreage. The amount of acreage considered your base or average is determined by the determination of the FSA County Committee through the "Quantified Base Law", and can only be overturned by Congress. *This law—dating to 1985—says the local committee is to determine what your "base acreage" is, and that amount is fixed, no matter how much more you are producing!*

Strategies: Seek statutory changes (in the farm bill) to require a catch-up reallocation of bases and yields and a process to allow SDFR's to re-establish their bases and yields to fairly and accurately reflect current acreage base and yield.

Representation on FSA County Committees—SDFR's are Underrepresented on Farm Service Agency (FSA) County Committees and not there when information on programs is shared and decisions on providing disaster assistance, adjusting base acreage and many other issues related to commodity programs. Any farmer can run in the county for the usually 3-member committee and their expenses are covered. There are also Minority Advisors who do not have to run for election but are appointed. Minority Advisors are not paid and not always allowed to take part in the decision making.

Making Changes in the Farm Bill—How do our concerns to the Ag. Committee on the Hill and in the Farm Bill? The Policy Research Center does not lobby but can conduct research and develop a strategy to implement policy. The CBO's have a long history of work on policy and "we are going to the hill." We can all be advocates and need to engage more farmers on advocacy. The need for more basic education on the Farm Bill was identified including a one page paper on what the farm bill does.

(B) **Specific Issues Related to Heir Property**—The following were the key issues that needed to be addressed to restore access to programs for producers lacking clear title or lease on the land they farm or seek to farm:

Heir Property: If you have land but there is no will or document saying who will be the administrator of it, your ability to administer and use it is very difficult. If there is not an administrator for the land, you will not be able to get a loan through the USDA. For example, when you want to take out a loan, but you are the beneficiary of land along with your siblings—you have to get all other siblings to sign on to your loan. You will end up in a case with the bank and your siblings to settle your claim interest in the land. Speculators will seek out one or two siblings to see if they can buy them out, then they can petition the courts for the full property to be sold. Called a "speculating interest" in the land to cause land loss. You get a minimal amount of the value of that land.

Arkansas' law has changed—the Uniform Partition of Heirs Property Act allows an heir who is a co-owner to buy out another who wants to sell their share of a property at the market value of the property.[1]

Adverse Possession is also used by white farmers, investors and property owners to take land. They pay property taxes and take ownership, even where there are not heir property issues. For example, an African American woman rented her land to a white farmer and as part of the rent he paid her taxes for 5 years. One year he did not pay rent and told he did not owe it because now he owned the land.

Strategies: Get more protections in place for African-American families. A lot of risk factors that can result in land loss—need to address them comprehensively.

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[1] In addition to Arkansas; Alabama, Connecticut, Georgia, Montana, Nevada, New Mexico and Texas have adopted versions of the *Uniform Partition of Heirs Property Act* (*http://www.uniformlaws.org/shared/docs/partition%20of%20heirs%20property/uphpa_final_10.pdf*). Bills to enact the law have also been introduced in the District of Columbia, Mississippi, and Missouri in 2017. A draft bill being shopped to additional state legislatures by the nonprofit *Uniform Law Commission* (*http://www.uniformlawcommission.com/*) to make it easier to divide property and preserve family wealth as the owners multiply over generations.

Key point: There is a systemic lack of access to information and resources to resolve heir property issues—We see a great deal of land that is idle, land that could be productive but isn't. The legal risk varies from state to state. In some states, someone can seize rights to a property simply by paying delinquent taxes. The time in which one is considered to have relinquished their rights to their land varies by state. There was a provision in the 2014 Farm Bill to help get Black farmers' land back; but it didn't go anywhere. We need new support for education on wills and estate planning.

(C) **Specific Issues Related to Technology Adoption and Usage**—The following were the key problems identified with respect to technology:

- Internet Services are Lacking.
- There is limited access to technology.
- Producers have not had access to usage of technology in agricultural production and management.

Additional issues raised:

- How can technology be used to make it easier for farmers to accept EBT (SNAP) payments? EBT payments total over $66 billion—that is a large customer base kept from the growers. Individuals should be able to come straight to your farm to purchase fresh products from you.
- Need more of all types of technology—Electronic, wireless, or solar and on farm.
- Not using solar energy or biofuel the way that we should.
- Access to electronic technology among rural/SDFRs (may be stuck in own ways at age 55+) and illiterate in how to use computer even if they had one address.
- Lack of access to internet, cell phone, *etc.,* particularly for elderly farmers.
- High cost for necessary internet speed and limited access to information, computers, and emails—encourage travel to library or McDonalds to use WiFi.
- Lack of technology limits ability to do bookkeeping or taxes.
- We need more and better outreach for available trainings on SAMS and Small Business Administration.
    - If your password is expired, the government will kick out any grant proposals.
    - Many advantages, but can be frustrating if you don't know where to go for the training.
    - Renew registration once every year and password every 60 days.
    - Have to go to many different agencies for different types of training (tedious).
- Need increased access to equipment including technology to purchase for educational purposes or cooperatives. For example: Presbyterian and Methodist Churches give grants ($20,000–$25,000) for SDFRs/and Indigenous Farmers and Ranchers. Use these funds for equipment or match. (Under $5,000 can count as office supplies).
- Reiteration of importance [o]f creating Farmers['] Market to generate income and obtain SNAP payments.
    - However—Banks and other actors are getting part of the SNAP payments—misconceptions exist about who is actually getting the money.

(D) **Specific Issues Related to Access to Resources and Knowledge**—The following were the key issues identified with respect to access to Resources and Knowledge:

- Local colleges and universities are a great resource for knowledge, training, and assistance, as are Community Based Organizations = but need more funding and more programs for outreach and technical assistance for SDFRs and better and different outreach efforts to bridge the gaps in the lack of internet, technology, and computers.
- Support is needed for urban area hubs and more grocery stores in urban communities.

- Provide more funds and more NRCS Technical Service Providers (TSP's) to serve DFR's. TSP's go out to farms and help put together plans for farmers for practices and tech that NRCS will then help pay for. NRCS also helps with practices such as water troughs, row crops, soil testing and herbicides. A lot of farmers don't know about TSP's. We need more TSP's—farmers can't be bashful about coming in to get these services.
- There is a lack of access to technology and training for organic agriculture for SDFRs Many farmers know of organic but are unaware of what it entails and are unsure of the different terms . . . organic, natural, pesticide free, *etc.* Need education on what is best for markets that you have access too. For example, it is possible to get certified organic for a few years and sell at a farmers' market and then gain the trust of your customers, stop doing the certification but keep your practices?
- Information is shared with large scale corporations or agribusinesses—SDFRs should have access to those same marketing strategies.
- Access to biofuel technology.
- Reduce the carbon footprint and help farmers save money.
- Snail mail is not obsolete.

(E) **Specific Issues Related to Access to Grants**—The following issues arose in several groups related to improving access to grants.

- Federal grants are for organizations/entities (not individuals).
- Continue and expand mandatory funding for Outreach and Assistance to Socially Disadvantaged and Veteran Farmers and Ranchers (2501) program and increase its maximum ([to] not less than $20 million but preferably $50 million annually. Policy Research Center should prepare a briefing paper that shows what has been done with the current funding to show and the other good we can do with more money. This will help CBO's and others working on the hill to show how funding for more programs will help more people. The limit of only one year of funding is a great barrier—business plans are usually 5 years. Add statutory authority or a requirement to provide multi-year funding.
- Important to learn how to use *grants.gov*—USDA agencies must list all the grants available as do other Federal Government departments. Also, you can sign-up on USDA agency websites to receive regular news releases from various USDA agencies (NIFA, NRCS, RD, AMS, as well as USDA Office of Advocacy and Outreach) to get notification of when grant cycles are open.
- Grants can only be used by the specific types of organizations listed and the money may come delayed a few years (proposals don't mean that you were awarded funding).
- Specialty Crop Block Grants will fund provide multi-year funding for 2–3 years. These are Federal funds administered by the states—Look at state agriculture department for grant cycles and specialty crop priority lists.

Repeated Denials of Grant Applications: Grant proposals are continually denied (for 3 years or more), while the reasons for denial continue to change.

Strategies: Ask agency to share reviews from reviewers, and to tell you if any part of the grant application was missing or incorrect. Request to see a past successfully funded grant.

Develop a relationship with your Congressional office and ask your Representative or Senator to put pressure on agency to fund it. Before you apply, apply to be a reviewer of the grant round and learn the elements of proposals that lead to positive reviews.

For proposals, which is most important for policy: internet/satellite services or agriculture technology? (These are of equal value, need both types of technology so there should be no separation between the two).

(F) **Specific Issues Related to Discrimination and the *Pigford* Claims Process**—A fuller examination needs to be conducted on the issues and impact related to the *Pigford* Discrimination Claims process through the Policy Research Center.

- Producers were supposed to get three things: Compensation of $50,000 (or more in other Tiers), Debt relief and Priority access to services, including inventory land.
- But the producers who were successful in the claims process only got funding and the $50,000 in no way compensated for their losses and most farmers didn't even get that. Only the lawyers benefitted. Very few successful claimants (only about 3%) received promised debt relief; even then the loan was forgiven only for a year. Many farmers are still going out of business even with a settlement from *Pigford,* because their debts are so high because of the penalties and interest they have accrued on their loans from private banks (because the USDA discriminated against them and wouldn't give them USDA loans).
- Under Category 3 of the *Pigford* Process, which was supposed to provide priority access to future programs, including to land in inventory, no one got inventory land. There is no evidence that there has been any increased priority to programs.
- We need to secure support in the farm bill for research to show we have not taken care of the Black farmer problem.

(G) **Specific Issues Related to Rural Development (RD)**—We also need to address the need for environmental and social justice. We need to address this in the small communities, like the small delta communities with water problems and sewer problems. We need to target funds to address these issues.

III. Solutions: Building Resourceful and Ready Farmers and Communities

The following were the proposals from the group related to solution that we can implement on our own without policy changes:

A. **Do What We Can Ourselves: Build Knowledge and Education of Socially Disadvantaged Farmers and Ranchers (SDFR's)**—We need to recognize that resources are likely not coming back and we need to take matters into our own hands. It is important that we all work to increase recognition of importance of farmers in communities.

(1) *Increase Knowledge*—You have to be able to fill out the application yourself with the help of the internet—we have to move into the 21st century. "I know how to use the cell phone and the computer—you can talk to the phone. Use appropriate technology—get your 10 year old granddaughter to help."

- First step—you have to visit USDA—you have to get a Farm Number, you have to get a farm track, you have to get a map and you need to show proof of ownership—a deed or a lease. You've got to have this stuff when you go to FSA or when you need to have a conservation plan with NRCS.
- Go and ask them what you got to have—when you go with nothing and you don't know nothing—you get nothing. If you asked the right questions and have the right stuff they can give you what you ask for.
  - How long does the lease have to be? Different amounts of time are needed for different programs.
  - We each need to be responsible to know what is available.
  - Join different organizations/associations to expand the types of information you are hearing (join the white groups to hear the information first).
- Participating in USDA programs—You can self-certify yourself. You need to be sure the land you are on fits the program and to document ownership or control of the land. That is part of the eligibility thing—we need to work on getting eligible. In Oklahoma, based on the reports from NRCS, Black farmers only get 2% of the allocated funds. If you apply and learn you are not legally eligible to participate—you have 30 days to reply[.]

(2) *Timeliness*—We need to know about program opportunities in a timely way—when are sign up periods? Get on mailing lists of agencies, CBO's and Extension to find out.

(3) *Get Farmers Involved with their Community Based Organizations and Cooperatives, and then with USDA Programs.*

- Most farmers who have a problem will go to their local CBOs. We want to keep the engagement effort local. We work with individuals to make sure they are thoroughly prepared, and if they still have needs/concerns/questions about the process, we go with them!
- Provide workshop for groups of producers to get ready to effectively apply for and use USDA programs.
- Make sure our farmers know who and where there USDA reps are.
- Use the Natural Resources and Conservation Service Conservation Innovation Grant (CIG) Program to educate and demonstrate conservation practices to farmers.
- Remember that USDA and Extension service are paid to serve you. Use them. The 1890 colleges can help producers to complete applications.

(4) *Learn how to apply and quality for programs*—We further need to learn when, where and how to sign up. We also need to come up with constructive solutions to address barriers we find—this will increase participa tion.

- Get on Extension Mailing List.
- Work with CBO's that provide hands on assistance in your area.
- Keep Calling and Following Up—develop motivation and perseverance.
- Everyone needs to get a Farm number!
- Get Receipt for Service every time you go to office—it is your right.
- Participate in Census of Agriculture.
- Keep Track of taxes and Complete your Schedule F.
- Build relationships.

(5) *Hold Agencies Accountable to Serve You*—You should expect quality service and do not need to accept discrimination.

- Be visible to the USDA. (They are being paid to serve you.)
- Document activities, and keep records/receipts of service (USDA is required to give you a receipt for service).
- Appeal decisions that you do not like.
- Hold the agencies accountable by filing reports and taking action. Go to higher ups.
- Seek assistance from CBO's and 1890's if you need it.

(6) *Participate in Programs and on Boards and Committees and Share What You Learn.*

- There is always a farmer in your community who knows how to participate. You should find that person to help you. Anyone who gets into a program should reach out and help someone else.
- Farmers who enter programs should commit to serving as mentors to others.
- Producers should consider joining other farm organizations working with white farmers. Join organizations that have information you can use, whether or not they are mostly white. Don't stereotype yourself and limit yourself to Black organizations. The white organizations are going to find out what's out there and what's going on before we ever do. We have to make ourselves more visible.
- We need to work together to increase representation on USDA Boards and Committees.
- We need to run for and get on FSA County Committees and Conservation District Boards and participate on NRCS State Technical Committees. Work with CBO's to learn how to run and to get support from other farmers and convince them to vote. Many County Committee members are elected with a small number of votes.

(7) *If You Encounter Discrimination—Take Immediate Action*—Discrimination is still happening. If you feel someone is discriminating against you, the smartest thing to do may not be to get in their face and cause a scene, but rather go to their boss. The GSA's do not want to lose their jobs.

B. **Improve Access to USDA Programs**—More program support and hands on assistance is needed.

- Reform agency approach to reaching farmers so that more people are knowledgeable of programs and able to access them. Transparency and Ac countability requirements must also be met. Employee performance must include indicators on success in including SDFR's.
- More funds for 2501 and to support the CBO's that provide hands on as sistance.
- Increase access and availability of technical service providers (TSP's) that come from our communities—train them to address the key issues to assure producers can become eligible for the programs.
- Extension agents need to go out more to field and reach SDFR's.
- Organize farm tours so farmers and ranchers can meet each other.
- Focus more outreach to women because men tend to be more reluctant to go to meetings.

C. **Address Black Land Loss and Heir Property Issues**—Secure more protections for African-American families to hold on to and utilize land. Family members fight over money, it's just what they do.

- A will is essential—without one "You have to go to court and the lawyers says sell it, and everyone gets like $2000 because there's so many people in family and lawyers take a cut."
- More training and technical assistance on wills and agreements should be provided to help families resolve heir property issues and to prevent forced partition sales by outside investors who approach absentee owners. There needs to be a program on succession planning and education and wills.
- Policy Research Center should do a matrix on property laws on the 18 states it serves.
- Learn how other families have handled this issue. For example, one family has a provision in the will that says they can only send the land to someone else in the family.
- General reform of approach, because current approach isn't working.

D. **Improve Access to and Use of Technology**—Internet gives you information, farming technology lets you apply it. Farmers need both types of technology. Technology on the farm will improve your operations—it is growing and will continue to grow.

- We can develop the technology to make biofuels on the farm to reduce your energy costs—I can make it and I know you can make it. You can transfer this knowledge to others.
- We can also make use of hydroponics and aquaponics.
- Many farming operations are now so high tech, with global positioning and access on information on soil quality and moisture. Irrigation can be done with remote computer access and access to the internet. Drones can be used in farming.
- Create a brand and get a market first.
- We need to promote more support, training and sharing on use of these technologies.

E. **Build Communications, Partnerships, Opportunities, Pathways**—USDA agencies are moving more into computer age—we can't afford to be left behind.

- All farmers need to learn to use the computer and phone and ways to get into programs that don't require going to offices.
  - Develop skills and partnerships (esp. with young people) to use internet and phones to find and share Information
- To address the issue of lack of access to information (ex. *Agriculture Census* or process/criteria for USDA programs):
  - Groups should develop and share a list that would show the type of issue (ex. need for equipment) and then the types of grants and resources available to address that issue (*e.g.,* grants from the Methodist church)

- Seek grants for technology transfer—we should work for greater participation in grant programs and more participation by us on the review committees.
- Get a group of farmers together—let the college speak to you and help you get the knowledge together—on one specific program—$6 million more went out to farmers due to educational efforts.
- In reference to knowledge—it is important—how to streamline the knowledge—not a check box—streamline workshops that actually provide SDFR with tools—line by line assistance. We need a new toolbox.

- Provide more education on the 2501 program and learn where and how the 2501 funds are appropriated and how to support more funds.
- Provide organic standards education and assure organic research completed by universities is shared with farmers.
- Be sure to understand and meet Food Safety and Modernization Act Standards for food we ingest—the 1890's have training programs.
- Learn how to use rural development programs.
- Recognize the critical importance of support so the community based organizations can bring the agencies to the communities rather than bringing the communities to the agencies.
  - Improve Access to Grant Funds—Use relationship building to expand horizons.
  - Takes time to get your name out there and win a proposal.
  - Try new tactics with every Administration because the same strategies don't always work.
  - Organize Black veteran farmers under us to get the funding for veteran farmers.
- Utilize Farmers['] Markets—It is critical to seize the opportunities presented in farmers['] markets.
  - Be sure the high level of spending at farmers['] markets can be accessed by all farmers and communities (*e.g.,* Socially Disadvantaged Communities).
  - Access Technology to accept SNAP Benefits at Farmers['] Markets.
- Build Partnerships and Networks—Everyone needs to be retrained in partnerships and communication with each other to strengthen our bonds of working together. We have to work together—African American, Latino, and American Indian farmers and ranchers.
  - Need to persevere and take the time to build relationships.
  - We must build accountability in partnerships.
  - Expand community based relationships with 1890 institutions.
  - At Langston University: Animal Science Boot camps were created to foster collaboration between the two groups.
  - USDA retirees who have a vast amount of knowledge of the programs should be tapped resources for SDFRs.

F. **Grow A New Generation of Farmers**—We need youth component that educates young people on land/agriculture.
- We need to educate our kids about farming to break stereotypes and misconceptions the younger generation has about farming—that it's dirty, *etc.* You have to show the value of farming (the economic advantages) and also that there are other opportunities, such as production agriculture. We need more people that are involved in forestry and production agriculture, and animal science.
- Organize Younger Farm Associations and Chapters and have regular meetings. These are good resources for information. We have one once a month and invite the NCRS.
- Urban farming youth *outreach* has been successful—There is an agricultural high school in Chicago.
- Build and strengthen partnerships and communication networks to effectively and actively capture the skill sets of all age groups and participants. Engage existing producers as mentors, and younger generation to help with electronic access.

- There is a youth loan program in the existing bill, we need to keep that. USDA has a youth loan (FSA youth loan can borrow up to $5,000) for any project that is agricultural-related. But you don't want kids getting the money for their parents. Need to get parents that are interested in youth programs. A lot of people don't know about this program.
- We need to think outside the box of focusing on people going to FSA, if you want to get this information to youth who are not connected to FSA list; to make it more accessible to others.
- How about going after establishing a teaching farm? There are Federal and state/local grants for these. This is a way to do youth outreach and education (debunk myths about farming), while securing another stream of revenue, and cultivating the next generation of farmers. There are several models of this that also teach entrepreneurship and allow new farmers to get a farm number and gain the experience they need to qualify for programs in the future.

IV. Policy Proposals for Statutory and Administrative Change

The group identified several specific proposals for Statutory Change (by the U.S. Congress in the farm bill or at the state Level) and/or Administrative Change (made in regulations or procedures by USDA agencies).

(1) **Strengthen and Secure More Funding for 2501 Outreach and Assistance for Socially Disadvantaged Farmers and Veteran and Ranchers (OASDVFR)**—A top priority identified was the need to greatly expand funding for the historic 2501 Program to at least the $20 million annual level in direct funds provided in the 2008 Farm Bill. A level of $50 million annually would much better meet needs. Language should also be included to specify that "*funds should remain available until expended*" to provide clear authority for multi-year grants of at least 3 years. Both of these changes must be made in the farm bill. The move to 3 year grants would also require a subsequent change by USDA to allow or move to a preference for 3 year grants. Another administrative change would involve requiring a peer review process to include CBO's and Minority Serving Institutions.

(2) **Secure Authority, Process and Action to Enable Producers to Re-establish Base Acres and Yields**—SDFR's should be allowed to re-establish bases and yields to reflect their current production. (Statutory Change Needed in Farm Bill).

(3) **Require Full Implementation of Transparency and Accountability provisions from Section 10708 of the 2008 Farm Bill**—Set clear targets and timelines for public reports on program applications and participation by race, ethnicity and gender to the county level-review participation compared to targets and publish reports on whether these are met. Language should also require the data from these reports be used in personnel evaluations, and for regular civil rights compliance reviews, with findings made public. (Could be done with Administrative Action, but changes are needed because it has not been—need Congressional Oversight and Stronger Statutory Requirements).

(4) **Require Periodic Audits of County Committee Actions**—There needs to be a periodic review of how FSA County Committees make decisions and how well they serve all farmers. Are decisions fair and according to policy? Are outreach responsibilities met? How is disaster assistance allocated? How has participation by race, gender and ethnic changed?

(5) **Expand and Increase Set Asides of Funding in NRCS Programs**—Set asides should be increased to 15[%] or 20% of funds. USDA should be required to implement set Asides as floors not ceilings. Unused funds should be redirected to the national level to redistribute to areas with more SDFR's. (Expansion requires Statutory Change in Farm Bill). Expand TSP (technical support programs) to include outreach division and increase support (or include a set aside) for TSP's qualified to serve SDFR's.

(6) **Increase Funding, Access and Set Asides in Various Programs:**

- Secure more funding for ***organic training,*** improve access to this training, enact set asides of 10–15% for SDFRs farmers and ranchers.
- Consider Set Asides in additional programs, including grant programs.

(7) **Enable Active Producers to Access Federal Farm Programs for Use on Heir Property**—Seek statutory authority (in farm bill) to enable farmers

to utilize Federal farm programs for land management and production including:

- Secure Waiver of eligibility restrictions to allow farm operators who have 5–10 year production and Schedule F tax history, but are not the administrator, to be eligible for conservation programs, EQIP, forestry and other services on all of the land (*i.e.,* a 5 year or 7 year contract on a CSP).
- Work to new secure lease-back and buy back provisions to help get Black Farmers and SDFR get land back.
- Establish new authority within existing Farm Ownership Loan Programs, or a new Loan Program with authority for low interest farm ownership loans to families to resolve heir property issues by buying out other heirs (*model these on programs in the 2008 and 2014 Farm Bill that provided a lending program to allow Tribes and then individual Native American Farmers to access loans to resolve fractionated land issues*).
- Research additional ways to build incentives for heirs to allow land management and production on the property. The time in which one is considered to have relinquished their rights to their land varies by state. Laws relating to adverse possession also vary. Review state laws and recent changes for best models.

(8) **Access to Programs for New and Beginning Farmers Seeking to Farm on Heir Property**

- Adjust criteria so heir property waiver could apply on a farm with a history of being farmed and that the waiver would apply to whoever is currently operating the land.
- Restore SDFR priority access to land in inventory with FSA, along with beginning farmers and ranchers.

(9) **Expand Youth Programs in the Farm Bill**—Incorporate more provisions to benefit youth and young farmers into farm bill, including expansion of the FSA youth loan. Allow more organizations and CBO's who serve youth to be able to access youth education programs funds.

(10) **Farm Credit**—Include language to provide exemptions for SDFR's eligible that now allow Limited Resource Farmers to access FSA loan programs without providing two letters of denial from banks.

(11) **Protect and Increase support for Rural Cooperative and Business Development Program and Funding**—Consider Additional Set Asides for SDFR's.

(12) **Support Urban Agriculture Policy and Programs**—Be sure they complement and work with other programs for SDFR's and do not compete with them or simply expand benefits for suburban and wealthier farmers.

(13) **Support More Funding for the Beginning Farmer Development Program**—Be sure set-asides for Socially Disadvantaged and Veteran Farmers are sufficient, possibly with priority to those who meet both categories. Eliminate matching requirements. Maintain "just in time" application process so some documents are on required once you win a grant.

(14) **Develop New Policy and Programs to Encourage Partnerships and Cooperatives among SDFRs to increase access to technology, information, and equipment.**

- Help beginning farmers to stay in business.
- Bridge gap in access to technology and technique.
- Foster mentorship among different age groups (*i.e.,* senior age farmers experienced in farming with youth skilled in technology use).
    - Reciprocal mentorship program.
        - Bridge gaps (as seen above).
        - Shares skillsets among different age groups (*i.e.,* younger generation better with technology while older generations know techniques).

(15) **In Extension, FSA, NRCS, *etc.*—increase authority and support for outreach grants to provide trainings in partnerships with 1890's and CBO's.**

- White farmers have relied on the 1862 land-grant institutions and USDA service centers for service center (African-American farmers are not present at these training sessions hosted at the institutions).
- Provide 1890 institutions and CBO's similar opportunities/funding to promote participation.

(16) **Provide New Funding and Authority for the National Agriculture Statistic Service to expand what is counted in the Census of Agriculture and other studies does.** Data should be collected on land ownership—not just farms. This will help us to put a strategy in place to effectively deliver funds allocated. (Also consider requirements for Economic Research Service Reports and Studies).

(17) **Include a Farm Bill Provision (as a last-minute amendment) to authorize funds for a Review of the *Pigford* Claims process and its Impact on Black Farmers.**

(18) **Support passage of Uniform Partition of Heir Property Act in more states?** (*Mentioned but not officially proposed*)—Request CBO's in states with the law to share experience with the law and recommend if it should be enacted elsewhere or changed in any way: *http://www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%20Property%20Act*.

V. Proposals on Strategy

- **Conduct Research**—We need more comprehensive studies on SDFRs, to learn more about the reasons they are not participating in USDA programs. Conducting a more comprehensive study of a larger sample pool would provide data that we could then take to USDA headquarters to show what the "masses" are saying. The Policy Research Center is working on this.
- **Report on *Pigford***—One group proposed that the Policy Research Center take a deeper look and prepare a report on the *Pigford* Claims process. There needs to be a clean and comprehensive research project. More than $2 billion was spent to resolve the claims, so there is nothing wrong with spending $5–$6 million to conduct a study that evaluates the impact of *Pigford* on the Black farming community
- **Expand grants for outreach education**—More support for Outreach is needed.
  - There are grants for this, but they aren't easy to get. Maybe if the 1890s institutions were given funds for this, there would be more participation among SFDRs. We should give these institutions money to do this.
  - We need 'retraining' and 'partnership education.' Need to stay on the 1890s institutions, to ensure that they remain aware of CBO's and their needs.
- **Farm Bill Information and Strategies**—How can we change farm bill if we don't know what it is? We need more information on what is in it and how it helps farmers.
  - Important to increase participation—and support—of Community Based Organizations to build grassroots power in the policy debates. CBO's have worked effectively on the hill for many years and we to benefit from this experience to work together to do so again.
  - With respect to the upcoming debate on renewing the Farm Bill (2018)—if something is positive we need to keep it. If it's negative get rid of it. We need to start working now because the time for input is now.
  - We should focus on some specific policies to laser in on for farm bill.
  - We should work with the Congressional Black Caucus to prepare and have them add amendments at the last moment because Congress needs their support to get the full bill passed.
  - The Jackson-Lewis study done for USDA has recommendations on 2501 and other issues that the USDA doesn't want to do. We should include these in our analysis of policy issues for action.
- **Develop and Use Mentor Farms**—We can learn from doing *versus* simply reading about farming best practices.
  - Use teaching or mentor farms to educate new farmers. Several CBO's have or are developing mentor farm operations with various structures. The optimal models allow the incoming producers to gain both the skills and experience necessary to qualify for USDA programs. This includes the opportunity to have control of a piece of land and to get a farm number.

- To find a list of 1890s institutions that offer model farms on the USDA site, search for '1890s'. They have 'Field Days' where they do demos of model farms.

VI. Conclusion

The following were the closing recommendations of the group at the final session, which was led by Mr. Tillman.

Grow the Next Generation of Producers—Support the next generation of African American and other SDFR's.

- Assure the next generation of farmers are involved in future meetings.
- Build youth education on farming to break stereotypes and misconceptions.
- Speak about the plight of farmers (Black farmers and southern farmers).
- Increase opportunity in production agriculture.
- Better relationship between USDA and farmer.

Engage Everyone in Improving the Farm Bill—Recommendations included the following:

- Prepare a one page handout of what the farm bill is.
- We are going to the Hill.
- Funding of 2501 program and Policy Research Center (for next 5 years).
- New Measures to Assure Accountability of service.
- Incorporate and expand youth programs and support in the farm bill (expand USDA youth loan and mentoring programs).
- Prepare the next generation to continue the fight.
- Increase support in the farm bill for workshops and other training sessions.

Increase the Capacity of Community-Based Organizations—Community-Based Organizations provide critical training and assistance.

- Increase support and participation of community-based organizations.
- Training for CBO leaders to engage farmers in agriculture and policy.

3. Issues Related to Farm Credit and Guaranteed Loans

Rural Coalition Letter to the General Accounting Office (GAO) regarding Sec. 5416. GAO Report on Credit Service to Socially Disadvantaged Farmers and Ranchers, Washington, D.C., March 3, 2021.*

Farm Credit Administration response to a farmer following a request for assistance with a complaint, December 18, 2014. [*Attachment 1*].

Rural Coalition Letter to the Farm Credit Administration requesting information on assuring protections under the Equal Credit Opportunity Act, December 19, 2014; farmer name redacted. [*Attachment 2*].

March 3, 2019

Hon. GENE L. DODARO,
Comptroller General,
U.S. [Government Accountability] Office,
Washington, D.C.

Re: Sec. 5416. GAO Report on Credit Service to Socially Disadvantaged Farmers and Ranchers

Dear General Dodaro:

I. Introduction

As the [Government Accountability] Office prepares to fulfill its duties under Section 5416 of Public Law 115–334, the 2018 Farm Bill, the undersigned organizations representing the agriculture lending interests of minority and socially disadvantaged farmers and ranchers encourage the adoption of methodologies that examine and evaluate farm lending policies having a negative impact on minority farmers and ranchers. The study's methodology should examine, from our perspective, and evaluate certain "unique" lending patterns, practices and policies that reliable sources, academic and legal, verifiably document as contributors to farm loan default, acceleration and foreclosure within the minority farming community.

The undersigned organizations over the years have reviewed thousands of loan documents, and assisted minority farmers with loan servicing options. Before and

*__Editor's note:__ the letter is dated March 3, 2019. It has been published herein as received.

after *Keepseagle, Love,* and *Garcia, Pigford* Farmer settlements, the undersigned organization labored with minority and socially disadvantaged family farmers and ranchers in the areas of farm credit applications, collateral requirements, and loan servicing. As a collective of over 100 years of experience in family farm foreclosure prevention and farm wealth transition, we know firsthand the consequences of late loans, disparate treatment and disparate impact in loan servicing and other hidden farming lending discriminatory policies and procedures. A history of loan service to our farmers gives us the knowledge and credibility to offer suggestions that *will accommodate efforts to determine other appropriate details of the study's methodology.* As you develop a methodology to gather and organize reliable report data to present to the House and Senate Agriculture Committee, consider farm loan practices from our practical and historical perspective.

As delineated herein, our methodology suggestions find general acceptance in 7 U.S.C. 1983c which authorized the Secretary of Agriculture to implement pilot loan programs when there is a finding of loan program irregularities. This study is much needed as it will point out farm lending irregularities for the purpose of improving credit for all farmers. Farmers appreciate the fact that the legislative language mandates a product completion within 120 days of December 18, 1018, the execution date of the 2018 Farm bill.

II. Legislative Requirements

The statutory language requiring of the study is general and purposely vague. We point out the vagueness of the language, not as a criticism, but to augment the necessity of a broader methodology that captures real irregularities faced by minority farm borrowers.

Essentially, Section 5416. of Title V of the 2018 Farm Bill requires the Comptroller General of the United States to conduct a study to (A) assess the credit and related services provided by agricultural credit providers to socially disadvantaged farmers and ranchers; (B) to review the overall participation of socially disadvantaged farmers and ranchers in the services described in subparagraph (A); and (C) to identify barriers that limit the availability of agricultural credit to socially disadvantaged farmers and ranchers. ***Title 5416, Sec. 5416 of Public Law 115–334.***

The language's general reference to terms like access, participation rates and barriers by implication suggests that the functionality of the methodology encompasses the time, place, manner of access, and foreclosures that may violate Federal laws if the irregularities are found to be within the consumer protection prohibitions of statutes like the *Equal Credit Opportunity Act (ECOA)—**15 U.S.C. 1691–1691f,** Fair Housing Act (FHA)—*42 U.S.C. 3601–3631; *Dodd Frank Unfair Deceptive and Abusive Practices Act (UDAP)—**12 U.S.C. Section 5531(d).***

Even though not specifically mentioned, it is permissible that the study's methodology must be comprehensive to the extent that access, participation and barriers will be quantitatively and qualitatively articulated by examining or evaluating lending irregularities and discriminatory practices against relevant regulatory guidance of relevant consumer protection statutes. If a plain meaning interpretation of Section 5416 applies without permissible considerations, the data could be limited to the number of minority farm loans granted and denied and miss critical data on key issues such as lending patterns, policies and practices that have a disparate impact or serve as disparate treatment. Missing the real issues of farm loan irregularities and discriminatory terms and conditions may cause further extractions of land wealth from minority farmers while denying the same or similar viable, economically appropriate lending risk management tools offered to nonminority farmers and ranchers.

We understand that not every aspect of a farm loan transaction can be studied. But critical irregularities must be studied. The Congressional intent of Section 5416 reveals that the results must inform and guide policy makers and practitioners on how to create program efficiencies while ensuring fair farm lending.

Reviewing overall farm lending participation rates does not address associated issues of barriers to participation such as fair and equitable participation. The fact that a minority farmer participates in a private or Federal loan program does not automatically equal meaningful, fair participation. Some farm credit transactions run afoul of consumer credit statutes and we can attest to such examples evincing lending irregularities and discrimination. Therefore, participation in harmful discriminatory lending transactions is more detrimental economically than straight forward credit denial, especially when the loan is over collateralized, and a personal residence security interest is mandated but is unnecessary to secure the loan in question. Minority farmers understand that agriculture is a high economic risk industry and their reliance on fairness in credit transactions must be guaranteed by the lenders offering various credit options.

Farm lending, especially when directed by the government or guaranteed by the government, should be a consistent and evenly applied farm risk management toll. In accordance with 7 CFR 1779.63 and 7 CFR 4279.281 the U.S. Department of Agriculture and the Small Business Administration must make sure that lending irregularities and discrimination is not a part of any loan guaranteed by the government. Minority farmers confront the same floods, droughts, and market fluctuations as nonminority farmers. Inequities and irregularities within farm lending sector should not be held in the same farm risk category as natural disasters.

III. Irregular and Discriminatory Lending Practices

The data collected for analysis, under Section 5416, must include loan transactional components such as **(a)** excessive collateral requirements, **(b)** unwarranted late disbursement of loan funds, **(c)** misapplication or calculation of actual or average farm production, **(d)** evaluation of loan applications based the association of credit risk identified with third party non applicants, **(e)** directing or requiring borrowers to purchased equipment or inputs from entities related to the transactional lender, **(f)** suggesting or requiring underfunded or over funded annual crop loans with the intent to gravely impact repayment ability, and **(g)** denying or forcing loan servicing options that diminish annual farm operations and loan repayment ability. While not exhaustive, this list is a compendium of discriminatory or irregular lending conduct that is prohibited by the Equal Credit Opportunity Act, the Fair Housing Act, and the Dodd Frank Unfair Deceptive and Abusive Practices Act. These aspects must be studied.

IV. Develop a Methodology from Applicable Consumer Credit; Civil Rights; Farm Credit Statutes and Regulations

The goal of this study is to collect data on access to fair credit since the lack of access to fair credit is the same as a barrier to credit. ***We recommend that the study examines 8 (eight) standards.***

(a) **Effects Test**—The Equal Credit Opportunity Act and its implementing regulations found at 15 U.S.C. 1691, and 12 CFR 1002, Regulation B, may prohibit certain credit practices that are discriminatory in effect because the practice or policy has a disproportionately negative impact on a prohibited basis such as race, age, gender, *etc.* Under the effects test, the policy or practice of the creditor does not have the intent to discriminate. The lending practice, under the effects test, appears to be neutral on its face. It is the application of the policy or practice that presents the irregular, discriminatory disparate impact or disparate treatment problem for the minority or socially disadvantaged farmer borrower. For example, the lender informs nonminority similarly situated farm loan borrowers on the best and lowest price seed, tractors or fertilizer. Or the nonminority borrower may get detailed information on where to find low priced farm land for rental. In contrast, the minority farmer does not get the same "best source to purchase" advice. Another example is appropriate as is the "best source to purchase" example. Consider a lender loan requirement specific to the minority farmer where a refinance of personal residence using a USDA guaranteed loan is mandatory for the closing of a farm operating loan. Under the "effects test" a disparate impact problem arises where, in contrast, the nonminority, similarly situated farm borrower is not required to refinance his personal residence and or use the personal residence as collateral for a farm operating loan. It is easy to see that the minority farmer, in these examples are subjected to disparate treatment. Granted, some lender policies or practices will pass muster if it meets a legitimate business need of the lender that cannot reasonably be achieved as well by means that are less disparate in their impact. ***See Regulation B, 12 CFR Section 1002.2(c), (m), (n), (t) and (z).***

(b) **Deceptive and Abusive Lending**—Although less frequently, a lender may subject a farm loan borrower to terms and conditions that are designed to put the farmer out of business. A farmer may be subjected to coercive tactics whereby a farmer can be lured into a farm loan that is not affordable or guaranteed to result in foreclosure. Lender decisions to such abusive or deceptive tactics in loan making or terms and conditions may violate the Dodd Frank Unfair Deceptive and Abusive Practices Act (UDAP). In the farming area, like other consumer credit, a UDAP claim can be successful only when the lenders conduct shows the following: "**(1)** materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or **(2)** takes unreasonable advantage of—**(A)** a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; **(B)** the inability of the consumer to protect

the interests of the consumer in selecting or using a consumer financial product or service; or **(C)** the reasonable reliance by the consumer on a covered person to act in the interest of the consumer." ***Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. Section 5531(d).***

(c) **Residential Real Estate**—In order to obtain a farm operating loan, a farmer may be required to offer his personal residence as collateral for such loan. On its face the offering of a personal residence can be a lender requirement that is based on the credit risk of the particular loan. However, Civil Rights statutes and implementing regulations such as 24 CFR Section 100.130(a) prohibit a lender from imposing different terms or conditions for the availability of loans or other financial assistance because of race where the transaction is secured by residential real estate. ***See 42 U.S.C. 3604(b); 24 CFR Section 100.130(a); and 24 CFR Section 100.130(b)(1)(2)(3).***

(d) **Excessive Collateral Requirements**—Whether minority farmers are required more frequently than non-minority farmers to tender excessive collateral in order to receive a farm loan or to acquire meaningful loan servicing through workout and loan modifications. ***See Regulation B, 12 CFR 1002.6(b)(4); Regulation B 12 CFR 1002.2(n).***

(e) **Discriminatory Loan Terms and Conditions**—Whether minority farmers more frequently than non-minority farmers receive loan funds after April of any given crop year. Under the guidance of 12 C[F]R 1002.6(b)(4) a lender cannot provide two different systems of credit application, loan pricing or loan servicing. ***See Regulation B, 12 CFR 1002.6(b)(4).***

(f) **Third Party Influence**—Whether minority farmer loan application packages and lending decisions are unduly influenced by third party entities such as equipment dealers, agricultural input suppliers and or processors and millers of raw agricultural products. ***See Regulation B, 12 CFR 1002.2(c); 12 CFR 1002.4(a)(b); and Unfair Deceptive Abusive Practices Act—12 U.S.C. Section 5531(d).***

(g) **Lender Control Over Farmer Operations**—Whether farm lender's more frequently exert control over the daily management of minority farmer operations in terms of acreage planted and equipment purchased. ***Unfair Deceptive Abusive Practices Act—12 U.S.C. Section 5531(d).***

(h) **Intentional Lender Mistakes**—Whether certain lender decisions are implemented with intent to cause irreparable damage to the economic viability of minority farm operations. **Unfair Deceptive Abusive Practices Act***—12 U.S.C. Section 5531(d) (UDAP).* We do not infer that every farm loan, whether USDA Direct or USDA guaranteed, is made and designed with the intent to defraud or damage the farming operations of minority operators. But, history and experience, nevertheless, inform us that such problems like this do appear occasionally and have the intended effect of causing harm and failure to minority farmer operations. Again, we stress that these practices do not happen every day, but our farmers tell when they exist, and the farmers tell us when lenders make lending mistakes—intentionally or not. Having made a compelling argument to the U.S. Congress during the 2018 Farm Bill debate, the House and Senate Agriculture Conference Committee, responded proactively to provide a provision of "equitable relief" for farm loan borrowers in those circumstances where a FSA farm loan employee makes a mistake—knowingly or unknowingly—and that mistake causes a borrower to be in noncompliance on a USDA direct loan. Section 5304 of the 2018 Farm Bill conference report gives the Secretary of Agriculture the authority to offer a farm loan borrower a provision of "equitable relief" when a decision of a farm loan officer causes the borrower to be out of compliance with the loan program. Noncompliance with a loan term or provision can lead to default, acceleration, and foreclosure. The "equitable relief" provisions of Section 5304 are far afield from the fraud prevention provision of the UDAP. ***12 U.S.C. Section 5531(d).*** Lender mistakes whether intentional or not will cause economic damage to farm business operations. We mention the presence of "equitable relief" in Section 5304 to highlight the existence of a problem and the necessity that the GAO study look into irregular lending practices having a flavor of mistake or fraud. ***Sec. 5304 of Public Law 115–334.***

V. Industry Specific Credit Transactions: Sugar Cane and Contract Poultry

Although not often implemented by the U.S. Department of Agriculture, 7 U.S.C. 1983c permits the Secretary of Agriculture to conduct pilot loan programs in areas of lending irregularities, such as those endemic to industries such as contract poultry and sugar cane production. The existence of pilot loan programs under 7 U.S.C.

1983c provides additional credibility to the research questions and methodologies that we suggest be made a part of this study. Our suggested approach makes a valid attempt to explain farm lending irregularities whether they be historical and race based or neutral loan making business decisions that have a disparate impact on minority farm loan borrowers. Upon the general applicability of 7 U.S.C. 1983c, we urge a methodology that informs the Secretary of Agriculture of the benefits of frequent, effective utilization of 7 U.S.C. 1983c when presented with a petition by a farm group showing that an area, or group of farmers are defaulting on loans on a consistent and increasing rate with a similar pattern or practice of lending or loan servicing. Under 7 U.S.C. 1983c, a petition from a farm group requires the Secretary to create a farmer Loan Pilot Project designed to prevent and restructure loans in the area of concern. FSA direct and private guaranteed lending in the contract poultry industry presents a good example of consistent farm lending irregularities. For example, in the years 2004–2007, approximately, we worked with Hmong organizations and producers, holding focus groups and other reviews of the difficulties faced by Hmong farmers who had relocated to northwest Arkansas near Fayetteville, to purchase poultry operations. We reviewed practices and called these to the attention of the Secretary of Agriculture. Many of the families included parents who entered the US as refugees, and children who had worked in fields such as engineering. A group primarily from Wisconsin began to move to northwest Arkansas at the recommendation of respected people, who had served in public positions within USDA and elsewhere. They had some resources, and it appears the local real estate industry worked in cooperation with the banks to secure guaranteed loans to buy out poultry operations that were not economically viable for their former owners. The producers showed us that in many cases identical or nearly identical farm and home plans were submitted to the banks for approval, and farmers were told they could secure certain conservation benefits used by previous owners. The prices of the farms rose as more producers moved in, and in most cases the families were not aware of the additional costs they must incur before the integrators would allow them to enter production. The loans provided were proving highly risky, and many of the new producers lost their operations. The "solution" recommended at the national level after Rural Coalition and many other groups called for action, was to pressure the Natural Resources and Conservation Service to engage trainers from groups who worked as farm advocates to teach producers how to better meet the requirements of the poultry integrators. The GAO should review the loan por[t]folios in that region over the past 15 years to examine lending practices. Producers told us that the bankers, the real estate agents, and many others benefited. The producers are left with debts most likely still held by the Farm Service Agency.

Minority and socially disadvantaged farmers and ranchers are often subjected to lending irregularities deemed "non business credit risk" loan terms and conditions. The following terms and conditions are deemed "non business credit risk" terms and conditions: **(i)** lender loan servicing mandate to sell borrowers existing income producing collateral and use the sales proceeds to buy new replacement collateral from a single tractor equipment source identified by the lender; **(ii)** farmer requirement to purchase a piece of farm harvesting equipment and immediately lease the equipment to a third party business; and **(iii)** consideration of the past bad debt of a parent or other family member. The outgrowth of these and related lending irregularities *fosters* barriers to meaningful access to farm credit for minority farmers.

VI. Effective Complaints Processing and Settlement

We further note that the Farm Credit System lacks a specific system or methodology to act on civil rights complaints consistent with ECOA and related requirements and that one needs to be developed and implemented in order to assure fair implementation of guaranteed programs. We have attached correspondence that we conducted with the Farm Credit Administration on behalf of a young African American producer in South Carolina, and correspondence between he and FCA in 2014.

We also have correspondence and many documents on the case of a Hmong woman who had an operation in Missouri with her husband, and how she lost her operation after he passed away. In these cases and many others, producers come to us at a point when it is very difficult to save their operations. What is similar in all the cases we have mentioned is that there is substantial confusion not only for the guaranteed loan borrowers we have encountered, but also on the part of advocates, on how to secure the rights provided these borrowers under the Equal Credit Opportunity Act. The Farm Credit Administration has not included equal credit opportunity under the protected rights it lists on its website, and to file a discrimination complaint, producers are told to write to the FCA Office of Congressional Relations and Public Affairs. The questions asked and responses provided indicate there is no formal process to investigate claims under ECOA. There do not appear

to be any statements or other information to tell farmers how to secure their rights. We urge you to review these attachments. The GAO study should examine what system FCA and the banks that make guaranteed farm loans should have and how producers should be informed of and assured their rights. Thus, producers who encounter unfair treatment lose valuable time trying to figure out the avenues of protection they do have. The GAO should consider what measures are necessary to correct these deficiencies and assure guaranteed lenders abide by ECOA in loan making and loan servicing.

The study methodology should also take a look at the specific minority farmer lending practices within certain crops or industries such as poultry in Arkansas, North Carolina and elsewhere, vegetable crops in South Carolina and sugar cane crops in Louisiana. The study will be much more valuable if it examines the lending practices in these industries as related to African American, Hispanic, Hmong and other Asian Pacific American, and Native Americans borrowers. A specific portion of the inquiry should address how the details of loan transactions may have caused or contributed to the exodus of minority and socially disadvantaged farmers from specific farm industries in specific areas, and who benefited and who lost in these areas.

VII. The Need for a System of Compliance Monitoring

Our Coalition has worked on the issue of compliance monitoring in direct lending and on the issue of equitable access to all Federal programs for farmers and ranchers for many years. In particular, we have worked to assure the data is available to understand patterns and barriers that interfere with the assurance of equitable access and opportunities. Since 1987, we have worked to secure authority for the collection and analysis of program participation data by race, gender and ethnicity at the national, state and county levels. The Agriculture Credit Act in 1987 required the calculation of target participation rates for lending to the county level for direct and guaranteed loans. Farm Service Agency and its predecessor, the Farmers Home Administration, has done so for years. These data are available to guaranteed lenders and the Farm Credit System. Over the years, in each Farm Bill we have added other authorities for data and documentation. Following the 2012 Census of Agriculture, we urged the National Agriculture Statistics Service to provide data to the county level on the demographics, economics and crop produced by race, gender and ethnicity. They complied, and this data is now available at *https://www.nass.usda.gov/Publications/AgCensus/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/index.php*.

We have seen no evidence that the Farm Credit System and other guaranteed lenders have any system to evaluate their lending to minority producers as compared to other producers, or that they collect the data they would need to proactively monitor their compliance with ECOA.

In 2011, Farm Credit Administration released for public comment a "Proposed Operating and Strategic Planning Rule," 76 *Fed. Reg.* 101 (May 25, 2011). Its recommendations were based on marketing practices related to addressing "diversity" in the marketing practices of the Farm Credit System Institutions, while avoiding the more central issue of compliance with ECOA. The following is an excerpt from our comments:

> *"The Rural Coalition, and other undersigned partners and allies, submitted detailed recommendations with respect to the proposed rule, which we share with you now as they are pertinent to the current report and merit re-examination for the outcomes achieved following the issuance of this rule:*
>
> ***"The Final Rule Should Require the Federal Credit System Institutions to Engage Historically Underserved Farmers and Community-Based Organizations that Serve Socially Disadvantaged and Limited Resource Farmers in the Development of Their Marketing Plans***
>
> *"According to Section 618.8440(b)(8), the marketing plans of Farm Credit System institutions would have to include, at a minimum, a description of the institution's chartered territory by geographic region, types of agriculture practiced and market segment and the strategies and the actions to ensure the institution's products and services are equally accessible by all farmers, with an emphasis on outreach to historically underserved farming communities. Furthermore, the proposed rule advises institutions to use an array of demographic information, down to the county level, to identify the characteristics and market segmentation of its territory (**i.e.,** Websites of the Census of Agriculture, the U.S. Census Bureau, and the United States Department of Agriculture's Economic Research Service).*

"In addition to these sources, the Farm Credit System institutions should also engage their state National Agricultural Statistics Service (NASS) Directors to generate data specific queries in order to obtain a deeper understanding of the farmers that the institutions are mandated to serve.

"Additionally, institutions should also specifically work with the USDA to obtain the annual application and participation rate data mandated in Section 14006 of the 2008 Farm Bill, including numbers and percentages, for each county or parish and state in the United States, organized by race, gender and ethnicity, from USDA's Farm Service Agency and Rural Development programs. The Farm Credit should also look at this authority and other more recent authorities to generate their own data on participation in their programs.

"Section 618.8440(b)(8), also advises that the 'marketing plans of institutions include grassroots outreach activities and education efforts that market to underserved populations regarding business and financial planning and leadership and loan programs for persons who are creditworthy and eligible to borrow.'

"Although outreach to underserved farming communities is an essential component of an institution's marketing plan, the unique perspective and reality of the underserved farmer should be incorporated in the developmental process of the institution's marketing plan. Accordingly, the final rule should require institutions to include historically underserved farmers and community-based farming organizations that serve socially disadvantaged and limited resource farmers in the developmental process of the institutions' marketing plans.

"In preparing our Coalition's comments to this proposed rule, we spoke to several members about the Farm Credit System and there exists a universal perception that the Farm Credit System institutions are not accessible to the underserved farmer and have failed to conduct outreach to these communities to educate them regarding the institutions' programs and services. In the words of a long-time Latino farmer and advocate, 'the Federal Credit System is further beyond the reach of the farmer than a commercial bank, we never felt this was a source of assistance.'

"Moreover, institutions should work to develop meaningful relationships with the USDA Minority Farms Advisory Committee authorized in the 2008 Farm Bill and now established, community-based organizations that serve socially disadvantaged and limited resource farmers, 1890 and 1994 Land-Grant Colleges and Universities, and grantees under the 2501 Outreach and Technical Assistance Program, as well as identify persons from these committees, institutions and organizations to assist in the development of marketing plans. Furthermore, the Farm Credit System Diversity Workgroup should also identify members from the aforementioned committees, institutions and organizations to assist in the development of its programmatic efforts to reach historically underserved farming communities. The development of such relationships is essential if progress is to be made in expanding credit to this growing market.

"As required by Section 4.19 of the Farm Credit Act, Farm Credit System associations and institutions should continue to tailor credit programs and services to address the needs of Young, Beginning, and Small farmers and ranchers. Although these programs do not have the explicit objective of advancing customer diversity and inclusion, these programs should be used as essential outreach portals to socially disadvantaged farmers and ranchers. As mentioned in a previous section of these comments, the current participation rate data of the USDA Beginning Farmers and Ranchers Program serves as a cautionary illustration of how well-intentioned programs can neglect the needs of historically underserved farming communities, especially if these communities are not included throughout the program development process.

*"Moreover, the final rule should emphasize the importance of allowing institutions to use discretion in determining whether farmers are creditworthy and eligible to borrow. If the Farm Credit System institutions want to make significant strides in serving historically underserved farming communities, these institutions must recognize that their credit requirements should not be rigidly enforced and should allow for case-by-case exceptions (**i.e.,** waiver or lowering of collateral requirements). The language 'creditworthy and eligible to borrow' should not be interpreted or implemented in such a manner to undermine the spirit of the proposed rule, which is to make the institutions more responsive to the needs to historically underserved farming communities.*

"The Final Rule Should Include Revisions to the Proposed Rule's Working Definition of Diversity

"Throughout the proposed rule, diversity is purported to be achieved through the inclusion of all individuals of varying race, ethnicity, sexual orientation, age,

disability, social class, religious and ideological beliefs and not through a list of demographic criteria.

"This working definition of diversity is problematic and provides a loophole for institutions to avoid implementing a marketing plan that actually promotes diversity and inclusiveness within the institutions' borrower base. Demographic criteria should be given equal weight in determining whether institutions are in fact providing equal access to credit to all farmers.

"Consequently, an institution's commitment to diversity and inclusion cannot be ascertained by an institution's lofty mission statement (as suggested by the Farm Credit Administration's Request for Comments) ***rather by the institution's actions and achievement of assessment benchmarks.*** *The final rule should include a revised definition of diversity to address these concerns and should also assure that the diversity includes actual borrowers or potential borrowers from the socially disadvantaged community who actually understand the issues, the history and the complexity of small rural communities and their racial, ethnic and gender dynamics and history.*

"The Final Rule Should Require the Farm Credit System Institutions and Diversity Workgroup to Make Their Final Marketing Plans and Participation Rate Data Public

"The Farm Credit System Diversity Workgroup was established in 2006 to increase diversity awareness, promote understanding of inclusiveness, and serve as a diversity resource within the Farm Credit System. Since its inception, the Diversity Workgroup is purported to have sponsored a diversity conference, several trainings workshops, speakers, outreach and communications. Despite the laudable efforts of the Diversity Workgroup, the effectiveness of the Workgroup's efforts to achieve a more inclusive workforce and borrower base must be evaluated through various assessment and accountability benchmarks. For example, some pertinent questions that must be addressed by the Diversity Workgroup [and at the current time by the Farm Credit System and lenders in General]:

"(1) How many farmers from historically underserved farming communities have applied for and received loans from Farm Credit System institutions;

"(2) Are the institutions' borrower base reflective of the market segmentation of their chartered territories? If not, what specific steps has the Workgroup recommended to the institutions to ensure they adhere to their mandate of providing equal access to credit to all farmers.

"The final rule should require the Farm Credit System institutions and Diversity Workgroup to make their marketing plans as well as their assessment and accountability findings public. Moreover, if there are egregious shortcomings in the marketing plans efforts to respond effectively to the needs of historically underserved farming communities, these plans must be revised to address these gaps in services. In essence, the institutions should view their marketing plans as fluid plans that can be amended as necessary to be more responsive to the institutions' diverse borrower base.

". . . Farm Credit System institutions should take affirmative steps to ensure that data systems are in place to record the important demographic and participation rate data of all borrowers to allow comparisons and track progress.

"The Final Rule Should Require Farm Credit System Banks and Associations Board of Directors to Appoint Directors From Historically Underserved Farming Communities or Community Based Organizations that Serve Socially Disadvantaged and Limited Resource Farmers

*"Reiterating Farm Credit Administration Bookletter BL–009, the proposed rule encourages all Farm Credit System Institutions' Board of Directors to appoint directors to serve on the Board that would further the aim of facilitating diversity, when feasible. Again, the discretionary language of the proposed rule (**i.e.,** 'encourages') will not bring about transformative change in the corporate culture of the Farm Credit System institutions. In order to bring about substantive change in the corporate culture of these institutions, the final rule should mandate that at least one appointment to the institution's Board of Directors be a member from a historically underserved farming community or a community-based organization that serves socially disadvantaged or limited resource farmers."*

Now in 2019, we further recommend a review of racial, ethnic and gender diversity among the directors and staff of the lending institutions of the Farm Credit System.

While some statutes have been updated since our recommendations in 2011, we see no evidence FCA has changed their systems to comply with ECOA and to assure fair service to all borrowers and potential borrowers. The GAO report should address these fundamental issues of the ability of the Farm Credit System and guaranteed lenders to assure fair service to all producers, as ECOA requires them to do.

VIII. Conclusion

The results and findings of a comprehensive study could assist lender and government agencies with the legal mandate to offer the same loan products and loan servicing options offered to each and every farmer regardless of social status. The success of highlighting irregular farm lending patterns, and lack of systems to address these patterns, will be instructive to all farmers, lenders and reduce the overall costs of farm lending transactions while preventing questionable or unlawful family farm foreclosures.

[Attachments]

[Letter 1]

December 18, 2014

[**Redacted**]
Email address: [**Redacted**]

Re: Document No. [**Redacted**]

Dear [**Redacted**],

We are writing to acknowledge your November 21, 2014, email sent to *infoLine@fca.gov* and your November 25, 2014, conference call with members of the Farm Credit Administration (FCA) staff advising us of your concerns with the operations of AgSouth Farm Credit, ACA (AgSouth or Association). In your email, you inquired about filing a discrimination complaint against AgSouth. In your conference call with FCA staff also explained that you were facing foreclosure. We have initiated a review of the servicing of your loan and will respond to you as soon as our review is completed.

This process generally requires several weeks to complete. If we have not completed our review within 30 days of the date of this letter, we will notify you by email of the status of our review. Please understand that in the process of conducting our review, we may contact AgSouth to obtain information regarding the issues you raised. While we do not share with the Association details of our telephone conversation with you, we may need to reveal your name and certain details to resolve your complaint.

Before concluding, I would like to briefly explain who we are and the authorities that we have. The FCA is an independent Federal agency that regulates and examines Farm Credit System (System) institutions. We also ensure that System institutions operate in a safe and sound manner and in compliance with applicable laws and regulations. Although part of our mission is to evaluate borrowers' concerns of wrongdoing by institutions like AgSouth, we can intervene in those institutions' business decisions only if their decisions violate applicable laws or regulations. We also cannot mediate disputes between those institutions and their borrowers. Please note that there are limitations on what we can do:

- We cannot act as a court of law.
- We cannot give you legal advice.
- We cannot become involved in complaints that are in litigation or have been litigated.
- We cannot intervene in business decisions of a Farm Credit System institution that do not violate laws or regulations, nor can we intervene in any way that would adversely affect the safety and soundness of the institution.
- We cannot mediate or adjudicate disputes between Farm Credit System institutions and borrowers.

Please include your document number (provided above) on any future correspondence you send us. If you have questions, please call us at [**Redacted**].

Sincerely,



MICHAEL A. STOKKE, *Director,*
Office of Congressional and Public Affairs.

[Letter 2]

December 19, 2014

Hon. JILL LONG-THOMPSON,
Farm Credit Administration,
McLean, VA

RE: Document No. 13184

Dear Ms. Long-Thompson:

We write to you on behalf of Mr. [**Redacted**] a [**Redacted**] year old African-America farmer in South Carolina who without immediate action faces the loss of his redemption rights to redeem the farm his grandparents owned and operated as a cattle operation in [**Redacted**], South Carolina for over 65 years, and [**Redacted**] acres of which they deeded to Mr. [**Redacted**] in 2006.

In 2008, Mr. [**Redacted**] began a long, tedious process to seek financing through AgSouth Farm Credit to purchase additional farm equipment, obtain a line of credit, and obtain financing to apply as a down payment on a [**Redacted**] acre operating farm he purchased in [**Redacted**], South Carolina.

He has since struggled to secure access to credit and NAP to operate both farms, and on December 1 of this year, his farms were foreclosed on. It is our understanding that he has until December 31, 2014 to exercise his right of redemption on the [**Redacted**] farm his grandparents owned, a farm that is now in the possession of AgSouth Farm Credit.

Mr. [**Redacted**] has communicated the details of his situation to the Rural Coalition, and has also filed a discrimination complaint with Farm Credit Administration. Your Office of Congressional and Public Relations has responded with a letter of December 18 that you are reviewing his complaint, referred to in Document No. 13184, noting that it may take up to 30 days to review his complaint and you will let him know if more time is needed.

We therefore urge Farm Credit Administration to advise AgSouth Farm Credit to postpone the scheduled sale of this land on December 31, 2014 until a full review is completed of all matters related to the servicing of this loan under the terms of the Equal Credit Opportunity Act and all other applicable statutes. We further urge FCA and AgSouth Farm Credit to advise Mr. [Redacted**] in detail exactly what redemption rights he has to reclaim this property before, during and/or after a final sale.**

Mr. [**Redacted**] has shared the details of his situation with the Rural Coalition and requested our assistance, which as of December 5, 2014 we have formally agreed to provide on his behalf. We have acted in support of and on behalf of Mr. [**Redacted**] because we strongly believe that it is young producers such as himself that are critical to the future of all farmers and ranchers, and particularly African American farmers, in U.S. agriculture. As such, Mr. [**Redacted**]'s case is of utmost importance to our Coalition, its members and farmers. The elder farmers of the Rural Coalition, including the leaders of our Farm and Ranch Team, have made the commitment to mentor and work with Mr. [**Redacted**] to assure his future viability. If Mr. [**Redacted**] fails in his desire to maintain land that has been in his family for generations and to secure a future in farming, then all of us have failed. Moving forward, we believe it would be most beneficial to all of us to figure out ways to work together to assure this future.

We are also writing to seek the assurance that Farm Credit Institutions such as AgSouth Farm Credit, that are accorded Preferred Lender Status and the guarantee of loans on the faith and credit of the United States through the USDA Farm Service Agency, value young farmers, and especially African American and other diverse farmers and ranchers, as important an asset as the value of their land. We understand there are fiduciary duties, and emphasize that one of them is to assure the terms of the Equal Credit Opportunity Act are met in letter and spirit in your lending policies, procedures and practices.

We believe that providing equal credit opportunity should also be viewed as an investment and market issue for FCA and Farm Credit System lenders. In the attachment to this letter, we have included our recent brief on how the sector of diverse producers that we serve is expanding. We believe that as our Coalition and others keep working for the transformation of systems and relationships, the sector has the potential to grow further, and each diverse producer that has a successful relationship with a Farm Credit System institution is a critical link to Farm Credit System's potential future market within this sector.

That being said, we turn to the question of the standard of service provided to Mr. [**Redacted**] and the processes and procedures by which FCA and its members

have observed this standard. We strongly feel the details of his case merit an immediate and complete onsite review that also affords Mr. [**Redacted**] the ability to more fully present his view of the matter.

We have observed that the processes by which the rights of producers are assured by both Farm Credit System lenders and the multiple agencies of the U.S. Department of Agriculture, while intricately linked, remain confusing and profoundly unclear, and not only to those of us who have worked as advocates for many years. Mr. [**Redacted**] has been left on his own to navigate a series of conflicting messages and unclear assurances of his rights and how they intersect between the many institutions, agencies and processes. Some of the advice he has received is not correct.

We believe that a review of Mr. [**Redacted**]'s history with the AgSouth Farm Credit should begin with the question of whether he received the same service and standard of service as other producers at every step of the way from the time he first sought a loan. Mr. [**Redacted**] has come to believe that on the basis of his race, he did not receive the same standard of service and assistance, and that is the basis of his complaint, which we support.

Mr. [**Redacted**] has also told us that as he sought to bring a buyer before his land was foreclosed on December 1 of this year, he was told that AgSouth Farm Credit would not release the lien. Mr. [**Redacted**] says that one reason communicated to him through his attorney was the fact that as guarantor, that USDA Farm Service would need to sign off and was likely not to wish to do so. Mr. Pressley was told at the same time that USDA did not have the authority to impose a moratorium on accelerated action on a guaranteed loan as it can when a civil rights claim is active on a direct loan. We seek clarification on how the rights of a farmer are protected and exercised in cases where both FSA and Farm Credit lenders have an interest. Thus, in Mr. [**Redacted**]'s case, in what way was Farm Service Agency consulted, and did FSA in this or any other case have or exercise the authority or interest in rejecting this release of the lien?

As FCA moves forward with its review of this matter, we seek additional information on what process will be used to conduct this review, and under which statutes. We have observed that FCA has a comprehensive nondiscrimination policy on Equal Employment Opportunity, and a person responsible to implement this policy. Similarly, there is a policy and structure related to ethics. With respect to Equal Credit Opportunity, borrowers are referred to the Office of Congressional and Public Relations. Similarly, those with complaints related to their borrowers rights are directed to the same office. However, among borrowers rights detailed on the website, nondiscrimination is not listed. In a cursory review we were also not able to find an affirmative non-discrimination statement on Equal Credit Opportunity similar to the policies on Equal Employment Opportunity.

We request information on what process and capacity reside in the Office of Congressional and Public Relations to conduct either a borrowers rights or equal credit opportunity review, why this office is assigned the responsibility for this review, and whether this review will include all relevant statutes including those related to equal credit opportunity. What ability does Mr. [**Redacted**] or any borrower have to provide information to this process? On the website and in your communication to Mr. [**Redacted**] there are numerous disclaimers about the authority of Farm Credit Administration to enforce these rights or to intervene if equal credit opportunity is not duly observed.

The information on the website seems to suggest that the borrower will have to resolve these issues directly with the lender. But on the AgSouth website, borrowers are told that if they have a concern related to Equal Credit Opportunity they should take those concerns to Farm Credit Administration. What authority and process does Farm Credit Administration or AgSouth Farm Credit have to resolve Equal Credit Opportunity Claims, and can it do so in a manner that is designed to protect the rights of the borrowers as well as those of the institution? Where and how can such claims be reviewed and with what protections to the borrower? If the above is not a resolution process, what process is open to Mr. [**Redacted**] and other borrowers and by what method can their rights be secured?

We ask the above questions with reference to what has already happened. In Mr. [**Redacted**] first contact to your office, the Assistant Director of the Office of Congressional and Public Relations and Mr. Eric Ovsiew, whom we understand is an attorney, were the first to whom Mr. [**Redacted**] was directed, and following their conversation, rather than providing some neutral format or procedure to file a complaint, they wrote back on November 26, 2014 with very specific questions that we would wish to assure would be in a borrower's interest to answer. How will such information be used, and how would it contribute to the ability of FCA to assure that Equal Credit Opportunity is afforded to Mr. [**Redacted**] and any other borrower by AgSouth Farm Credit or any other Farm Credit System lender?

We believe protections are especially important because in our experience working with thousands of diverse producers, we have found disparities in treatment at many levels, but especially in the use of appraisals to value land. We are especially concerned that the appraised value of the property in question has sharply declined, and Mr. [**Redacted**] stands to be held liable for many thousands of dollars of repayments of the guaranteed farm loan loss claims while others might obtain his land at a fraction of the assessed value for which he was first provided financing, while any risk to the lender is absorbed by the government and the borrower through the guaranteed process.

We have already raised with USDA the need to assure that much clearer information is provided to Mr. [**Redacted**] and all other producers of their borrowers rights and their right to equal credit opportunity under both direct and guaranteed loans both separately and as they intersect. We have urged USDA, and raise also to you the need, to clarify the process to secure these protections and to secure them in the timely manner necessary to avoid the foreclosure and losses that Mr. [**Redacted**] and others have incurred.

We cannot afford to lose another generation of African American producers to the same systemic inequities we have worked so hard to root out and eradicate. The leadership of Farm Credit Administration has stated its commitment to diversity and inclusion. We seek to understand how this commitment operates in practice. Immediate action is essential to assure Mr. Pressley's future in agriculture, and his future and that of his generation of farmers and ranchers matters to all of us.

We urge you to see the sale on December 31 is halted until such time as a fair review is completed and Mr. [**Redacted**]'s equal opportunity, borrower and redemption rights are assured. We may be reached at the address above, or by contacting Lorette Picciano by email at [**Redacted**]. An alternate phone number when our office is closed is [**Redacted**].

Sincerely,

JOHN ZIPPERT,
Chair Person,

GEORGIA GOOD,
Vice Chairperson;

LORETTE PICCIANO,
Executive Director,

WILLARD TILLMAN,
Board Member.

The Rural Coalition, born of the civil rights, indigenous rights, and anti-poverty rural movements, has worked since 1978 to assure that diverse organizations from all regions, ethnic and racial groups, women and men, and youth and elders, have the opportunity to work together on the issues that affect them all. The foundation of this work is strong local, regional and national organizations that work to assure the representation and involvement of every sector of this diverse fabric of rural peoples.

CC:

[**Redacted**], *Farmer;*
KENNETH A. SPEARMAN, *Board Member,* Farm Credit Administration;
LELAND A. STROM, *Board Member,* Farm Credit Administration;
CHARLES R. RAWLS, *General Counsel,* Farm Credit Administration;
MICHAEL A. STOK[K]E, *Director,* Office of Congressional and Public Affairs, Farm Credit Administration;
CHARLES C. RUCKS, *Chairman,* AgSouth Farm Credit, ACA;
WILLIAM T. ROBINSON, *Vice Chairman,* AgSouth Farm Credit, ACA;
WALTER W. DOUGLAS, *Outside Director and Member,* Governance and Ethics Committee, AgSouth Farm Credit, ACA;
KEN AUER, *President and CEO,* Farm Credit Council;
TOM VILSACK, *Secretary,* United States Department of Agriculture (USDA);
VAL DOLCINI, *Administrator,* USDA Farm Service Agency;
CHRIS BEYERHELM, *Deputy Administrator for Farm Loan Programs,* USDA Farm Service Agency;
JOE LEONARD, Ph.D., *Assistant Secretary for Civil Rights;*
BENNY BUNTING, *Advocate;*

SAVONALA HORNE, Esq., North Carolina Association of Black Lawyers Land Loss Prevention Project;

ALFONZO ABEYTA, *Farmer and Co-Chair,* Rural Coalition Farm and Ranch Team;

BEN BURKETT, *Farmer and Co-Chair,* Rural Coalition Farm and Ranch Team.

Attachment

"The Census of Agriculture Shows Progress in Maintaining Diverse Producers in Agriculture," prepared by Rural Coalition, October 2014.*

SUBMITTED ARTICLE BY HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

Chicago Tribune

[*https://www.chicagotribune.com/news/ct-xpm-2006-05-15-0605150155-story.html*]
CHICAGO TRIBUNE

Hmong poultry farmers cry foul, sue

HOWARD WITT, *Tribune Senior Correspondent*

May 15, 2006, **Ozark, Ark.**

When Eric Xiong quit his factory job and bought a modest turkey farm nestled here in the Ozark Mountains three years ago, the 32 year old Hmong immigrant from Laos thought he had finally snagged his piece of the American dream. At last he could leave behind a string of dreary manufacturing jobs, be his own boss and provide for his wife and two young children.

But the harder Xiong worked, it seemed, the more money he lost. The first year he fell $20,000 short of what he needed to pay his bills. The next year he lost $50,000 more. By the end of last year, he had depleted his savings, stopped paying the mortgage on his farm and started borrowing from relatives to put food on the table. He declared bankruptcy a few months ago.

"When we bought this farm, the bank promised us it would provide us a decent living," he said. "But we've been losing money from the very first day."

If Xiong's story were isolated, it might be written off as another sadly familiar tale of an inexperienced small farmer gone bust in the notoriously difficult poultry business. Except that Xiong is far from alone.

Across Arkansas, Oklahoma and southern Missouri, more than a dozen Hmong poultry farmers—most of them uneducated Vietnam-era refugees with little command of English—have filed for bankruptcy protection this year. Hmong community leaders and advocacy groups estimate that scores of others are in financial trouble.

All of the farmers in bankruptcy appear to have paid far more for their farms than they were worth and are saddled with large mortgages they cannot repay. Most say they were told to sign loan documents they didn't understand that seemed to greatly overstate the income potential of their farms and understate their expenses.

Now small-farmer support groups, attorneys and Agriculture Department officials are asking whether some of the Hmong, who began moving here five years ago from Minnesota, Wisconsin and California, were defrauded.

All the loans have one feature in common: They are guaranteed by the *U.S. Department of Agriculture's* [1] Farm Service Agency program to assist minority farmers, which pays off up to 95 percent of each loan if the farmer defaults, thus relieving the banks of nearly all risk.

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* **Editor's note:** The document entitled, *The Census of Agriculture Shows Progress in Maintaining Diverse Producers in Agriculture* listed as an attachment was not included in the submission by the Rural Coalition/Coalición Rural for the March 25, 2021. A news release of the same title exists on the Rural Coalition/Coalición Rural website; **however,** it is dated May 2015, and appears to have been updated July 24, 2018 (*https://www.ruralco.org/press-releases/2018/8/31/the-census-of-agriculture-shows-progress-in-maintaining-diverse-producers-in-agriculture-june-7-2018*). Due to the conflicting date information it has not been included in this publication, nor has it been retained in Committee file.

[1] *https://www.chicagotribune.com/topic/politics-government/government/u.s.-department-of-agriculture-ORGOV0000241-topic.html*.

Advocates for the Hmong wonder whether an informal "good old boy" business network spread the word that the Asian immigrants, who typically had cash for down payments, were easy marks—and a chance to unload troubled farms.

"The banks don't give these loans much scrutiny because they know the Federal Government will repay them if the farmer defaults," said Sean Brister, an attorney in Fayetteville, Ark., whose firm has filed six lawsuits in recent weeks on behalf of Hmong farmers.

Moving Into Region

Others perceive racial motives in a place where Asians and other minorities are not frequently encountered. The Hmong stand out because few have learned English or assimilated decades after they began arriving in the U.S. from refugee camps in Thailand, where they were driven in 1974 after backing U.S. troops battling Laotian communists.

The first few Hmong farmers arrived here in 2001 to buy poultry farms. Now Hmong community leaders estimate that 500 Hmong families operate poultry farms in the three-state region.

"I'm finding ethnic prejudice in all of this," said Jim Pate, an attorney in Russellville, Ark., and Vietnam veteran representing several Hmong farmers in bankruptcy court. "In almost every case, when the banks set them up with these loans, they were preparing them to fail."

The attorneys and advocates involved stop short of alleging any conspiracy to defraud the Hmong farmers, or even direct collusion between the various banks and appraisers involved in all of the cases. And they acknowledge that some of the bankruptcies might be the result of market forces: The rush of Hmong to the region seeking to buy poultry farms bid up prices beyond what the inexperienced farmers could sustain.

Yet there are hard-to-explain similarities in the paperwork for a number of the loans.

In some cases, bank loan officers added 30 percent or more to the income estimates provided by the poultry companies that issued the production contracts to the farms. In others, the banks added projected income from the sale of poultry litter—a waste product farmers typically must pay haulers to remove.

"I don't have a good answer to the question of whether this is all organized in some way," said Scott Marlow, director of farm preservation for the Rural Advancement Foundation International in Pittsboro, N.C., who has reviewed the Hmong situation. "What I can say is that across a series of applications that we read, chunks of the applications would be identical or very similar."

In four cases Brister is pursing, loan officers from different banks filled in similar estimates of $18,000 to $20,000 for the Hmong family's living expenses—regardless of family size.

In Xiong's case, that expense estimate allowed for just $9 per day to feed his family of four.

Unlike many of the Hmong families in the region, Xiong speaks English well and holds an advanced university degree. But he says his education did not help him understand the financial paperwork associated with the purchase of his 143 acre turkey farm in early 2003.

Among those papers is a letter from Cargill Turkey Products, which issued the production contract to the farm Xiong bought. In the letter, addressed to a loan officer at Regions Bank in Ft. Smith, Ark., Cargill predicted Xiong could earn $107,000 to $156,000 by raising turkeys and selling them to Cargill.

But when the loan officer filled out a Federal loan guarantee form forecasting Xiong's income, he wrote down $186,320, plus $4,670 for the sale of litter waste—nearly $35,000 more than the highest estimate provided by Cargill.

Other documents included in Xiong's lawsuit allege that the real estate appraiser inflated the number of turkeys the farm could sustain and misrepresented the age of the buildings on the property, both of which helped to justify the $865,000 that Xiong paid for the farm.

Denying Misrepresentations

The real estate appraiser named in the lawsuit did not return calls seeking comment. But for their part, Regions Bank officials strongly deny that they misled Xiong or any other Hmong farmers or purposefully wrote unsustainable loans.

"We don't make loans that we think people are not going to be able to repay," said Mike Cialone, president of the Regions Bank branch that issued Xiong's mortgage.

But advocates for the Hmong contend that the banks stood to benefit in several ways. Many of the sales involved farms that already were troubled and in danger

of default, so selling to the Hmong meant converting shaky mortgages into mortgages with government guarantees. And the higher sale prices paid by the Hmong meant bigger loans and more interest revenue.

Federal agriculture officials overseeing the guaranteed loan program say they have heard anecdotal evidence of a handful of Hmong bankruptcies but have yet to find clear trends that might point to malfeasance.

But they acknowledge that they do not normally scrutinize loan guarantee applications received from "preferred" bank lenders in the Farm Service Agency program, such as Regions Bank, according Bob Bonnett, chief of the guaranteed loan division. The officials say they are reviewing the lawsuits and bankruptcy petitions.

"It is a crime if people are being taken advantage of down there," Bonnett said. "If we find out that has been happening, we will take action."

Any such enforcement action will come too late to help Xiong, however, who expects he will lose his farm when the bankruptcy proceeding is complete.

"After the first year, when it was clear that I could not support this farm, I called the real estate agent and told her I wanted to sell," Xiong said. "She said it was worth $200,000 less than what I paid for it—what she let me pay for it. I put my trust into other people and they took advantage of me."

SUBMITTED HEARING BY HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA *

TREATMENT OF MINORITY AND LIMITED RESOURCE PRODUCERS BY THE U.S. DEPARTMENT OF AGRICULTURE

HEARINGS

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS, NUTRITION, AND FOREIGN AGRICULTURE

AND THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

MARCH 19, JULY 17, 1997

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STATEMENT OF PHENG VUE, PRESIDENT, CALIFORNIA HIGHLANDER COOPERATIVE, INC.

Mr. VUE. Thank you, Mr. Chairman, and members of the subcommittee for giving me this opportunity to testify on the treatment of minority and limited resource producers by the U.S. Department of Agriculture.

My name is Pheng Vue. I'm a farmer. Before I became a farmer, I was working for Hmong Organization. We receive funding from the Federal Government, local government to provide education, social adjustment, job development to our people. Nowhere do programs protect the Southeast Asian farmers.

Day to day, year by year many farmers are approaching me asking for assistance. I made a decision that I should quit my job and join them as a farmer, see what kinds of problems they have. So I become a farmer.

I have been a farmer almost 6 years. Mr. Chairman, about 15 years ago, I mean, back in 1980, there were less than 30 Southeast Asian farmers in the San Joaquin Valley of California. In 1988, the number increased to about 800 farmers, today more than 1,000 Southeast Asian farmers in the San Joaquin Valley of California.

We produce strawberries, cherry tomatoes, greenbeans, sugarpeas, squash, and many other Oriental vegetables. The total

production values are over $30 million each year. The annual contribution to the agribusiness in the San Joaquin Valley are over $10 million from purchasing farm supplies, fertilizers, equipment, seeds, plants, and give the employment opportunity to the community.

Along with what I stated, Southeast Asian farmers face a major disadvantage from not able to share the same profits as other groups. Each year Southeast Asians were able to produce lots of products. However, we could not find enough brokers to purchase our produce. More and more brokers say that American markets are too expensive. They prefer to import from other countries.

This resulted in losing tons and tons of our crops each year. In addition, many times we were forced to sell our produce in a lower price, which could not even cover our labor costs. For this reason, how can we survive as we continue to produce our products to support our families?

Today there are only two companies in the local area which is willing to buy our strawberries from the Southeast Asian farmer. However, both of these companies did not want to purchase the large volume of strawberries. Therefore, at this present time, any farmer who wishes to grow different kinds of strawberries worries that the market may not be suitable for them to grow at the meantime.

We are also facing other major problems. There is no local lender willing to loan money to our people. Even though several of us have been banking at the same bank over 10 years, when we applied for a line of credit, we were denied. These practices did not and have not been very helpful to our community as we share the burden of paying income taxes to support this great country, just like any other American people.

For all the years of farming that I recall since I joined them as farmer, we have never received any source of support from neither the local, State, or Federal Government such as farm loan, loan guarantee, or Farm Disaster Program.

For example, in 1994, we have 16 Southeast Asian strawberry farmers suffer damage from the storm that destroyed their strawberry fields, about 90 percent of their crop. Our farmers contacted a Government agency in the area, but none of them would respond.

The farmers also contacted the Farmers Home Administration in Fresno County for assistance, hopefully to qualify for receiving the Farm Disaster Program and the Loan Guarantee Program, but at the end, the answer was no. The USDA people said that they have never heard of any Southeast Asian farmers in the Central Valley of California and they don't have staff available to help. The same problems continue until today.

Well, Mr. Chairman, since I have to share time with Dr. Chang, in my conclusion here, I would like to request you to look at my testimony. And I would like to request you to support us because we are Southeast Asians coming to this country without preparing. When we come here, we have only one skill: go back to farming. So please read my testimony and give us help.

Thank you.

[The prepared statement of Mr. Vue appears at the conclusion of the hearing.]

Mr. GOODLATTE. Thank you, Mr. Vue. We appreciate your testimony, as we do all of the witnesses.

Mr. Powell, what steps were taken by the Department with regard to the particular instance of discrimination that you experienced and you recounted in your testimony? Has the Department looked into that matter? And have they conducted any kind of investigation or taken any action as a result?

Mr. POWELL. Yes. They conducted an investigation and found affirmative findings that was discriminated again, but that is as far as it has gone. Nobody has done anything to try and compensate myself nor several other farmers with the same affirmative findings.

Mr. GOODLATTE. How long ago was that finding made?

Mr. POWELL. I think it was in 1992 or 1993.

Mr. GOODLATTE. And have they left this record open? Did they say they would be back in touch regarding some action to be taken on it or——

Mr. POWELL. Well, we have been trying to work with them. And nobody has done anything to compensate me or no one else on these issues. All they would do is they would talk about it.

Mr. GOODLATTE. Is the file still open?

Mr. POWELL. Yes, sir, the file is still open.

Mr. GOODLATTE. When is the last time you had any communication with them about that?

Mr. POWELL. My attorney has been keeping the communication with them. I think he talked with Mr. Reeves sometime this week. But we have been getting talk all the time. These sessions like today and other days, they are very good. We appreciate them.

This is time when all farmers need to be preparing their land, getting it ready to make a crop for the 1997 crop year. And if they're having trouble getting the loan, then it's going to be a lot of farmers that will not be able to plant a crop this year. This is March. Corn should be planted this month to be profitable.

Mr. GOODLATTE. But we will hear the Department's comments on that and other matters when we take that up with them hopefully within the next month or so. We are expecting the opportunity either at the subcommittee or the full committee level to hold some further hearings, hear the Department's report and their recommendations.

Mr. Boyd, you had indicated in your testimony that there were 1,500 complaints pending at the Department of Agriculture, but only 271 of them have been acknowledged. Is that your position?

Mr. BOYD. That's correct.

Mr. GOODLATTE. What do you base the 1,500 figure on?

Mr. BOYD. Based on complaints that I have seen come through my organization. There are 168 active complaints in Virginia. They've got on that list that I gave you somewhere in the neighborhood of 15.

I mean, why? I don't understand what's going on. Why have this Office of Civil Rights if nothing is going to be implemented there? This is the whole problem at the Department of Agriculture. There is no implementation at the Department. There is no accountability at the Department. And the Department of Agriculture needs major overhauling.

Mr. GOODLATTE. Ms. Felzien, what rules prevent officers of your organization from running for FSA County Committee positions?

Ms. FELZIEN. It's section 401(b) of the ASCS handbook, 22–PM.

Mr. GOODLATTE. And what do you think is the rationale behind that on the part of the Department?

Ms. FELZIEN. I really do not know.

Mr. GOODLATTE. If these prohibitions were removed, what do you think is the best process to select the most qualified women to serve on county committees?

Ms. FELZIEN. Going through the county committee. If we're addressing our county committees, you have to be a landowner. You fill in the application and have the ballot throughout the county. But she should at least be allowed to have the ability to run or he.

Mr. GOODLATTE. Have you personally experienced difficulties obtaining a loan or other services through the FSA?

Ms. FELZIEN. No because I am just married to a farmer. I can only have the power of attorney. I am not considered a person that's able to do that.

Mr. GOODLATTE. Mr. Windy Boy, does the Bureau of Indian Affairs have any kind of outreach or educational programs to help Native American producers?

Mr. WINDY BOY. In the light of the way the Bureau of Indian Affairs is downsizing and reducing their funding through both Congress and the Senate, nothing that would really address agriculture per se.

Mr. GOODLATTE. And, Mr. Vue, have you gone to a county FSA office to apply for a loan? And if so, what kind of experience did you have?

Mr. VUE. When we go to apply for this kind of loan, the first question they're going to ask, they ask "What kind of crop do you plant and how many acres you have?" That's what the question they would ask.

Mr. GOODLATTE. All right. Thank you. Those are all the questions that I have.

The Chair recognizes the gentlewoman from North Carolina.

Mrs. CLAYTON. Thank you, Mr. Chairman.

I want to just observe that, as I might have observed when I thought the GAO was limited in scope, certainly the total effect of all of your testimony shows how pervasive and how widespread the discrimination is and how it's not any one group or one gender. It's there, and it comes in subtle ways. And it affects real people and timing.

Sometimes the rules are not only things that cause persons to be denied of their resources, but it's attitudes. It's processing. A violation of the rules obviously is something you can get at, but you cannot get at how people respond to other human beings or you can't get at how slowly or how swiftly people process or what assistance is given and what indeed information is withheld and not told.

Mr. Harris, you have been doing this for a long time. And I gather sometimes we can get cynical, not because you're a lawyer. Lawyers are cynics anyhow. But sometimes you can get cynical.

You've gone through some of these. Do you perceive any change in attitude that gives you any sense of hope that maybe we won't just go through this again, that you're not all over again, déjà vu

all over again, that we really are serious there is a sense of hope for you in this process?

Mr. HARRIS. There is a sense of hope. I have a sense of hope with respect to the members of the Agriculture Committees for both the House and Senate. Over the past 4 to 6 years, there have been new faces, who are very much concerned about these issues and have come from districts where their constituents are directly impacted.

The fact that we have been able to discuss these issues with the current and the past Secretary of Agriculture; whereas, before we couldn't even meet with the person, is encouraging. The fact that we are having these types of meetings and hearings is encouraging.

The caution that I do have is in the reality that, regardless of what happens in Congress and at the top levels of USDA, you still have the second or third largest bureaucracy in this country, which is entrenched.

Mrs. CLAYTON. The second.

Mr. BOYD. The second? Thank you.

And it has a very institutional plantation mentality. And if we're not careful, all of our work will be for naught.

Mrs. CLAYTON. There are also recommendations in the civil rights report that the Department of Agriculture recognizes that entrenchment or that system. And the accountability I guess is—we need to find a way where we are accountable.

They have made some recommendations. Any comments on any of those recommendations that you have? That goes for any one of you on that to think that they would—do you see the recommendations that were in the civil rights report getting at the accountability issue, where the rules of the Federal Government now can be monitored and someone can be held accountable for their action if they are found discriminating, that someone above them can take——

* * * * *

Mr. GOODLATTE. It is out of date, in other words?

Mrs. CLAYTON. It is out of date. And this is the handbook that's precluding them from either serving on committees or for being treated as a separate entity if they happen to be farmers in that area.

Ms. FELZIEN. That's correct.

Mrs. CLAYTON. Would you bear with me to ask some other questions?

Mr. GOODLATTE. Yes. Without objection.

Mrs. CLAYTON. All right. Thank you.

I wanted to ask Mr. Windy Boy, as you noted in your observation that you were willing to not foreclose on that. I liked that little pun that you had. That was a little subtlety. We didn't quite all understand it, but I appreciate that you owned the land before we owned the land.

Given that, you raise in your testimony that because you don't pay taxes, that you have found it difficult to get some of the services that normally other citizens get, particularly through the Extension Service. Am I misinterpreting that?

Mr. WINDY BOY. Yes. In fact, we do pay taxes. All Tribes do pay Federal taxes.

Sitting in the back there, in reference to the GAO report, there was a county in Montana that has the Blackfeet Indian Reservation as a part of it. I just want for the record that that is not reflective of Indian country.

Mrs. CLAYTON. That particular——

Mr. WINDY BOY. Right.

Mrs. CLAYTON. But are you having difficulty receiving services from the—did I misread your testimony that I read last evening? Are you having difficulty receiving services from the Extension Service?

Mr. WINDY BOY. Yes, we are.

Mrs. CLAYTON. What's the difficulty? And what's that based on?

Mr. WINDY BOY. Based on individual reports back to the Intertribal Agriculture Council, headquarters office in Billings.

Mrs. CLAYTON. Has there been any effort to resolve that with Agriculture?

Mr. WINDY BOY. Not as such yet.

Mrs. CLAYTON. Mr. Vue, I think you made the observation that you are not subsidized, receive no guarantees. And basically I share with you the product. And California is always reminding us that their crops are unsubsidized. But there is no reason why you shouldn't receive the right to make an application for a loan or the right to make application for disaster assistance or crop insurance as anyone else.

True, row crops and vegetables and fruits are not subsidized as perhaps peanuts or—well, peanuts are not either; that's what we say, I think that's what we say—or as wheat and corn and others?

But what's the basis of it? They don't know you as a farming group or is there something written that you want to refer to us to look at as to why they are denying you the right to make an application or——

Mr. VUE. Yes. The second question right after the same question the chairman asked me, that people, USDA people at the Farmers Home Administration, they ask you about what kind of crop you plant, how many acres.

And when you tell them you're a strawberry farmer and you tell the number of strawberries and they say, "I don't think you are qualified for the loan, but I don't think you have the ability to fill out the Government paper. It's too much. And we don't have staff here available to help you."

Mrs. CLAYTON. That's what I'm responding to.

Mr. VUE. That's what they told us. And we have no choice. Then just go home.

Mrs. CLAYTON. I'm responding to your answers that say there is nothing, no basis in law that says that because you grow strawberries that you're not eligible to make an application unless they gave you something that you could help us. Because you grow strawberries is not a basis for denying you the right to have an application.

Mr. VUE. I don't quite understand what you're coming——

Mrs. CLAYTON. Doctor?

Mr. CHANG. I think this is an example about discrimination against Southeast Asians or Asians as a whole. I have my name

here, but even appalled. At the outside, it has taken us 20 years to come to this far today.

The amount throughout the country, we have many people. We served before with the American armed forces, and we picked up the American pilots. And now we even not get a chance to talk.

And back to your question, back in the old country, we are farmers. I brought Mr. Pheng and a couple of former soldiers here. They are farmers. They are farming in California and Wisconsin, Minnesota, Florida.

And they do not get any support from the USDA, including anything, like Mr. Pheng Vue mentioned, when you ask. And they look at your face, look at your black hair. They don't want to talk to us. That's why we come in here, Mr. Chairman.

And I hope that you take some time to listen to us. There is no one out there listen to us. I served only last February 28 when they removed the national development on the Government. We represent hundreds of organizations throughout the country. We have 350,000.

And I just walked to the USDA office and testified with Mr. Dan Glickman. And then Mr. Glickman assigned Mr. Schumacher to visit Hmong in Fresno. So this is an example. This is the first time in history for Hmong in Southeast Asia.

And I think you need to spend some time and listen to us. I know that this is strong language, but we need your support.

Mrs. CLAYTON. Thank you.

Well, I think the reason you're here is that we want to learn from you as well.

Mr. Boyd, did you submit the names or the lists of the foreclosures that you said occurred since the moratorium?

Mr. BOYD. Yes, I did.

Mrs. CLAYTON. So it's part of your record. That's what I just wanted to make sure.

Mr. BOYD. Right.

* * * * *

Finally, the amount of time FSA takes to process applications from minority and nonminority farmers is about the same. Nationwide, from October 1994 through March 1996, FSA took an average of 86 days to process the applications of nonminority farmers and an average of 88 days to process those of minority farmers. More specifically, for African Americans, FSA took 82 days; for Hispanic Americans and Native Americans, 94 days; and for Asian Americans, 97 days.

TESTIMONY OF CHARLIE JONCHUE CHANG

Thank you Mr. Chairman and members of the committee for giving me the opportunity to speak to you on behalf of the Hmong-American on the subject of the Agricultural. My name is Charlie Jonchue Chang. I am the interim executive director of Hmong National Development, Inc. base in Washington, DC.

The word Hmong may sound very new to some of you. Let me make a brief explain to you about who are the Hmong?. Hmong is an ethnic group from Laos. In the earlier 1960's, Hmong was recruited by the U.S. Central Intelligence Agency to pickup U.S. downed pilots and collected intelligence information. After the United States pulled out from Indochina in 1975, hundreds of thousands of Hmong had no place to go but to escape Laos for Thailand and eventually moved on to settle into third countries such as France, Canada, Australia, and mostly in the United States.

Today, approximately 350,000 Hmong reside in the United States, over 85,000 settled in the Central Valley California, over 75,000 settled in between the states of Minnesota and Wisconsin, and the rest are scattered all over the United States.

Mr. Chairman, after arrival in this country in the mid 1970's, we discovered that America is the land of opportunity and has lots of land available for farming. Many of our people before fighting against the communist along side by side with the U.S.

special guerrilla force used to be farmers. But after resettlement in this great country, we would like to begin our new lives here as farmer again. Since the 1970's, more American families left agricultural environment and move on to joint the high tech business in the suburban areas. For this reason, the United States depends more and more on foreign agricultural to support our nation. We, the Hmong and Laotian, saw that there were golden opportunities available to continue our farming skills that we have left over in Laos to produce crops and agricultural goods to support our great country, the United States.

Beginning in 1983, the Hmong in the Central Valley, California first leased about 100 acres of land for farming. We produced only Asian vegetables, Thai chili, and cherry tomatoes to support the local Asian markets. Today, we own over 1000 acres of these lands and leased more than 10,000 acres for farming. We produce just about everything you see on the U.S. markets such as strawberries, cherry tomatoes, greenbeans, longbeans, sugarpeas, bitter melon, eggplant, lemongrass, Thai chili, ginseng, Asian rice, and other varieties of Asian vegetables.

With all these efforts, we received no funding or support from the U.S. Department of Agriculture. We simply operate our agricultural businesses based on our natural experiences. For this reason, we face many obstacles along our lives such as not knowing how to use pesticide, improper use of chemical fertilizer and so on. There were many incidents occurred to the community such as Mr. Gnia Vue Thao of Fresno, CA died with chemical fertilizer poisoning and Mr. Kue Vue of North Carolina was exposed to the pesticide. He too almost died.

According to a 1995 survey of the Fresno County, the Hmong community views agriculture as its vehicle to becoming economically self-sufficient. Based on the Hmong's agrarian background in Laos, coupled with Fresno County's strong agricultural potential, agriculture could be a good long-term and expanding source of income for the community. I strongly agree with this survey. Today, over 6,500 acres in Fresno County alone own by Southeast Asian farmers. Our farmers produce a variety of labor intensive, specialty crops including strawberries, cherry tomatoes, greenbeans, longbeans, sugar peas, bittermelon, eggplant, lemongrass, Thai chili, and other varieties of Asian vegetables. I am sure that our products have reached the markets throughout the United States.

Mr. Chairman, throughout these years, our farmers have faced major problems such as production, marketing, finance, program and budget, and employment representation issues.

Production. Our farmers face major challenges associated with the leasing of land, soil, quality and testing, production costs, generally lower than average yield, fertilizer and pesticide usage, and labor regulations. For the lack of English proficiency, our farmers are not quite able to follow the production practices as recommended by the Agriculture Department and local Government. Therefore, we face many problems in this issue.

Marketing. Due to the lack of knowledge on the marketing issue, we are attempting to capitalize on our comparative advantage—labor by growing labor intensive crops. We could not utilize all of the marketing opportunities available to us to increase the average value of our crops. In order to reach higher-valued markets, we need the U.S. Government to help us improving our post-harvest handling practices and new varieties and crops that may provide better returns and produce a year round supply of income.

Finance. Our farmers have not been able to obtain agricultural credit in the short or long-term in order to expand our operations, purchase land, equipment, and pursue marketing opportunities. There is no financial institution willing to loan for long-term investment to our community. We also generally do not qualify for Small Business Association loan or meet the credit requirement for any type of loans. For these reasons, we cannot expand our operations to the best of our capability.

Program and Budget. I propose overall an agricultural economic development cooperative program which would offer innovative solutions to the problems identified as stated. I request a total of $15 million budgeted to assist the Hmong and Laotian farmers. I would propose that a Hmong national community-based organization such as the Hmong National Development, Inc. (HND) through the collaboration of the U.S. Department of Agriculture should be the non-governmental organization to administer and implement the program over a 5 year period. I believe that after the 5th year, this program can and should become financially self-sustaining for 1,500 Hmong/Laotian farmers in California, 400 in Minnesota, 600 in Wisconsin, 200 in North Carolina, and 50 in Florida.

Employment Representation. For all the reasons above and with the lack of representation at the Government level, I propose that the U.S. Department of Agriculture should hire at least two Hmong-American individuals who are fluent in Hmong, Laotian, and of course English languages to work for the Federal Govern-

ment. These individuals will certainly able to help Hmong and Laotian American farmers in various functions regarding farming and regulations.

In conclusion, I believe that with your financial support and any other type of assistance, we will definitely be able to help these new American farmers in five major parts as described:

(1) Production
(2) Marketing
(3) Finance
(4) Program and budget
(5) Employment Representation

I believe that it is possible for us to improve our economic situation if the U.S. Government would allocate the necessary funding and resources to help us in the development of programs designed to accelerate the farming and management of business related skills to our people. These methods will guaranty many of our people get out of public assistance and any other government dependency programs.

In return, I believe that by the year 2002, Hmong and Laotian communities throughout the United States will be able to generate over thousand jobs, reduce welfare dependency rate by 75 percent, increase the sale of our products in the U.S. markets, export our products to foreign countries as much as possible, and produce tax revenue millions of dollars for our country.

May God bless you and the American people.

STATEMENT OF PHENG VUE

Thank you Mr. Chairman and members of the subcommittee for giving me this opportunity to testify about agriculture. My name is Pheng Vue. I am the president of the California Highlander Cooperative, Inc. I am here to speak and represent this organization and the Southeast Asian American community at the Central Valley California. I will speak on the issue on behalf of our success, problems, struggle, and the needs of the Southeast Asian farmers in the San Joaquin Valley, CA.

The word "Southeast Asian" composes three different ethnic groups. They are: Hmong, Laotian, and Mien. So I will use the term of "Southeast Asian" or "SEA" in my speech to represent a more broader perspective.

Mr. Chairman, about 15 years ago, many of us have sought of farming project as our ways to make a living in this country. In 1980, there were less then 30 Southeast Asian farmers in the San Joaquin Valley. In 1988, the numbers were increased up to about 800 farmers. Today, more than 1,200 farmers are from the Southeast Asian community in the San Joaquin Valley, CA. We produce strawberries, cherry tomatoes, greenbeans, sugarpears, squash, and many varieties of Oriental vegetables. The total production values are over $30 million each year. The annual contribution to agribusiness in the San Joaquin Valley is over $10 million from purchasing farm supplies, fertilizers, equipment, seeds, plants, to the employment opportunity for the community.

Over the years, the SEA farmers in the San Joaquin Valley have managed to overcome so many obstacles. In spite of our success, there are many obstacles still to come if we are to grow and succeed to our fullest potential.

We have many decade of experiences in the agribusiness from Laos to the San Joaquin Valley. We are convinced that there are still underdeveloped markets for our products. And with the help of the U.S. Government, we will be able to produce more for the markets, both domestic and international.

As I mentioned earlier, as farmers, SEA have faced major obstacles along these years by not having the same opportunity of sharing profits as other groups. SEA had no choice, but to sell our products to the same brokers every year. That reason has left us at the mercy of the marketing expertise of others. Each year, we did not have buyers as we should, we resulted in losing tons of our products for not being able to sell. If not, we ended up forced to sell tons of products at a constant lower price than the prices originally quoted by the broker.

Every year, many of our SEA farmers face problems of over production of cherry tomatoes, greenbeans, squash and many other varieties of Oriental vegetables. Each year, farmers ended the year with excessive products due to the brokers unwilling to find enough markets. Therefore, the problems as mentioned are often compounded when our farmers follow brokers and agencies recommendations to try new varieties of crops. The brokers often sold large amount of seeds to our farmers or sold us seeds for a new type of plant and promise to buy the products. But year after year, the brokers failed to buy all these products cost Hmong hundreds of thousands of dollars. Such practices were not acceptable to anyone, but Hmong

could not complain to any officials or Hmong had no way of knowing who to complaint to.

There are only two companies in the San Joaquin Valley willing to buy strawberries from SEA farmers. However, both of these companies ore limited to purchasing large volume of products Hmong produced. Therefore, at the present time, any farmer who wishes to grow different varieties of strawberries, worries that the markets may not be suitable for them to grow at the meantime. Thus, we need your help in finding market place to purchase these products so that our people can begin planting as they wished.

FINANCIAL AND GOVERNMENT SUPPORT

SEA farmers have been farming in the San Joaquin Valley for over 15 years and we have never received any support from neither the local, State, and Federal Government agencies; such as farm loan, loan guarantees, nor farm disaster program.

In 1994, 16 SEA farmers suffered damage from the storm that destroyed about 90 percent of their crops. Our farmers contacted many Government agencies in the area, but none of them were responded. The farmers also contacted the Farmers Home Administration in Fresno County for assistance hopefully to qualify for receiving the Farm Disaster Program and the Loan Guarantee Program, but at the end the answer was no. The officials said that they had never heard of the SEA farmers and they don't have staff available to help. The same problems continue today.

SEA farmers have raised crops in the San Joaquin Valley for over 15 years. Despite the fact that we contribute over $10 million to the local economy annually, the USDA reacts to us as though we don't exist. They feeling of not necessary for us to do business with them. This is sad considering that the most of our farmers are also U.S. citizens just like any other Americans.

In the past, the Department of Health and Human Services, Office of Refugee Resettlement, and the County of Fresno Department of Social Service have funded some local nonprofit organizations to train welfare recipients to become farmers. The trainees are recruited by way of forcing and the trainers did not even have experience on farming skills. All these programs are just wasted American tax dollars. This funding would go to help improving the farmers' skills, at the end the farmers should in return able to help the welfare recipients to become self-sufficient[.]

Private lenders.

Despite SEA farmers producing a total value as indicated above each year, many of us who have been banking at the same local banks over the years, are still unable to apply for a line of credit, business loan, or loan guarantee without something for collateral. For these reasons, we ask for your help in giving us equal opportunity as any other American citizens.

TECHNICAL ASSISTANCE.

Current technical assistance is being provided to SEA farmers by nonprofit organizations and some investment corporations are strictly funded by outsider marketing people, new varieties of crops and management skills training, not from the U.S. Government. These programs, while providing data for the trainers and specialist to perpetuate themselves, do very little to help our farmers.

Often those individuals who run these programs, reported to the USDA, as if they represent the SEA farmers when actually they don't even speak the language and knowing what the community needs.

A good example of misinformation that caused major distress as follows:

On January 12, 1997, the Department of Agriculture's Civil Rights Listening Forum announced a public listening forum. Our California Highlander Coop was not notified until January 15, 1997. When we called to reserve a seat to speak at the Forum, we were told that someone already reserved the rights to speak for the SEA farmers. The individual claimed that he spoke on behalf of the Valley's Southeast Asian farmers, but in fact he was from an organization based in San Francisco. He also was not even a Southeast Asian origin. Therefore, we request that from now on, there should be a direct contact between the SEA farmers coop and government agencies. This is essential to limit the mis-information and interpretation.

Based on the above concerns, we the SEA request our immediate needs as follows:

The U.S. Department of Agriculture must hire at least two bilingual Hmong individuals who are fluent in Hmong, Laotian, and of course, English. These individuals should work closely with the SEA farmer communities throughout the United States.

Funding for technical support to develop a marketing plan and capabilities for new markets, domestic and abroad should be provide equally for SEA.

Available funding for Southeast Asia farmers for loans with low interest rates and without collateral.

Access to agricultural and SBA loans just like any other qualified citizen.

Able access to Government farm disaster loan programs.

Fair share of government contracts to purchase agricultural commodities.

Three to 5 year operating budget for the Co-op project for SEA.

In conclusion, the Board of Directors and all of the members of the California Highlander Cooperative, are certain that with your help, we want to produce goods for our people. We cannot depend on foreign goods forever. Someone has to start to produce our own goods, and the SEA farmers would like to share this profits and this success in developing America a best place to live, to eat and to see. Not only for our own generation, but for our children, grandchildren, and great-grandchildren. So that they have a place to call "America".

We look forward to working with you and the U.S. Department of Agriculture.

STATEMENT OF LARRY W. MITCHELL

Farmers Union's (NFU) leadership on civil rights, in an industry which has not been known for its progressiveness in this area, began many decades ago. Representing some 300,000 agriculture families, NFU is very concerned when anyone's civil rights is threatened. Aubrey Williams of the Alabama Farmers Union was one of our early leaders concerned with civil rights.

When Franklin D. Roosevelt gave his first inaugural address, Williams decided that he belonged to the New Deal team. He went to work for the Reconstruction Finance Corporation in the South, where his skills came to the attention of FDR advisor and confidante Harry Hopkins.

Hopkins brought Williams onto the staff of the Federal Emergency Relief Administration. There, Williams created the overall plan for the Civil Works Administration and agitated for a program for jobs for youth. This resulted in creation of the National Youth Administration (NYA), which Williams was appointed to head.

At the same time, Hopkins kept Williams involved in the Works Progress Administration (WPA). Williams appointed Blacks to his staff and provoked some animosity, but he refused to observe a color line.

Arriving at a Birmingham luncheon for NYA workers, he found an all-white assemblage, although he had ordered that no discrimination be shown. The white workers were seated at the luncheon tables, and the Black workers were standing along the walls. Williams refused to let the luncheon proceed until tables were brought in for the Black NYA workers.

"I want to say as a Southerner that I covenant that the Black man shall have his share in a better life," Williams declared.

That covenant, made so many decades ago, remains a part of the policy of National Farmers Union. As recently as last March at our 94th Anniversary Convention in Cincinnati, Ohio, Farmers Union declared:

Although much has been accomplished to ensure freedom and equal opportunity for all citizens, regardless of color, sex, or national origin, much remains to be done.

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SUBMITTED REPORT BY HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

The State of Socially Disadvantaged Farmers and Ranchers in California's 16th Congressional District

Prepared for Representative Jim Costa (CA–16)

By Henry L. Muñoz, District Office Fellow

February 2021

Overview

In this report, we draw information from conversations with community leaders, cooperative advocates, and farm service providers. The state of socially disadvantaged farmers in California's 16th Congressional District is an important concern. The overall objective is to illustrate the nuances disadvantage farmers and ranchers face every day, and to offer a path forward through policy change.

Key Areas to Focus

1. **Build awareness of, and support for farm bill/USDA policy objectives**—Disseminate information regarding opportunities provided by, including, but not limited to, the United States Department of Agriculture (USDA) and other Federal agencies for socially disadvantaged farmers and ranchers.

2. **Ensure socially disadvantaged farmers and ranchers are included in policy discussions and implementation**—Create a path to include socially disadvantaged farmers and ranchers in the development, adoption, implementation, and enforcement of food and agriculture laws, regulations and policies and programs.
3. **Empower community outreach and technical assistance from cooperatives to build more resilient communities**—Provide a voice to key non-government outreach centers and empower them to play a more active role in strengthening public awareness of socially disadvantaged farmers and ranchers; emphasizing a bigger role—participation at local, state, and government entities where decisions on disbursements of resources are made.

Context

1. Support for socially disadvantaged farmers and ranchers continues to evolve through many political and economic environments but more than ever requires a holistic approach to increase their awareness of USDA's programs and services.
2. Inadequate funding for outreach and technical assistance to support small farms; specialty crops entering a broader market must be addressed.
   (a) Lenders have several incentives to lend to larger farms.
      (1) Operators of smaller farms typically need smaller loans, and making many small loans is more time- and resource-intensive than making fewer, larger loans.
      (2) Large farms often produce major commodities such as corn, soybeans, and beef cattle, while small farms often produce specialty crops. Underwriting loans to large farms that produce major commodities is easier and less risky because more data are available on the market for those products.
      (3) Programs such as crop insurance are geared toward large, major-commodity farmers. These programs mitigate repayment risk and make lenders more likely to approve a loan or provide more favorable terms, such as lower interest rates, so it leaves SDFRs without the competitive edge to move into a broader market for their produce.
   (b) A United States Farm Bill that increases funding for the USDA Farming Opportunities, Training, and Outreach (FOTO) Program, which includes the Beginning Farmer and Rancher Development Program (BFRDP) and the Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program (known as the 2501 Program), would provide funding support to organizations addressing inequity in land access and transition for SDFRs.
3. Socially disadvantaged farmers and ranchers require less bureaucracy at local, state, and Federal Government to address their challenges and provide much-needed support in today's rapid economic change.
   (a) The United States Government must take a bigger role in promoting economic growth and prosperity for SDFRs.
   (b) GAO–19–539 (Jul. 2019) *Information on Credit and Outreach to SDFRs is Limited.* According to SDFR advocacy groups, lending industry representatives, and Federal officials, SDFRs are more likely to operate smaller, lower-revenue farms, have weaker credit histories, or lack clear title to their agricultural land, which can make it difficult for them to qualify for loans.
   (c) SDFRs are more likely than other farmers and ranchers to operate small farms, which can make it difficult for them to qualify for private credit. According to data from the 2017 Census of Agriculture, SDFRs represented 30 percent of primary producers but operated 39 percent of farms smaller than 50 acres and 16 percent of farms 500 acres or larger.
   (d) Difficulty meeting loan underwriting standards, SDFRs face challenges related to historical discrimination, ongoing unfair treatment by lenders, and a lack of familiarity with some programs and technologies when trying to obtain private agricultural credit
   (e) There are circumstances that can limit use of the land as collateral because of lending requirements or conventions that require formal proof of ownership or that disallow the use of a partial ownership interest as security for a loan. SDFRs do not have a clear title to their agricultural

land because the land was passed down informally from generation to generation without a will.

4. California farmers are some of the most diverse in the country; they represent 35.1% of the country's Asian farmers, 14.6% of Latino farmers, 21.9% of Native American farmers, and 4.9% of women farmers.
5. In California, less than 25% of farmers are female, and less than 2% of female farmers are women of color.
6. Uphill battle for socially disadvantaged farmers to comply with many of the local, state, and Federal regulations (Example: Irrigated Lands Regulatory Program (ILRP)).
   (a) SDFRs with small-scale farms with a high diversity of crops face particular challenges in complying with the Irrigated Lands Regulatory Program (ILRP). These challenges are especially difficult for socially disadvantaged, immigrant, and refugee farmers, who may speak only their native language or have limited English.
   (b) Currently, there is no funding for the level of outreach and technical assistance required to assist small farms with ILRP reporting requirements, and appropriate reporting requirements have not yet been developed.
7. Median total household income among all farm households ($83,111) exceeded the median for all U.S. households ($68,703) in 2019.[1] However, on average, socially disadvantaged farmers and ranchers in California receive less in Federal financial payments than their other ranchers/farmers counterparts and earn much less in profits.
8. Socially disadvantaged farmers and ranchers are being critical to the lack of U.S. funding to assist them to solve many of their challenges. SDFRs face challenges using their agricultural land as collateral. Many long-term agricultural loans require the borrower to pledge land as collateral to secure the transaction. For example, long-term loans (up to 40 years) made by Farm Credit System institution and FSA, must be secured by a first-position lien on interests in real estate, generally enabling the Farm Credit System and FSA to obtain ownership or control of the land in the event of default.
9. USDA must continue to build public trust on agriculture policy initiatives with SDFR.
10. Development of culturally appropriate educational programs is a must and it requires more involvement from our community based organizations and state and Federal agencies. For example UC Cooperative Extension provides technical assistance to small farmers.
11. Direct subsidy programs are geared toward larger commodities.

Audiences

1. *Local, State and Federal Policymakers*—Enormous commitments were made in support of socially disadvantaged farmers and ranchers through farm bills over the last 3 decades, but these vastly increased resources have also come with too many obstacles. Resources must be re-focused on the attainment of these farm bills objectives.
2. *Farm Services Agency (FSA)—USDA*—To define success for our socially disadvantaged farmers and ranchers; we must graduate from traditional ways of assistance and become a full partner with community outreach center for better integration, planning, and programming of Federal resources.
3. *Local Outreach—Farm Cooperatives*—There is currently no funding for the level of outreach and technical assistance required to assist socially disadvantaged farmers with many reporting requirements; for example, East San Joaquin Water Quality Coalition.

A Coordinated Approach to Improving Access to Government Resources

1. Support for socially disadvantaged farmers and ranchers must be a coordinated approach that draws upon the expertise and efforts of community leaders, cooperatives, local, state, and Federal agencies.

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[1] USDA Economic Research Service. (2020, December 18). Retrieved from *https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/*.

2. Socially disadvantaged farmer and ranchers have a raw infrastructure that simply need adequate government resources through grants and loans that will eventually harness new technology to raise their agricultural productivity and provide a more stable, nutritious and affordable food supply.
3. Local, state and Federal agencies must link programs and policies for socially disadvantaged farmers and ranchers with America's values; political will and assistance through programs are values in actions.

Path Forward Through Policy Change

1. Strengthen U.S. Government Farm Bill: A Bill That Truly Supports Socially Disadvantaged Farmers and Ranchers

- *Develop the Infrastructure*
  a. Reduce regulatory burden when asking for Federal resources; ultimate mission is to empower socially disadvantaged farmer and ranchers within their rural communities that feed America.
  b. Ensure socially disadvantaged farmer and rancher inclusion when reporting availability of resources (*e.g.,* community outreach, FSA, cooperatives, CDFA).
  c. Provide better e-connectivity to rural areas where socially disadvantaged farmer and ranchers operate from.
  d. Establish an advisory board to exchange progress to help develop the most effective messaging and program offerings.
- *Align Other Programs*
  a. Work with FSA/USDA/OPPE/CDFA/Outreach coordinators to link farm bill objectives more closely to socially disadvantaged farmers and ranchers' priorities through professional, cultural exchanges, subject-matter expertise, and speaker programs on current financial assistance program.
  b. Coordinate with all level of government entities on outreach campaigns; for example, the Center of Community Prosperity, under the USDA Office of Partnerships and Public Engagements (OPPE) hosts outreach and training summits and capacity-building workshops to encourage a sustainable development process focusing on locally-driven, bottom-up solutions addressing challenges in rural and underserved communities.
- *Share Resources*
  a. Create socially disadvantaged farmer and rancher toolkit—these include information on 2018 Farm Bill, fact sheets, testimonials/success stories within the CA–16 and/or other districts.
  b. Provide information on additional state legislation; for example, The Farmer Equity Act (AB 1348), requires inclusion of socially disadvantaged farmers and ranchers to take part in the decision making of implementation, enforcement of food and agriculture laws, regulations, and policies and programs.[2]
  c. The 2501 Program has awarded 533 grants totaling more than $138 million. This funding has helped reach socially disadvantaged agricultural producers—farmers and ranchers who have experienced barriers to service due to racial or ethnic prejudice.[3]
- *Capitalize on Key Events/Releases*
  a. Develop calendar of upcoming key events; media outlets (social media, television, internet, radio and newspaper print) wield enormous influence in shaping opinion and perceptions. Partnering with media outlet infrastructure is key.
  b. Incorporate socially disadvantaged farmer and rancher key messages into talking points during monthly/quarterly outreach meetings.
  c. Encourage more key local/state/Federal leadership to engage at different socially disadvantaged farm and ranch business locations. This will allow for

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[2] CDFA Farmer Resource Portal—*The Farm Equity Act.* (2020 December 9). Retrieved from *https://www.cdfa.ca.gov/farmer.resources/*.

[3] *USDA Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (The 2501 Program).* (2021 January 08). Retrieved from *https://www.usda.gov/partnerships/socially-disadvantaged-farmers-and-ranchers*.

open dialogue, unfettered debated, and freedom of expression with many of their challenges and concerns.

2. Shape Governmental Access to Resources Message

- *Hone the Message*

a. Coordinate and work as a team at the community, local, state, and Federal level to nurture common interests and values between socially disadvantaged farmers and ranchers and communities they represent.

b. Provide socially disadvantaged ranchers and farmers with access through information sharing on management of grants, cooperative agreements, and other availability of local, state, and Federal financial assistance.

c. Although farm bills have tailored policies in support of social disadvantaged farmers and ranchers, in many cases these polices remain absent in the decision-making process for financial support. These decisions have created and upheld the inequities in our food system and must be a part of the bold, systemic change required to tackle these challenges.

- *Tout Successes*

a. Work with FSA, CDFA, USDA and other agencies to develop testimonials on successes across the state and our nation that focuses on socially disadvantaged rancher and farmer programs.

b. Ensure inclusion of success stories of socially disadvantaged ranchers and farmers; speeches, websites/social media, outreach events and to some extent Hill testimonies.

3. Empower Socially Disadvantaged Farmers and Ranchers

a. Increase funding for the 2501 Program; will allow for better USDA Farming Opportunities, Training, and Outreach (FOTO) Program. The 2501 Program also includes the Beginning Farmer and Rancher Development Program (BFRDP) and the Outreach and Assistance for Socially Disadvantaged and Veteran Farmers and Ranchers Program.

b. There must be an improved and revised access to credit for socially disadvantaged farmers and ranchers through the Farm Service Agencies (FSA) within our CA–16 District.

c. Promote virtual exchanges between socially disadvantaged farmers and ranchers with community leaders, outreach centers, local, state, and Federal entities that focuses on providing additional resources to supplement the 2018 Farm Bill; either from local or state support.

SUBMITTED STATEMENTS BY HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

STATEMENT 1

ON BEHALF OF WILL SCOTT, JR., OWNER, SCOTT FAMILY FARMS, FOUNDER, AFRICAN AMERICAN FARMERS OF CALIFORNIA

My name is Will Scott, Jr. I am the owner of Scott Family Farms and founder of the African-American Farmers of California. My brother and son farm with me. We are a third generation family run farm. We farm 45 acres of vegetables including black-eyed peas, okra, spinach and other vegetable crops.

Our family moved from Oklahoma, where my grandfather, father and uncle were sharecroppers of 60 acres of land. My father moved to California when I was a teenager in 1952. He and my brothers, Charles and Melvin bought 5 acres and started Scott Family Farms. While I was attending Reedley Junior College, I was drafted into the U.S. Navy during my second year of college. I was in the Navy for 4 years and 7 months from 1961–66 as a Submarine Electronic Engineer. I am a Veteran of the Vietnam War. Upon returning from the war, I came back to Fresno, got married, had children and started working for the phone company as an engineer designer for 30 years. Upon being offered early retirement, I began farming in 1994. I was determined to keep the legacy of African American Farmers alive and growing in California by introducing Southern specialty crops back into Black communities to help stop obesity and diabetes epidemics. I wanted to build healthy immune systems to pass on to the next generation.

There was a Black Farmers organization prior to 1997, but farmers had lost lots of land due to high interest rates and the economy was seeing over 15% interest

rates. Black farmers were being taken advantage of and a group of about 30 farmers knew we must form an organization to unite the existing Black farmers and participate in food production in California and understand the rules and regulations facing the farming community. We formed a nonprofit organization, the African-American Farmers of California in 1997. The first President was Al Smith. His family had been here since 1912. However, in 1998, the organization elected me to be the President.

We have increased the size of the organization and have opened a 16 acre demonstration farm, (owned by the County of Fresno) which serves as a testing area where new farmers can get hands-on experience growing a variety of produce. Farmers can lease 1 or 2 acres and then take the technology back to their own farm. Many of these small farmers are now selling their own produce at Farmer[s'] Markets in Fresno and from the Bay Area to Los Angeles.

Some of the issues at the present time include problems I have encountered as a minority farmer. I have been denied getting into markets and denied entry into many farmers[']markets. I was turned down for a loan to put in a new water well. I had a farmer that offered me a personal loan.

I went to the USDA–FSA to seek a loan for 40 acres of land. They told me I would have to apply for a loan with five commercial banks and be turned down by three of them. I was told by many of the banks that the area the property was located was in a "high-risk" area, that Western Fresno was "red-lined" as a poor area, that the area was in a "hodge-podge" area. I applied at Production Credit. They told me my application looked good, but I never heard back from them. When I returned to their office and my file was opened, it contained only two pieces of paper. I could see they had not worked on my loan request. I was told I would need 30% down to obtain the loan.

I returned to the USDA–FSA office and finally got the loan. However, I had to put up 150% collateral of my assets. This included my home and my 5 acres.

The members of the African-American Farmers of California are fearful to apply for any loans, and do not want to deal with the Government, as they feel they will lose everything they have. I have encouraged them to apply for sensible programs that help to clean our environment. The San Joaquin Valley Air Pollution Control District has a program called a "tractor trade up program," that allows the replacement of an older tractor to be traded up for a cleaner burning tractor with funding from the California Air Resources Board. Our organization will continue to encourage programs to assist farmers.

I continue to advocate along side with the Nisei Farmers League on issues of concern to the family communities. I will work with all minority groups including Hispanic, Asian, Japanese-Americans, and others. We must advocate together and interact with the United States Department of Agriculture and our Congressmen.

STATEMENT 2

ON BEHALF OF ASIAN BUSINESS INSTITUTE & RESOURCE CENTER

The Asian Business Institute & Resource Center (ABIRC)'s mission is to build a strong network of Asian American business owners to promote and advocate for the sustained success of Asian businesses in the Central California region. ABIRC assists Southeast Asian (SEA) business owners and farmers to access business and financial resources, develop business plans, marketing, access non-traditional loans, and workshops conducted in various languages. ABIRC advocates for small businesses and farmers, provides technical assistance toward certifications for various contractual opportunities, and many means of building capacity within the SEA business community.

Issue, Problem or Need

It is estimated that there are over 1,000 independent SEA farmers in California's Central Valley. This SEA community is, by and large, considered a socially disadvantaged group with many barriers to access the minimum resources that industrial-sized operations have at their disposal. Access to culturally competent services and technical assistance has always been a challenge to this group of small, minority farmers who operate farms that are 10 acres or less; hence the name "micro farmer." Even with barriers in place, they are a rapidly growing segment of California's agricultural food chain and contributors to the local, state and national agricultural economies. SEA specialty crop farmers rely on the success of their small farms as a means of income to sustain their families.

The COVID–19 pandemic decimated SEA micro farmers' operations. With the closure of farmers' markets and grocery stores, they suddenly had no income. ABIRC's SEA farmer census data, the largest dataset on SEA farmers, revealed that micro

farmers had not received any crisis relief funding and were not aware of they existed. We attributed that to the lack of dissemination of these efforts to ethnic communities and the very definition of small business by the Small Business Administration (500 employees or less). The USDA's definition of specialty crops excluded many of the crops grown by SEA micro farmers. Public safety policies to close offices restricted access to service providers through phones manned by monolingual, not culturally competent staff and webpages. These actions created yet another barrier to equity. Traditional support through the SBA, USDA, NRCS, SBDC was limited, at best. Similar scenarios were observed in county and state agricultural agencies.

The first round of crisis relief dollars barely reached the SEA micro farmers. The first dollars that reached ABIRC's constituents were through philanthropy. It was not until later that actual government relief dollars reached the SEA micro farmers through CARES dollars via the City of Fresno. SEA micro farmers from Fresno, Merced, Stockton, Sacramento and beyond would not have received any support without the work of ABIRC stretching its already limited resources and partners. Painful as it is to acknowledge, the majority of the resources to micro farmers were from philanthropic dollars, not CARES dollars or direct government relief dollars.

Because of the existing barriers and closure of traditional sales markets, micro farmers are suffering. There have been numerous closures of farms and farmer families' economies have been decimated. Long and committed advocacy efforts from ABIRC and small farm organizations are starting to create pathways, but there is much more that needs to be done to mitigate the long-term negative impact of this pandemic on SEA micro farmers. Direct mechanisms, intentional technical assistance, and relief dollars need to reach this community who is subject to so many barriers and, since the pandemic, more prejudice. Without direct injection of assistance and intervention, a great piece of our local economy and community will be disproportionately impacted. We want to thank Congressman Costa's office for their continued advocacy and efforts to try and serve, protect, and save the SEA micro farmers.

SUBMITTED MEMORANDUM BY HON. ALMA S. ADAMS, A REPRESENTATIVE IN CONGRESS FROM NORTH CAROLINA

Opinions of the Office of Legal Counsel of the United States Department of Justice Consisting of Selected Memorandum Opinions Advising the President of the United States, the Attorney General and Other Executive Officers of the Federal Government in Relation to Their Official Duties

Legal Guidance on the Implications of the Supreme Court's Decision in *Adarand Constructors, Inc.* v. *Peña**

This memorandum sets forth preliminary legal guidance on the implications of the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña,* which held that "strict scrutiny" is the standard that governs judicial review of the constitutionality of Federal affirmative action programs that use racial and ethnic criteria as a basis for decisionmaking. The memorandum is not intended to serve as a definitive statement of what *Adarand* means for any particular affirmative action program; rather, it is intended to provide a general overview of the Court's decision and the application of the strict scrutiny standard in the context of affirmative action.

June 28, 1995

Memorandum Opinion to General Counsels

This memorandum sets forth preliminary legal guidance on the implications of the Supreme Court's recent decision in *Adarand Constructors, Inc.* v. *Peña,* 515 U.S. 200 (1995), which held that Federal affirmative action programs that use racial and ethnic criteria as a basis for decisionmaking are subject to strict judicial scrutiny. The memorandum is not intended to serve as a definitive statement of what *Adarand* means for any particular affirmative action program. Nor does it consider the prudential and policy questions relevant to responding to *Adarand.* Rather, it is intended to provide a general overview of the Court's decision and the new standard for assessing the constitutionality of Federal affirmative action programs.

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* **Editor's note:** this is an excerpt from the U.S. Department of Justice report entitled, *Opinions of the Office of Legal Counsel of the United States Department of Justice Consisting of Selected Memorandum Opinions Advising the President of the United States, the Attorney General and Other Executive Officers of the Federal Government in Relation to Their Official Duties,* Volume 19, 1995. The report in its entirety is retained in Committee file and is available at: *https://www.justice.gov/olc/file/626891/download*.

Our conclusions can be briefly summarized. *Adarand* made applicable to Federal affirmative action programs the same standard of review, strict scrutiny, that *City of Richmond* v. *J.A. Croson Co.,* 488 U.S. 469 (1989), applied to state and local affirmative action measures—with the important caveat that, in this area, Congress may be entitled to greater deference than state and local governments. Although *Adarand* itself involved contracting, its holding is not confined to that context; rather, it is clear that strict scrutiny will now be applied by the courts in reviewing the Federal Government's use of race-based criteria in health, education, hiring, and other programs as well.

The Supreme Court in *Adarand* was careful to dispel any suggestion that it was implicitly holding unconstitutional all Federal affirmative action measures employing racial or ethnic classifications. A majority of the Justices rejected the proposition that "strict scrutiny" of affirmative action measures means "strict in theory, fatal in fact," and agreed that "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country" may justify the use of race-based remedial measures in certain circumstances. 515 U.S. at 237. *See id.* at 268 (Souter, J., dissenting); *id.* at 273 (Ginsburg, J., dissenting). Only two Justices advocated positions that approach a complete ban on affirmative action.

The Court's decision leaves many questions open—including the constitutionality of the very program at issue in the case. The Court did not discuss in detail the two requirements of strict scrutiny: the governmental interest underlying an affirmative action measure must be "compelling" and the measure must be "narrowly tailored" to serve that interest. As a consequence, our analysis of *Adarand*'s effects on Federal action must be based on *Croson* and the lower court decisions applying strict scrutiny to state and local programs. It is unclear, however, what differences will emerge in the application of strict scrutiny to affirmative action by the national government; in particular, the Court expressly left open the question of what deference the judiciary should give to determinations by Congress that affirmative action is necessary to remedy discrimination against racial and ethnic minority groups. Unlike state and local governments, Congress may be able to rely on national findings of discrimination to justify remedial racial and ethnic classifications; it may not have to base such measures on evidence of discrimination in every geographic locale or sector of the economy that is affected. On the other hand, as with state and local governments under *Croson,* Congress may not predicate race-based remedial measures on generalized, historical societal discrimination.

Two additional questions merit mention at the outset. First, the Court has not resolved whether a governmental institution must have sufficient evidence of discrimination to establish a compelling interest in engaging in race-based remedial action *before* it takes such action. A number of courts of appeals have considered this question in reviewing state and local affirmative action plans after *Croson,* and all have concluded that governments may rely on "post-enactment" evidence—that is, evidence that the government did not consider when adopting the measure, but that reflects evidence of discrimination providing support for the government's determination that remedial action was warranted at the time of adoption. Those courts have said that the government must have had some evidence of discrimination when instituting an affirmative action measure, but that it need not marshal all the supporting evidence at that time. Second, while *Adarand* makes clear that remedying past discrimination will in some circumstances constitute a compelling interest sufficient to justify race-based measures, the Court did not address the constitutionality of programs aimed at advancing nonremedial objectives—such as promoting diversity and inclusion. For example, under Justice Powell's controlling opinion in *Regents of the Univ. of Calif,* v. *Bakke,* 438 U.S. 265 (1978), increasing the racial and ethnic diversity of the student body at a university constitutes a compelling interest, because it enriches the academic experience on campus. Under strict scrutiny, it is uncertain whether and in what settings diversity is a permissible goal of affirmative action beyond the higher education context. To the extent that affirmative action is used to foster racial and ethnic diversity, the government must seek some further objective beyond the achievement of diversity itself.

Our discussion in this memorandum proceeds in four steps. In Section I, we analyze the facts and holding of *Adarand* itself, the scope of what the Court did decide, and the questions it left unanswered. Section II addresses the strict scrutiny standards as applied to state and local programs in *Croson* and subsequent lower court decisions; we consider the details of both the compelling interest and the narrow tailoring requirements *Croson* mandated. In Section III, we turn to the difficult question of how precisely the *Croson* standards should apply to Federal programs, with a focus on the degree of deference courts may give to congressional determinations that affirmative action is warranted. Finally, in an appendix, we sketch out a series

of questions that should be considered in analyzing the validity under *Adarand* of Federal affirmative action programs that employ race or ethnicity as a criterion. The appendix is intended to guide agencies as they begin that process.

I. The *Adarand* Case

A. Facts

Adarand involved a constitutional challenge to a Department of Transportation ("DOT") program that compensates persons who receive prime government contracts if they hire subcontractors certified as small businesses controlled by "socially and economically disadvantaged" individuals. The legislation on which the DOT program is based, the Small Business Act, establishes a government-wide goal for participation of such concerns at "not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year." 15 U.S.C. § 644(g)(1). The Act further provides that members of designated racial and ethnic minority groups are presumed to be socially disadvantaged. *Id.* § 637(a)(5), § 637(d)(2), (3); 13 CFR § 124.105(b)(1).[1] The presumption is rebuttable. 13 CFR §§ 124.111(c)–(d), 124.601–124.609.[2]

In *Adarand,* a nonminority firm submitted the low bid on a DOT subcontract. However, the prime contractor awarded the subcontract to a minority-owned firm that was presumed to be socially disadvantaged; thus, the prime contractor received additional compensation from DOT. 515 U.S. at 205. The nonminority firm sued DOT, arguing that it was denied the subcontract because of a racial classification, in violation of the equal protection component of the Fifth Amendment's Due Process Clause. The district court granted summary judgment for DOT. The Court of Appeals for the Tenth Circuit affirmed, holding that DOT's race-based action satisfied the requirements of "intermediate scrutiny," which it determined was the applicable standard of review under the Supreme Court's rulings in *Metro Broad., Inc.* v. *FCC,* 497 U.S. 547 (1990), and *Fullilove* v. *Klutznick,* 448 U.S. 448 (1980). *See Adarand,* 515 U.S. at 210.

B. The Holding

By a five-four vote, in an opinion written by Justice O'Connor, the Supreme Court held in *Adarand* that strict scrutiny is now the standard of constitutional review for Federal affirmative action programs that use racial or ethnic classifications as the basis for decisionmaking. The Court made clear that this standard applies to programs that are mandated by Congress, as well as those undertaken by government agencies on their own accord. 515 U.S. at 227. The Court overruled *Metro Broadcasting* to the extent that it had prescribed a more lenient standard of review for Federal affirmative action measures. *Id.*[3]

Under strict scrutiny, a racial or ethnic classification must serve a "compelling interest" and must be "narrowly tailored" to serve that interest. *Id.*[4] This is the same standard of review that, under the Supreme Court's decision in *City of Richmond* v. *J.A. Croson Co.,* 488 U.S. 469 (1989), applies to affirmative action measures adopted by state and local governments. It is also the same standard of review that applies to government classifications that facially discriminate against minorities. *Adarand,* 515 U.S. at 221–24.

In a portion of her opinion joined by Chief Justice Rehnquist, Justice Kennedy, and Justice Thomas, Justice O'Connor sought to "dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact'" when it comes to affirmative action. *Id.* at 237 (quoting *Fullilove,* 448 U.S. at 519 (Marshall, J., concurring in the judg-

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[1] The following groups are entitled to the presumption: African American; Hispanic; Asian Pacific; Subcontinent Asian; and Native American. *See Adarand,* 515 U.S. at 205. This list of eligible groups parallels that of many Federal affirmative action programs.

[2] DOT also uses the subcontractor compensation mechanism in implementing the Surface Transportation and Uniform Relocation Assistance Act of 1987 ("STURAA"), Pub. L. No. 100–17, § 106(c)(1), 101 Stat. 145, and its successor, the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA"), Pub. L. No. 102–240, § 1003(b), 105 Stat. 1919–22. Both laws provide that "not less than 10 percent" of funds appropriated thereunder "shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals." STURAA and ISTEA adopt the Small Business Act's definition of "socially and economically disadvantaged individual," including the applicable race-based presumptions. *Adarand,* 515 U.S. at 208.

[3] Justice O'Connor (along with three other Justices) had dissented in *Metro Broadcasting* and urged the adoption of strict scrutiny as the standard of review for Federal affirmative action measures.

[4] A classification reviewed under intermediate scrutiny need only (i) serve an "important" governmental interest and (ii) be "substantially related" to the achievement of that objective. *Metro Broad.,* 497 U.S. at 564–65.

ment)). While that familiar maxim doubtless remains true with respect to classifications that, on their face, single out racial and ethnic minorities for invidious treatment,[5] Justice O'Connor's opinion declared that the Federal Government may have a compelling interest to act on the basis of race to overcome the "persistence of both the practice and lingering effects of racial discrimination against minority groups in this country." *Id.* In this respect, Justice O'Connor's opinion in *Adarand* tracks her majority opinion in *Croson.* There, too, the Court declined to interpret the Constitution as imposing a flat ban on affirmative action by state and local governments. 488 U.S. at 509–11.

Two members of the *Adarand* majority, Justices Scalia and Thomas, wrote separate concurring opinions in which they took a more stringent position. Consistent with his concurring opinion in *Croson,* Justice Scalia would have adopted a near-absolute constitutional bar to affirmative action. Taking issue with Justice O'Connor's proposition that racial classifications may be employed in certain circumstances to remedy discrimination against minorities, Justice Scalia stated that the "government can never have a 'compelling interest' in discriminating on the basis of race in order to 'make-up' for past racial discrimination in the opposite direction." *Adarand*, 515 U.S. at 239 (Scalia, J., concurring in part and concurring in the judgment).[6] According to Justice Scalia, "[individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or a debtor race. That concept is alien to the Constitution's focus on the individual . . . ." *Id.* The compensation of victims of specific instances of discrimination through "make-whole" relief, which Justice Scalia accepts as legitimate, is not affirmative action, as that term is generally understood. Affirmative action is a group-based remedy: where a group has been subject to discrimination, individual members of the group can benefit from the remedy, even if they have not proved that they have been discriminated against personally.[7] Justice O'Connor's treatment of affirmative action in *Adarand* is consistent with this understanding.

Although Justice Thomas joined the portion of Justice O'Connor's opinion holding that the government's interest in redressing the effects of discrimination can be sufficiently compelling to warrant the use of remedial racial and ethnic classifications, he apparently agrees with Justice Scalia's rejection of the group-based approach to remedying discrimination. Justice Thomas stated that the "government may not make distinctions on the basis of race," and that it is "irrelevant whether a government's racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help those thought to be disadvantaged." *Id.* at 240 (Thomas, J., concurring in part and concurring in the judgment).

The four dissenting Justices in *Adarand* (Justices Stevens, Souter, Ginsburg, and Breyer)[8] would have reaffirmed the intermediate scrutiny standard of review for congressionally authorized affirmative action measures established in *Metro Broadcasting,* and would have sustained the DOT program on the basis of *Fullilove,* where the Court upheld Federal legislation requiring grantees to use at least ten percent of certain grants for public works projects to procure goods and services from minority businesses. Justices Stevens and Souter argued that the DOT program was more narrowly tailored than the legislation upheld in *Fullilove. Adarand,* 515 U.S. at

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[5] *See, e.g., McLaughlin* v. *Florida,* 379 U.S. 184, 192 (1964) (racial and ethnic classifications that single out minorities for disfavored treatment are in almost all circumstances "irrelevant to any constitutionally acceptable legislative purpose") (internal quotations omitted); *Loving* v. *Virginia,* 388 U.S. 1, 11 (1967) ("There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies" state law that prohibited interracial marriages).

[6] In his *Croson* concurrence. Justice Scalia said that he believes that "there is only one circumstance in which the States may act *by race* to 'undo the effects of past discrimination': where that is necessary to eliminate their own maintenance of a system of unlawful racial classification." 488 U.S. at 524 (Scalia, J., concurring in the judgment). For Justice Scalia, "[t]his distinction explains [the Supreme Court's] school desegregation cases, in which [it has] made plain that States and localities sometimes have an obligation to adopt race-conscious remedies." *Id.* The school desegregation cases are generally not thought of as affirmative action cases, however. Outside of that context, Justice Scalia indicated that he believes that "[a]t least where state or local action is at issue, only a social emergency rising to the level of imminent danger to life and limb . . . can justify an exception to the principle embodied in the Fourteenth Amendment that our Constitution is color-blind." *Id.* at 521.

[7] *See Local 28, Sheet Metal Workers' Int'l Ass'n* v. *EEOC,* 478 U.S. 421, 482 (1986); *Wygant* v. *Jackson Bd. of Educ.,* 476 U.S. 267, 277–78 (1986) (plurality opinion), *id.* at 287 (O'Connor, J., concurring).

[8] Justice Stevens wrote a dissenting opinion that was joined by Justice Ginsburg. Justice Souter wrote a dissenting opinion that was joined by Justices Ginsburg and Breyer. And Justice Ginsburg wrote a dissenting opinion that was joined by Justice Breyer.

259–64 (Stevens, J., dissenting); *id.* at 266–67 (Souter. J., dissenting). All four dissenters stressed that there is a constitutional distinction between racial and ethnic classifications that are designed to aid minorities and classifications that discriminate against them. As Justice Stevens put it, there is a difference between a "No Trespassing" sign and a "welcome mat." *Id.* at 245 (Stevens, J., dissenting). *See id.* ("[a]n attempt by the majority to exclude members of a minority race from a regulated market is fundamentally different from a [race-based] subsidy that enables a relatively small group of [minorities] to enter that market"); *see also id.* at 270 (Souter, J., dissenting); *id.* at 275–76 (Ginsburg, J., dissenting). For the dissenters, Justice O'Connor's declaration that strict scrutiny of affirmative action programs is not "fatal in fact" signified a "common understanding" among a majority of the Court that those differences do exist, and that affirmative action may be entirely proper in some cases. *Id.* at 271, 275 (Ginsburg, J., dissenting). In Justice Ginsburg's words, the "divisions" among the Justices in *Adarand* "should not obscure the Court's recognition of the persistence of racial inequality and a majority's acknowledgment of Congress' authority to act affirmatively, not only to end discrimination, but also to counteract discrimination's lingering effects." *Id.* at 273. The dissenters also emphasized that there is a "significant difference between a decision by the Congress of the United States to adopt an affirmative-action program and such a decision by a State or a municipality." *Id.* at 249 (Stevens, J., dissenting); *id.* at 264 (Souter, J., dissenting). They stressed that unlike state and local governments, Congress enjoys express constitutional power to remedy discrimination against minorities; therefore, it has more latitude to engage in affirmative action than do state and local governments. *Id.* at 255 (Stevens, J., dissenting). Justice Souter noted that the majority opinion did not necessarily imply a contrary view. *Id.* at 268–69 (Souter, J., dissenting).

Thus, there were at most two votes in *Adarand* (Justices Scalia and Thomas) for anything that approaches a blanket prohibition on race-conscious affirmative action. Seven justices confirmed that Federal affirmative action programs that use race or ethnicity as a decisional factor can be legally sustained under certain circumstances.

C. Scope of *Adarand*

Although *Adarand* involved government contracting, it is clear from the Supreme Court's decision that the strict scrutiny standard of review applies whenever the Federal Government voluntarily adopts a racial or ethnic classification as a basis for decisionmaking.[9] Thus, the impact of the decision is not confined to contracting, but will reach race-based affirmative action in health and education programs, and in Federal employment.[10] Furthermore, *Adarand* was not a "quota" case: its standards will apply to any classification that makes race or ethnicity a basis for decisionmaking.[11] Mere outreach and recruitment efforts, however, typically should not be subject to the *Adarand* standards. Indeed, post-*Croson* cases indicate that such efforts are considered race-neutral means of increasing minority opportunity.[12] In some sense, of course, the targeting of minorities through outreach and recruitment campaigns involves race-conscious action. But the objective there is to expand the pool of applicants or bidders to include minorities, not to use race or ethnicity in

[9] By voluntary affirmative action, we mean racial or ethnic classifications that the Federal Government adopts on its own initiative, through legislation, regulations, or internal agency procedures. This should be contrasted with affirmative action that is undertaken pursuant to a court-ordered remedial directive in a race discrimination lawsuit against the government, or pursuant to a court-approved consent decree settling such a suit. Prior to *Croson,* the Supreme Court had not definitely resolved the standard of review for court-ordered or court-approved affirmative action. *See United States* v. *Paradise,* 480 U.S. 149 (1987) (court order); *Local 93. Int'l Ass'n of Firefighters* v. *City of Cleveland,* 478 U.S. 501 (1986) (consent decree) The Court has not revisited the issue since *Croson* was decided. Lower courts have applied strict scrutiny to affirmative action measures in consent decrees. *See, e.g., Stuart* v. *Roache,* 951 F.2d 446, 449 (1st Cir. 1991) (Breyer, J.) *cert. denied,* 504 U.S. 913 (1992).

[10] Title VII of the 1964 Civil Rights Act is the principal Federal employment discrimination statute. The Federal Government is subject to its strictures. See 42 U.S.C. § 2000e–17. The Supreme Court has held that the Title VII restrictions on affirmative action in the workplace are somewhat more lenient than the constitutional limitations. *See Johnson* v. *Transportation Agency,* 480 U.S. 616, 627–28 n.6 (1987). But *see id.* at 649 (O'Connor, J., concurring in the judgment) (expressing view that Title VII standards for affirmative action should be "no different" from constitutional standards).

[11] We do not believe that *Adarand* calls into question Federal assistance to historically-Black colleges and universities.

[12] *See, e.g., Peightal* v. *Metropolitan Dade County,* 26 F.3d 1545, 1557–58 (11th Cir. 1994); *Billish* v. *City of Chicago,* 962 F.2d 1269, 1290 (7th Cir. 1992), vacated on other grounds, 989 F.2d 890 (7th Cir.) (*en banc*), *cert. denied,* 510 U.S. 908 (1993); *Coral Constr. Co.* v. *King County,* 941 F.2d 910, 923 (9th Cir. 1991), *cert. denied,* 502 U.S. 1033 (1992).

the actual decision. If the government does not use racial or ethnic classifications in selecting persons from the expanded pool, *Adarand* ordinarily would be inapplicable.[13]

Adarand does not require strict scrutiny review for programs benefitting Native Americans as members of federally recognized Indian Tribes. In *Morton* v. *Mancari,* 417 U.S. 535 (1974), the Supreme Court applied rational basis review to a hiring preference in the Bureau of Indian Affairs for members of federally recognized Indian Tribes. The Court reasoned that a Tribal classification is "political rather than racial in nature," because it is "granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign Tribal entities." *Id.* at 554. *See id.* at 553 n. 24.

Adarand did not address the appropriate constitutional standard of review for affirmative action programs that use gender classifications as a basis for decisionmaking. Indeed, the Supreme Court has never resolved the matter.[14] However, both before and after *Croson,* nearly all circuit court decisions have applied intermediate scrutiny to affirmative action measures that benefit women.[15] The Sixth Circuit is the only court that has equated racial and gender classifications: purporting to rely on *Croson,* it held that gender-based affirmative action measures are subject to strict scrutiny.[16] That holding has been criticized by other courts of appeals, which have correctly pointed out that *Croson* does not speak to the appropriate standard of review for such measures.[17]

D. Open Questions on Remand

Adarand did not determine the constitutionality of any particular Federal affirmative action program. In fact, the Supreme Court did not determine the validity of the Federal legislation, regulations, or program at issue in *Adarand* itself. Instead, the Court remanded the case to the Tenth Circuit for a determination of whether the measures satisfy strict scrutiny.

Adarand left open the possibility that, even under strict scrutiny, programs statutorily prescribed by Congress may be entitled to greater deference than programs adopted by state and local governments. This is a theme that some of the Justices had explored in prior cases. For example, in a portion of her *Croson* opinion joined by Chief Justice Rehnquist and Justice White, Justice O'Connor wrote that Congress may have more latitude than state and local governments in utilizing affirmative action. And in his concurrence in *Fullilove,* Justice Powell, applying strict scrutiny, upheld a congressionally mandated program, and in so doing, said that he was mindful that Congress possesses broad powers to remedy discrimination nationwide. In any event, in *Adarand,* the Court said that it did not have to resolve whether and to what extent courts should pay special deference to Congress in evaluating Federal affirmative action programs under strict scrutiny.

Aside from articulating the components of the strict scrutiny standard, the Court's decision in *Adarand* provides little explanation of how the standard should be applied. For more guidance, one needs to look to *Croson* and lower court decisions applying it. That exercise is important because *Adarand* basically extends the *Croson* rules of affirmative action to the Federal level—with the caveat that application of those rules might be somewhat less stringent where affirmative action is undertaken pursuant to congressional mandate.

II. The *Croson* Standards

In *Croson,* the Supreme Court considered a constitutional challenge to a Richmond, Virginia ordinance that required prime contractors who received city contracts to subcontract at least thirty percent of the dollar amount of those contracts

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[13] Outreach and recruitment efforts conceivably could be viewed as race-based decisionmaking of the type subject to *Adarand* if such efforts work to create a "minorities-only" pool of applicants or bidders, or if they are so focused on minorities that nonminorities are placed at a significant competitive disadvantage with respect to access to contracts, grants, or jobs.

[14] The lone gender-based affirmative action case that the Supreme Court has decided is *Johnson* v. *Transportation Agency,* 480 U.S. 616 (1987). But *Johnson* only involved a Title VII challenge to the use of gender classifications—no constitutional claim was brought. *Id.* at 620 n. 2. And as indicated above (*see supra* note 10), the Court in *Johnson* held that the Title VII parameters of affirmative action are not coextensive with those of the Constitution.

[15] *See, e.g., Ensley Branch, NAACP* v. *Seibels,* 31 F.3d 1548, 1579–80 (11th Cir. 1994); *Contractors Ass'n* v. *City of Philadelphia,* 6 F.3d 990, 1009–10 (3d Cir. 1993); *Lamprecht* v. *FCC,* 958 F.2d 382, 391 (D.C. Cir. 1992) (Thomas, J.); *Coral Constr. Co,* v. *King County,* 941 F.2d at 930–31; *Associated Gen. Contractors* v. *City and County of San Francisco,* 813 F.2d 922, 939 (9th Cir. 1987).

[16] *See Conlin* v. *Blanchard,* 890 F.2d 811, 816 (6th Cir. 1989); *see also Brunet* v. *City of Columbus,* 1 F.3d 390, 404 (6th Cir. 1993), *cert. denied,* 510 U.S. 1164 (1994).

[17] *See, e.g., Seibels,* 31 F.3d at 1580.

to businesses owned and controlled by members of specified racial and ethnic minority groups—commonly known as minority business enterprises ("MBEs"). The asserted purpose of Richmond's ordinance was to remedy discrimination against minorities in the local construction industry.

Croson marked the first time that a majority of the Supreme Court held that race-based affirmative action measures are subject to strict scrutiny.[18] Justice O'Connor's opinion in *Croson*[19] said that "the purpose of strict scrutiny is to 'smoke out' illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen 'fit' this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." 488 U.S. at 493 (plurality opinion). *See also id.* at 520 (Scalia, J., concurring in the judgment) ("[S]trict scrutiny must be applied to all governmental classifications by race, whether or not its asserted purpose is 'remedial' or 'benign.'"). In short, the compelling interest inquiry centers on "ends" and asks *why* the government is classifying individuals on the basis of race or ethnicity; the narrow tailoring inquiry focuses on "means" and asks *how* the government is seeking to meet the objective of the racial or ethnic classification.

Applying strict scrutiny, the Court held that (a) the Richmond MBE program did not serve a "compelling interest" because it was predicated on insufficient evidence of discrimination in the local construction industry, and (b) it was not "narrowly tailored" to the achievement of the city's remedial objective.

A. Compelling Governmental Interest

1. Remedial Objectives

Justice O'Connor's opinion in *Croson* stated that remedying the identified effects of past discrimination may constitute a compelling interest that can support the use by a governmental institution of a racial or ethnic classification. This discrimination could fall into two categories. First, the government can seek to remedy the effects of its own discrimination. Second, the government can seek to remedy the effects of discrimination committed by private actors within its jurisdiction, where the government becomes a "passive participant" in that conduct, and thus helps to perpetuate a system of exclusion. 488 U.S. at 492 (plurality opinion); *id.* at 519 (Kennedy, J., concurring in part and concurring in the judgment). In either category, the remedy may be aimed at ongoing patterns and practices of exclusion, or at the lingering effects of prior discriminatory conduct that has ceased. *See Adarand*, 515 U.S. at 269 (Souter, J., dissenting) ("The Court has long accepted the view that constitutional authority to remedy past discrimination is not limited to the power to forbid its continuation, but extends to eliminating those effects that would otherwise persist and skew the operation of public systems even in the absence of current intent to practice any discrimination.").

Croson requires the government to identify with precision the discrimination to be remedied. The fact and legacy of general, historical societal discrimination is an insufficient predicate for affirmative action: "While there is no doubt that the sorry history of both private and public discrimination in this country has contributed to a lack of opportunities for Black entrepreneurs, this observation, standing alone, cannot justify a rigid racial quota in the awarding of public contracts in Richmond, Virginia." 488 U.S. at 499. *See id.* at 505 ("To accept Richmond's claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for 'remedial relief' for every disadvantaged group."). Similarly, "amorphous" claims of discrimination in certain sectors and industries are inadequate. *Id.* at 499 ("[A]n amorphous claim that there has been past discrimination in a particular industry cannot justify the use of an unyielding racial quota."). Such claims "provide[] no guidance for [the government] to determine the precise scope of the injury it seeks to remedy," and would have "no logical stopping point." *Id.* at 498 (internal quotations omitted). The Court indicated that its requirement that the government identify with specificity the effects of past discrimination anchors remedial affirmative action measures in the present. It declared that "[i]n the absence of particularized findings" of discrimination, racial

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[18] *Croson* was decided by a 6–3 vote. Five of the Justices in the majority (Chief Justice Rehnquist, and Justices White, O'Connor, Scalia, and Kennedy) concluded that strict scrutiny was the applicable standard of review. Justice Stevens concurred in part and concurred in the judgment, but consistent with his long-standing views, declined to "engag[e] in a debate over the proper standard of review to apply in affirmative-action litigation." 488 U.S. at 514 (Stevens, concurring in part and concurring in the judgment).

[19] Justice O'Connor's opinion was for a majority of the Court in some parts, and for a plurality in others.

and ethnic classifications could be "ageless in their reach into the past, and timeless in their ability to affect the future." *Id.* (internal quotations omitted).

The Court in *Croson* did not require a judicial determination of discrimination in order for a state or local government to adopt remedial racial or ethnic classifications. Rather, relying on Justice Powell's plurality opinion in *Wygant* v. *Jackson Bd. of Educ.,* 476 U.S. 267 (1986), the Court said that the government must have a "'strong basis in evidence for its conclusion that remedial action was necessary.'" *Croson,* 488 U.S. at 500 (quoting *Wygant,* 476 U.S. at 277). The Court then suggested that this evidence should approach "a *prima facie* case of a constitutional or statutory violation" of the rights of minorities. 488 U.S. at 500.[20] Notably, the Court said that significant statistical disparities between the level of minority participation in a particular field and the percentage of qualified minorities in the applicable pool could permit an inference of discrimination that would support the use of racial and ethnic classifications intended to correct those disparities. *Id.* at 507. *See id.* at 501 ("There is no doubt that where gross statistical disparities can be shown, they alone in a proper case may constitute *prima facie* proof of a pattern or practice of discrimination.") (internal quotations omitted). But the Court said that a mere underrepresentation of minorities in a particular sector or industry when compared to general population statistics is an insufficient predicate for affirmative action. *Id.* ("When special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who may possess the necessary qualifications) may have little probative value.") (internal quotations omitted).

Applying its "strong basis in evidence" test, the Court held that the statistics on which Richmond based its MBE program were not probative of discrimination in contracting by the city or local contractors, but at best reflected evidence of general societal discrimination. Richmond had relied on limited testimonial evidence of discrimination, supplemented by statistical evidence regarding: (i) the disparity between the number of prime contracts awarded by the city to minorities during the years 1978–1983 (less than one percent) and the city's minority population (fifty percent), and (ii) the extremely low number of MBEs that were members of local contractors' trade associations. The Court found that this evidence was insufficient. It said that more probative evidence would have compared, on the one hand, the number of qualified MBEs in the local labor market with, on the other hand, the number of city contracts awarded to MBEs and the number of MBEs in the local contractors' associations.

In *Adarand,* Justice O'Connor's opinion noted that "racial discrimination against minority groups in this country is an unfortunate reality," and as an example, it pointed to the "pervasive, systematic, and obstinate discriminatory conduct" that underpinned the court-ordered affirmative action measures that were upheld in *United States* v. *Paradise,* 480 U.S. 149 (1987). *Adarand,* 515 U.S. at 237 (internal quotations omitted).[21] Her opinion did not say, however, that only overwhelming evidence of the sort at issue in *Paradise* can justify affirmative action. Again, *Croson* indicates that what is required is a "strong basis in evidence" to support the government's conclusion that race-based remedial action is warranted, and that such evidence need only approach a *prima facie* showing of discrimination against minorities. 488 U.S. at 500. The factual predicate in *Paradise* plainly exceeded a *prima facie* showing. Post-*Croson* lower court decisions support the conclusion that the requisite factual predicate for race-based remedial action does not have to rise to the level of discrimination in *Paradise.*

The Court in *Croson* left open the question whether a government may introduce statistical evidence showing that the pool of qualified minorities would have been

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[20] Lower courts have consistently said that *Croson* requires remedial affirmative action measures to be supported by a "strong basis in evidence" that such action is warranted. *See, e.g., Peightal,* 26 F.3d at 1553; *Concrete Works* v. *City and County of Denver,* 36 F.3d 1513, 1521 (10th Cir. 1994), *cert. denied,* 514 U.S. 1004 (1995); *Donaghy* v. *City of Omaha,* 933 F.2d 1448, 1458 (8th Cir.), *cert. denied,* 502 U.S. 1059 (1991). Some courts have said that this evidence should rise to the level of *prima facie* case of discrimination against minorities. *See, e.g., O'Donnell Constr. Co.* v. *District of Columbia,* 963 F.2d 420, 424 (D.C. Cir. 1992); *Stuart,* 951 F.2d at 450; *Cone Corp.* v. *Hillsborough County,* 908 F.2d 908, 915 (11th Cir.), *cert. denied,* 498 U.S. 983 (1990).

[21] The measures at issue in *Paradise* were intended to remedy discrimination by the Alabama Department of Public Safety, which had not hired a Black trooper at any rank for four decades, 480 U.S. at 168 (plurality opinion), and then when Blacks finally entered the department, had consistently refused to promote Blacks to the upper ranks. *Id.* at 169–71.

larger "but for" the discrimination that is to be remedied. Post-*Croson* lower court decisions have indicated that such evidence can be probative of discrimination.[22]

Croson also did not discuss the weight to be given to anecdotal evidence of discrimination that a government gathers through complaints filed with it by minorities or through testimony in public hearings. Richmond had relied on such evidence as additional support for its MBE plan, but the Court discounted it. Post-*Croson* lower court cases, however, have said that anecdotal evidence can buttress statistical proof of discrimination.[23]

In addition, *Croson* did not discuss which party has the ultimate burden of persuasion as to the constitutionality of an affirmative action program when it is challenged in court. Prior to *Croson,* the Supreme Court had spelled out the following evidentiary rule: while the entity defending a remedial affirmative action measure bears the initial burden of production to show that the measures are supported by "a strong basis in evidence," the "ultimate burden" of proof rests upon those challenging the measure to demonstrate that it is unconstitutional. *Wygant,* 476 U.S. at 277–78 (plurality opinion).[24] Lower courts consistently have said that nothing in *Croson* disturbs this evidentiary rule.[25]

Finally, and perhaps most significantly, *Croson* did not resolve whether a government must have sufficient evidence of discrimination at hand *before* it adopts a racial classification, or whether "post-hoc" evidence of discrimination may be used to justify the classification at a later date—for example, when it is challenged in litigation. The Court did say that governments must "identify [past] discrimination with some specificity before they may use race-conscious relief." 488 U.S. at 504. However, every court of appeals to consider the question has allowed governments to use "post-enactment" evidence to justify affirmative action—that is, evidence that the government did not consider when adopting a race-based remedial measure, but that nevertheless reflects evidence of discrimination providing support for the determination that remedial action was warranted at the time of adoption.[26] Those courts have interpreted *Croson* as requiring that a government have *some* evidence of discrimination prior to embarking on remedial race-conscious action, but not that it marshal all such evidence at that time.[27]

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[22] *See, e.g.. Contractors Ass'n,* 6 F.3d at 1008; *O'Donnell Constr. Co.* v. *District of Columbia,* 963 F.2d 420, 427 (D.C. Cir. 1992); *cf. Associated Gen. Contractors* v. *Coalition for Econ. Equity,* 950 F.2d 1401, 1415 (9th Cir. 1991) (government had evidence that an "old boy network" in the local construction industry had precluded minority businesses from breaking into the mainstream of "qualified" public contractors), *cert. denied,* 503 U.S. 985 (1992).

[23] *See, e.g., Contractors Ass'n,* 6 F.3d at 1002–03 (while anecdotal evidence of discrimination alone rarely will satisfy the *Croson* requirements, it can place important gloss on statistical evidence of discrimination); *Coral Constr. Co.,* 941 F.2d at 919 ("[t]he combination of convincing anecdotal and statistical evidence is potent;" anecdotal evidence can bring "cold numbers to life"); *Cone Corp.* 908 F.2d at 916 (testimonial evidence adduced by county in developing MBE program, combined with gross statistical disparities in minority participation in public contracting, provided "more than enough evidence on the question of prior discrimination and need for racial classification").

[24] *See also Wygant,* 476 U.S. at 293 (O'Connor, J., concurring in part and concurring in the judgment) (when the government "introduces its statistical proof as evidence of its remedial purpose, thereby supplying the court with the means for determining that the [government] had a firm basis for concluding that remedial action was appropriate, it is incumbent upon the [challengers] to prove their case; they continue to bear the ultimate burden of persuading the court that the [government's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently 'narrowly tailored'").

[25] *See, e.g., Concrete Works,* 36 F.3d at 1521–22; *Contractors Ass'n,* 6 F.3d at 1005; *Cone Corp.,* 908 F.2d at 916.

[26] *See Concrete Works,* 36 F.3d at 1521; *Contractors Ass'n,* 6 F.3d at 1004), *Coral Constr. Co.,* 941 F.2d at 920. As the Second Circuit put it when permitting a state government to rely on post-enactment evidence to defend a race-based contracting measure, "[t]he law is plain that the constitutional sufficiency of . . . proffered reasons necessitating an affirmative action plan should be assessed on whatever evidence is presented, whether prior to or subsequent to the program's enactment." *Harrison & Burrowes Bridge Constr. Inc.* v. *Cuomo,* 981 F.2d 50, 60 (2d Cir. 1992).

[27] *See Concrete Works,* 36 F.3d at 1521 ("Absent any preenactment evidence of discrimination, a municipality would be unable to satisfy *Croson.* However, we do not read *Croson*'s evidentiary requirement as foreclosing the consideration of post-enactment evidence."); *Coral Constr. Co.,* 941 F.2d al 920 (requirement that municipality have "some evidence" of discrimination before engaging in race-conscious action "does not mean that a program will be automatically struck down if the evidence before the municipality at the time of enactment does not completely fulfill both prongs of the strict scrutiny test. Rather, the factual predicate for the program should be evaluated based upon all evidence presented to the district court, whether such evidence was adduced before or after enactment of the [program]."). One court has observed that the "risk of insincerity associated with post-enactment evidence . . . is minimized" where the evidence

2. Nonremedial Objectives

Because Richmond defended its MBE program on remedial grounds, the Court in *Croson* did not explicitly address if and when affirmative action may be adopted for "nonremedial" objectives, such as promoting racial diversity and inclusion. The same is true of the majority opinion in *Adarand,* since the program at issue in that case also is said to be remedial. In his *Adarand* dissent, Justice Stevens said that the majority's silence on the question does not foreclose the use of affirmative action to serve nonremedial ends. 515 U.S. at 258 (Stevens, J., dissenting). Thus, in the wake of *Croson* and *Adarand,* there are substantial questions as to whether and in what settings nonremedial objectives can constitute a compelling interest.[28]

To date, there has never been a majority opinion for the Supreme Court that addresses the question. The closest the Court has come in that regard is Justice Powell's separate opinion in *Regents of the Univ. of Calif,* v. *Bakke,* 438 U.S. 265 (1978), which said that a university has a compelling interest in taking the race of applicants into account in its admissions process in order to foster greater diversity among the student body.[29] According to Justice Powell, this would bring a wider range of perspectives to the campus, and in turn, would contribute to a more robust exchange of ideas—which Justice Powell said was the central mission of higher education and in keeping with the time-honored First Amendment value in academic freedom. *See id.* at 311–14.[30] Since *Bakke,* Justice Stevens has been the most forceful advocate on the Court for nonremedial affirmative action measures. He has consistently argued that affirmative action makes just as much sense when it promotes an interest in creating a more inclusive and diverse society for today and the future, as when it serves an interest in remedying past wrongs. *See Adarand,* 515 U.S. at 257 (Stevens, J., dissenting); *Croson,* 488 U.S. at 511–12 & n. 1 (Stevens, J., concurring); *Johnson,* 480 U.S. at 646–47 (Stevens, J., concurring); *Wygant,* 476 U.S. at 313–15 (Stevens, J., dissenting). As a circuit judge in a case involving an ostensibly remedial affirmative action measure, Justice Ginsburg announced her agreement with Justice Stevens' position "that remedy for past wrong is not the exclusive basis upon which racial classifications may be justified." *O'Donnell Constr. Co.,* 963 F.2d at 429 (Ginsburg, J., concurring) (citing Justice Stevens' concurrence in *Croson,* 488 U.S. at 511).

In *Metro Broadcasting,* the majority relied on *Bakke* and Justice Stevens' vision of affirmative action to uphold FCC affirmative action programs in the licensing of broadcasters on nonremedial grounds; the Court said that diversification of ownership of broadcast licenses was a permissible objective of affirmative action because it serves the larger goal of exposing the nation to a greater diversity of perspectives over the nation's radio and television airwaves. 497 U.S. at 567–68. The Court reached that conclusion under intermediate scrutiny, however, and thus did not hold that the governmental interest in seeking diversity in broadcasting is "compelling." *Adarand* did not overrule the result in *Metro Broadcasting*—a point not lost on Justice Stevens. *See Adarand,* 515 U.S. at 258 (Stevens, J., dissenting) ("The majority today overrules *Metro Broad.,* only insofar as it" is inconsistent with the holding that Federal affirmative action measures are subject to strict scrutiny. "The proposition that fostering diversity may provide a sufficient interest to justify [a racial or ethnic classification] is not inconsistent with the Court's holding today—indeed, the question is not remotely presented in this case . . . .").

On the other hand, portions of Justice O'Connor's opinion in *Croson* and her dissenting opinion in *Metro Broadcasting* appear to cast doubt on the validity of nonremedial affirmative action programs. In one passage in her opinion in *Croson,* Justice O'Connor stated that affirmative action must be "strictly reserved for the reme-

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"consists essentially of an evaluation and re-ordering of [the] pre-enactment evidence" on which a government expressly relied in formulating its program. *Contractors Ass'n,* 6 F.3d at 1004. Application of the post-enactment evidence rule in that case essentially gave the government a period of transition in which to build an evidentiary foundation for an affirmative action program that was adopted before *Croson,* and thus without reference to the *Croson* requirements. In *Coral Construction,* the Ninth Circuit permitted the government to introduce post-enactment evidence to provide further factual support for a program that had been adopted *after Croson,* with the *Croson* standards in mind. *See Coral Constr. Co.,* 941 F.2d at 914–15, 919–20.

[28] Given the nation's history of discrimination, virtually all affirmative action can be considered remedial in a broad sense. But as *Croson* makes plain, that history, on its own, cannot properly form the basis of a remedial affirmative action measure under strict scrutiny.

[29] Although Justice Powell wrote for himself in *Bakke,* his opinion was the controlling one in the case.

[30] Although it apparently has not been tested to any significant degree in the courts. Justice Powell's thesis may carry over to the selection of university faculty: the greater the racial and ethnic diversity of the professors, the greater the array of perspectives to which the students would be exposed.

dial setting." 488 U.S. at 493 (plurality opinion). Echoing that theme in her dissenting opinion (joined by Chief Justice Rehnquist and Justices Kennedy and Scalia) in *Metro Broadcasting,* Justice O'Connor urged the adoption of strict scrutiny for Federal affirmative action measures, and asserted that under that standard, only one interest has been "recognized" as compelling enough to justify racial classifications: "remedying the effects of racial discrimination." 497 U.S. at 612. Justice Kennedy's separate dissent in *Metro Broadcasting* was also quite dismissive of non-remedial justifications for affirmative action; he criticized the majority opinion for "allow[ing] the use of racial classifications by Congress untied to any goal of addressing the effects of past race discrimination"). *Id.* at 632 (Kennedy, J., dissenting).

Nowhere in her *Croson* and *Metro Broadcasting* opinions did Justice O'Connor expressly disavow Justice Powell's opinion in *Bakke.* Accordingly, lower courts have assumed that Justice O'Connor did not intend to discard *Bakke.*[31] That proposition is supported by Justice O'Connor's own concurring opinion in *Wygant,* in which she expressed approval of Justice Powell's view that fostering racial and ethnic diversity in higher education is a compelling interest. 476 U.S. at 286. Furthermore, in *Wygant,* Justice O'Connor said that there might be governmental interests other than remedying discrimination and promoting diversity in higher education that might be sufficiently compelling to support affirmative action. *Id.* For example, Justice O'Connor left open the possibility that promoting racial diversity among the faculty at primary and secondary schools could count as a compelling interest. *Id.* at 288 n*. In his *Wygant* dissent, Justice Stevens argued that this is a permissible basis for affirmative action. *Id.* at 313–15 (Stevens, J., dissenting).

On the assumption that *Bakke* remains the law, it is clear that to the extent affirmative action is used to foster racial and ethnic diversity, the government must seek some further objective, beyond the mere achievement of diversity itself.[32] As *Bakke* teaches, in higher education, that asserted goal is the enrichment of the academic experience. And according to the majority in *Metro Broadcasting,* the asserted independent goal that justifies diversifying the owners of broadcast licenses is adding variety to the perspectives that are communicated in radio and television. That same kind of analysis must be applied to efforts to promote racial and ethnic diversity in other settings.

For instance, diversification of the ranks in a law enforcement agency arguably serves vital public safety and operational needs, and thus enhances the agency's ability to carry out its functions effectively. *See Wygant,* 476 U.S. at 314 (Stevens, J., dissenting) ("[I]n law enforcement . . . in a city with a recent history of racial unrest, the superintendent of police might reasonably conclude that an integrated police force could develop a better relationship with the community and thereby do a more effective job of maintaining law and order than a force composed only of whites."); *Paradise,* 480 U.S. at 167 n. 18 (plurality opinion) (noting argument that race-conscious hiring can "restore[] community trust in the fairness of law enforcement and facilitate[] effective police service by encouraging citizen cooperation").[33] It is more difficult to identify any independent goal that may be attained by diversifying the racial mix of public contractors. Justice Stevens concurred in the judgment in *Croson* on precisely that ground. Citing his own *Wygant* dissent, Justice Stevens contrasted the "educational benefits to the entire student body" that he said could be achieved through faculty diversity with the minimal societal benefits (other than

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[31] *See Winter Park Communications, Inc.* v. *FCC,* 873 F.2d 347, 353–54 (D.C. Cir. 1989), *aff'd sub. nom. Metro Broad., Inc.* v. *FCC,* 497 U.S. 547 (1990); *Winter Park,* 873 F.2d at 357 (Williams, J., concurring in part and dissenting in part); *Shurberg Broad., Inc.* v. *FCC,* 876 F.2d 902, 942 (D.C. Cir. 1989) (Wald, C.J., dissenting), *aff'd sub. nom. Metro Broad., Inc.* v. *FCC,* 497 U.S. 547 (1990). In *Davis* v. *Halpern,* 768 F. Supp. 968 (S.D.N.Y. 1991), the court reviewed the law of affirmative action in the wake of *Croson* and *Metro Broadcasting,* and, citing Justice Powell's opinion in *Bakke,* said that a university has a compelling interest in seeking to increase the diversity of its student body. *Id.* at 981. *See also United States* v. *Board of Educ. Township of Piscataway,* 832 F. Supp. 836, 847–48 (D.N.J. 1993) (under constitutional standards for affirmative action, diversity in higher education is a compelling governmental interest) (citing *Bakke* and *Croson*).

[32] The Court has consistently rejected "racial balancing" as a goal of affirmative action. *See Croson,* 488 U.S. at 507; *Johnson,* 480 U.S. at 639; *Local 28 Sheet Metal Workers' Int'l Ass'n* v. *EEOC,* 478 U.S. 421, 475 (1986) (plurality opinion); *Bakke,* 438 U.S. at 307 (opinion of Powell, J.).

[33] *See also Detroit Police Officers' Ass'n* v. *Young,* 608 F.2d 671, 696 (6th Cir. 1979), *cert. denied,* 452 U.S. 938 (1981) ("The argument that police need more minority officers is not simply that Blacks communicate better with Blacks or that a police department should cater to the public's desires. Rather, it is that effective crime prevention and solution depend heavily on the public support and cooperation which result only from public respect and confidence in the police.").

remedying past discrimination, a predicate that he said was not supported by the evidence in *Croson*) that would flow from a diversification of the contractors with whom a municipality does business. *See Croson,* 488 U.S. at 512–13 (Stevens, J., concurring in part and concurring in the judgment). Furthermore, the Court has stated that the desire to develop a growing class of successful minority entrepreneurs to serve as "role models" in the minority community is not, on its own, a valid basis for a racial or ethnic classification. *See Croson,* 488 U.S. at 497 (citing *Wygant,* 476 U.S. at 276 (plurality opinion)); *see also Wygant,* 476 U.S. at 288 n* (O'Connor, J., concurring).

Diversification of the health services profession was one of the stated predicates of the racial and ethnic classifications in the medical school admissions program at issue in *Bakke.* The asserted independent goal was "improving the delivery of health-care services to communities currently underserved." *Bakke,* 438 U.S. at 310. Justice Powell said that "[i]t may be assumed that in some situations a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification." *Id.* The problem in *Bakke,* however, was that there was "virtually no evidence" that the preference for minority applicants was "either needed or geared to promote that goal." *Id.*[34]

Assuming that some nonremedial objectives remain a legitimate basis for affirmative action after *Adarand,* there is a question of the nature of the showing that may be necessary to support racial and ethnic classifications that are premised on such objectives. In higher education, the link between the diversity of the student body and the diversity of viewpoints on the campus does not readily lend itself to empirical proof. Justice Powell did not require any such evidence in *Bakke.* He said that the strong First Amendment protection of academic freedom that allows "a university to make its own judgments as to education includes the selection of its student body." *Bakke,* 438 U.S. at 312. A university is thus due some discretion to conclude that a student "with a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity." *Id.* at 314.

It could be said that this thesis is rooted in a racial stereotype, one that presumes that members of racial and ethnic minority groups have a "minority perspective" to convey. As Justice O'Connor stated in *Croson,* a driving force behind strict scrutiny is to ensure that racial and ethnic classifications are not motivated by "stereotype." *Croson,* 488 U.S. at 493 (plurality opinion). There are sound arguments to support the contention that seeking diversity in higher education rests on valid assumptions. The thesis does not presume that all individuals of a particular race or ethnic background think and act alike. Rather, it is premised on what seems to be a common sense proposition that in the aggregate, increasing the diversity of the student body is bound to make a difference in the array of perspectives communicated at a university. *See Metro Broad.,* 497 U.S. at 579 ("The predictive judgment about the overall result of minority entry into broadcasting is not a rigid assumption about how minority owners will behave in every case but rather is akin to Justice Powell's conclusion in *Bakke* that greater admission of minorities would contribute, on average, to the robust exchange of ideas.") (internal quotations omitted). Nonetheless, after *Croson* and *Adarand,* a court might demand some proof of a nexus between the diversification of the student body and the diversity of viewpoints expressed on the campus.[35] Likewise, a court may demand a factual predicate to support the proposition that greater diversity in a law enforcement agency will serve the operational needs of the agency and improve its performance,[36] or that minority health care professionals are more likely to work in medically underserved communities.[37]

B. Narrow Tailoring Test

In addition to advancing a compelling goal, any governmental use of race must also be "narrowly tailored." There appear to be two underlying purposes of the nar-

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[34] Aside from (he proffered justification in *Bakke,* the government may have other reasons for seeking to increase the number of minority health professionals.

[35] Justice Powell cited literature on this subject in support of his opinion in *Bakke. See* 438 U.S. at 312–13 n. 48, 315 n.50.

[36] *See Hayes* v. *North State Law Enforcement Officers Ass'n,* 10 F.3d 207, 215 (4th Cir. 1993) (although the use of racial classifications to foster diversity of police department could be a constitutionally permissible objective, city failed to show a link between effective law enforcement and greater diversity in the department's ranks).

[37] *See Bakke,* 438 U.S. at 311 (opinion of Powell, J.) (noting lack of empirical data to support medical school's claim that minority doctors will be more likely to practice in a disadvantaged community).

row tailoring test: first, to ensure that race-based affirmative action is the product of careful deliberation, not hasty decisionmaking; and, second, to ensure that such action is truly necessary, and that less intrusive, efficacious means to the end are unavailable. As it has been applied by the courts, the factors that typically make up the "narrow tailoring" test are as follows: (i) whether the government considered race-neutral alternatives before resorting to race-conscious action; (ii) the scope of the affirmative action program, and whether there is a waiver mechanism that facilitates the narrowing of the program's scope; (iii) the manner in which is used, that is, whether race is a factor in determining eligibility for a program or whether race is just one factor in the decisionmaking process; (iv) the comparison of any numerical target to the number of qualified minorities in the relevant sector or industry; (v) the duration of the program and whether it is subject to periodic review; and (vi) the degree and type of burden caused by the program. In *Adarand,* the Supreme Court referred to its previous affirmative action decisions for guidance on what the narrow tailoring test entails. It specifically mentioned that when the Tenth Circuit reviewed the DOT program at issue in *Adarand* under intermediate scrutiny, it had not addressed race-neutral alternatives or the duration of the program.

Before describing each of the components, three general points about the narrow tailoring test deserve mention. First, it is probably not the case that an affirmative action measure has to satisfy every factor. A strong showing with respect to most of the factors may compensate for a weaker showing with respect to others.

Second, all of the factors are not relevant in every case. For example, the objective of the program may determine the applicability or weight to be given a factor. The factors may play out differently where a program is nonremedial.

Third, the narrow tailoring test should not necessarily be viewed in isolation from the compelling interest test. To be sure, the inquiries are distinct: as indicated above, the compelling interest inquiry focuses on the ends of an affirmative action measure, whereas the narrow tailoring inquiry focuses on the means. However, as a practical matter, there may be an interplay between the two. There is some hint of this in *Croson.* In several places, the Court said that the weak predicate of discrimination on which Richmond acted could not justify the adoption of a rigid racial quota—which suggests that if Richmond had opted for some more flexible measure the Court might have been less demanding when reviewing the evidence of discrimination. By the same token, the more compelling the interest, perhaps less narrow tailoring is required. For example, in *Sheet Metal Workers,* and *Paradise,* the Supreme Court upheld what on their face appear to be rather rigid classifications to remedy egregious and persistent discrimination.

However, it bears emphasizing that the Supreme Court has never explicitly recognized any trade-off between the compelling interest and narrow tailoring tests. It is also far from clear that the Court in *Croson* would have found that a more flexible MBE program, supported by the generalized evidence of discrimination on which Richmond relied, could withstand strict scrutiny. In addition, the membership of the Court has changed dramatically in the years since *Sheet Metal Workers* and *Paradise.* Both cases were decided by 5–4 margins, and only one member of the majority (Justice Stevens) remains. And while Justice O'Connor agreed with the majority in *Sheet Metal Workers* and *Paradise* that ample evidence of deeply entrenched discrimination gave rise to a very weighty interest in race-based action, she dissented on the ground that the particular remedies selected were too rigid.

1. Race-Neutral Alternatives

In *Croson,* the Supreme Court said that the Richmond MBE program was not "narrowly tailored," in part because the city apparently had not considered race-neutral means to increase minority participation in contracting before adopting its race-based measure. The Court reasoned that because minority businesses tend to be smaller and less-established, providing race-neutral financial and technical assistance to small and/or new firms and relaxing bonding requirements might achieve the desired remedial results in public contracting—increasing opportunities for minority businesses. 488 U.S. at 507, 510. Justice Scalia suggested an even more aggressive idea: "adopt a preference for small businesses, or even for new businesses—which would make it easier for those previously excluded by discrimination to enter the field. Such programs may well have a racially disproportionate impact, but they are not based on race." *Id.* at 526 (Scalia, J., concurring). As such, they would not be subjected to strict scrutiny.

The Court in *Croson* did not specify the extent to which governments must consider race-neutral measures before resorting to race-conscious action. It would seem that the government need not first exhaust race-neutral alternatives, but only give

them serious attention.[38] This principle would comport with the purposes of ensuring that race-based remedies are used only when, after careful consideration, a government has concluded that less intrusive means would not work. It also comports with Justice Powell's view that in the remedial setting, the government need not use the "least restrictive means" where they would not accomplish the desired ends as well. *See Fullilove,* 448 U.S. at 508 (Powell, J., concurring); *see also Wygant,* 476 U.S. at 280 n. 6 (plurality opinion of Justice Powell) (narrow tailoring requirement ensures that "less restrictive means" are used when they would promote the objectives of a racial classification "about as well") (internal quotations omitted).[39]

This approach gives the government a measure of discretion in determining whether its objectives could be accomplished through some other avenue. In addition, under this approach, the government may not be obliged to consider race-neutral alternatives every time that it adopts a race-conscious measure in a particular field. In some situations, the government may be permitted to draw upon a previous consideration of race-neutral alternatives that it undertook prior to adopting some earlier race-based measure.[40] In the absence of prior experience, however, a government should consider race-neutral alternatives at the time it adopts a racial or ethnic classification. More fundamentally, even where race-neutral alternatives were considered, a court might second-guess the government if the court believes that an effective race-neutral alternative is readily available and hence should have been tried. *See Metro Broadcasting,* 497 U.S. at 625 (O'Connor, J., dissenting) (FCC affirmative action programs are not narrowly tailored, in part, because "the FCC has never determined that it has any need to resort to racial classifications to achieve its asserted interest, and it has employed race-conscious means before adopting readily available race-neutral, alternative means"); *Paradise,* 480 U.S. at 199–200 (O'Connor, J., dissenting) (district court's race-based remedial order was not narrowly tailored because the court "had available several alternatives" that would have achieved the objectives in a less intrusive manner).[41]

2. Scope of Program/Administrative Waivers

Justice O'Connor's opinion for the Court in *Croson* criticized the scope of Richmond's thirty percent minority subcontracting requirement, calling it a "rigid numerical quota" that did not permit consideration, through some form of administrative waiver mechanism, of whether particular individuals benefiting from the ordinance had suffered from the effects of the discrimination that the city was seeking to remedy. 488 U.S. at 508. At first blush, this criticism of the Richmond plan may appear to conflict with previous Court decisions, joined by Justice O'Connor, that held that race-based remedial measures need not be limited to persons who were the victims of discrimination. (*See supra* pp. 174–75.) Upon closer reading, however, *Croson* should not be interpreted as introducing a "victims-only" requirement through the narrow tailoring test.[42] The Court's rejection in *Adarand* of Justice Scalia's position that compensation is due only to individuals who have been discriminated against personally provides further confirmation that *Croson* did not impose any such requirement.

The Court's focus in *Croson* on individualized consideration of persons seeking the benefit of a racial classification appears to have been animated by three separate

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[38] *See Coral Constr. Co.,* 941 F.2d at 923 ("[W]hile strict scrutiny requires serious, good faith consideration of race-neutral alternatives, strict scrutiny does not require exhaustion of every such possible alternative.").

[39] *Cf. Billish,* 989 F.2d at 894 (7th Cir.) (*en banc*) (Posner, J.) (in reviewing affirmative action measures, courts must be "sensitiv[e] to the importance of avoiding racial criteria . . . whenever it is possible to do so, [as] *Croson* requires"), *cert. denied,* 510 U.S. 908 (1993).

[40] *See Contractors Ass'n,* 6 F.3d at 1009 n. 18.

[41] *See also Seibels,* 31 F.3d at 1571 (city should have implemented race-neutral alternative of establishing nondiscriminatory selection procedures in police and fire departments instead of adopting race-based procedures; "continued use of discriminatory tests . . . compounded the very evil that [race-based measures] were designed to eliminate"); *Aiken* v. *City of Memphis,* 37 F.3d 1155, 1164 (6th Cir. 1994) (remanding to lower court, in part, because evidence suggested that the city should have used obvious set of race-neutral alternatives before resorting to race-conscious measures).

[42] Most lower courts have not construed *Croson* in that fashion. *See, e.g., Billish*, 962 F.2d at 1292–94, *rev'd* on other grounds, 989 F.2d 890 (7th Cir.) (*en banc*), *cert. denied,* 510 U.S. 908 (1993); *Coral Constr. Co.,* 941 F.2d at 925–26 n. 15; *Cunico* v. *Pueblo Sch. Dist. No. 60,* 917 F.2d 431, 437 (10th Cir. 1990). *But see Winter Park Communications. Inc.,* 873 F.2d at 367–68 (Williams, J., concurring in part and dissenting in part) (interpreting *Croson* as requiring that racial classifications be limited "to victims of prior discrimination"); *Main Line Paving Co.* v. *Board of Educ.,* 725 F. Supp. 1349, 1362 (E.D. Pa. 1989) (MBE program not narrowly tailored, in part, because it "containe[d] no provision to identify those who were victims of past discrimination and to limit the program's benefits to them").

concerns about the scope of the Richmond plan. First, the Court indicated that in order for a remedial affirmative action program to be narrowly tailored, its beneficiaries must be members of groups that were the victims of discrimination. The Court faulted the Richmond plan because it was intended to remedy discrimination against African-American contractors, but included among its beneficiaries Hispanics, Asian-Americans, Native-Americans, Eskimos, and Aleuts—groups for which Richmond had proffered "*absolutely no evidence of past discrimination.*" *Id.* at 506. Therefore, the Court said, even if the Richmond MBE program was "'narrowly tailored' to compensate African-American contractors for past discrimination, one may legitimately ask why they are forced to share this 'remedial relief' with an Aleut citizen who moves to Richmond tomorrow?" *Id.*[43] Second, the Court said that the Richmond plan was not even narrowly tailored to remedy discrimination against Black contractors because "a successful Black entrepreneur . . . from anywhere in the country" could reap its benefits. *Id.* at 508. That is, the geographic scope of the plan was not sufficiently tailored.[44] Third, the Court contrasted the "rigidity" of the Richmond plan with the flexible waiver mechanism in the ten percent minority participation requirement that was upheld in *Fullilove.* As the Court in *Croson* described it, the requirement in *Fullilove* could be waived where a minority business charged a "higher price [that] was not attributable to the effects of past discrimination." *Id. See Fullilove,* 448 U.S. at 488 (plurality opinion). The theory is that where a business is struggling to overcome discrimination, it may not have the capacity to submit a competitive bid. That an effective waiver provision allows for "individualized consideration" of a particular minority contractor's bid does not mean that the contractor has to be a "victim" of a specific instance of discrimination. It does mean that if the contractor is wealthy and has entered the mainstream of contractors in the community, a high bid might not be traceable to the discrimination that a racial or ethnic classification is seeking to redress. Instead, such a bid might reflect an effort to exploit the classification.[45]

3. Manner in Which Race is Used

The Court's attack on the "rigidity" of the Richmond ordinance also implicates another common refrain in affirmative action jurisprudence: the manner in which race is used is an integral part of the narrow tailoring requirement. The clearest statement of the Court's somewhat mixed messages in this area is that programs that make race or ethnicity a requirement of eligibility for particular positions or benefits are less likely to survive constitutional challenge than programs that merely use race or ethnicity as one factor to be considered under a program open to all races and ethnic groups.[46]

Two types of racial classifications are subject to criticism as being too rigid. First and most obvious is an affirmative action program in which a specific number of positions are set aside for minorities. The prime example is the medical school admissions program that the Court invalidated in *Bakke.* Justice Powell's pivotal opinion in the case turned squarely on the fact that the program reserved sixteen percent of the slots at the medical school for members of racial and ethnic minority groups. Another example of this type of classification is the program upheld in

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[43] *See O'Donnell Constr. Co.,* 963 F.2d at 427 (MBE program was not narrowly tailored because of "random inclusion of racial groups for which there was no evidence of past discrimination").

[44] *Compare Coalition for Econ. Equity,* 950 F.2d at 1418 (MBE program intended to remedy discrimination against minorities in county construction industry was narrowly tailored, in part, because scope of beneficiaries was limited to minorities within the county) *with Podberesky* v. *Kirwan,* 38 F.3d 147, 159 (4th Cir.) (scholarship program intended to remedy discrimination against African-Americans in Maryland was not narrowly tailored, in part, because African-Americans from outside Maryland were eligible for the program), *cert. denied,* 514 U.S. 1128 (1995).

[45] *See Milwaukee County Pavers Ass'n* v. *Fiedler,* 922 F.2d 419, 425 (7th Cir.) (noting that administrative waiver mechanism enabled state to exclude from scope of beneficiaries of affirmative action plan in public contracting "two wealthy Black football players" who apparently could compete effectively outside the plan), *cert. denied,* 500 U.S. 954 (1991); *Concrete Gen. Inc.* v. *Washington Suburban Sanitary Comm'n,* 779 F. Supp. 370, 381 (D. Md. 1991) (MBE program not narrowly tailored, in part, because it had "no provision to 'graduate' from the program those contracting firms which have demonstrated the ability to effectively compete with non-MBE's in a competitive bidding process"); *see also Shurberg Broad., Inc.* v. *FCC,* 876 F.2d at 916 (opinion of Silberman, J.) ("There must be some opportunity to exclude those individuals for whom affirmative action is just another business opportunity.").

[46] The factor that we labeled above as "scope of beneficiaries/administrative waivers" is sometimes considered by courts under the heading of "flexibility," along with a consideration of the manner in which race is used. For the sake of clarity we have divided them into two separate components of the narrow tailoring test.

Fullilove. It provides that, except where the Secretary of Commerce determines otherwise, at least ten percent of the amount of Federal grants for certain public works projects must be expended by grantees to purchase goods or services from minority-owned businesses. 42 U.S.C. § 6705(f)(2).

The second type of classification that is vulnerable to attack on flexibility grounds is a program in which race or ethnicity is the sole or primary factor in determining eligibility. One example is the FCC's "distress sale" program, which allows a broadcaster whose qualifications have been called into question to transfer his or her license prior to an FCC revocation hearing, provided the transferee is a minority-owned business.[47] Another example of affirmative action programs in which race or ethnicity is a requirement of eligibility are college scholarships that are reserved for minorities.[48]

Under both types of classifications, persons not within the designated categories are rendered ineligible for certain benefits or positions.[49] Justice Powell's opinion in *Bakke* rested on the fact that the admissions program at issue was a quota that saved places for minorities solely on the basis of their race.[50] As Justice Powell put it, such a program

> tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats.

438 U.S. at 319. Justice Powell contrasted admissions programs that require decisions based "*solely*" on race and ethnicity, *id.* at 315, with programs in which race or ethnic background is simply one factor among many in the admissions decision. Justice Powell said that in the latter type of program, "race or ethnic background may be deemed a 'plus' in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats." *Id.* at 317. In Justice Powell's view, such programs are sufficiently flexible to meet the narrow tailoring requirement.

This line of reasoning also resonates in *Johnson* v. *Transportation Agency,* 480 U.S. 616 (1987). There, the Supreme Court upheld an affirmative action plan under which a state government agency considered the gender of applicants[51] as one factor in making certain promotion decisions. The Court noted that the plan "set[] aside no positions for women," but simply established goals for female representation that were not "construed" by the agency as "quotas." *Id.* at 638. The Court further observed that the plan "merely authorize[d] that consideration be given to affirmative action concerns when evaluating qualified applicants." *Id.* The Court stressed that in the promotion decision in question, "sex . . . was but one of numerous factors [that were taken] into account." *Id.* The agency's plan "thus resemble[d]" the type of admissions program "approvingly noted by Justice Powell" in *Bakke:* it "requires women to compete with all other qualified applicants. No persons are

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[47] The distress sale program was upheld under intermediate scrutiny in *Metro Broadcasting.*

[48] There is a plausible distinction between college scholarships that are reserved for minorities and admissions quotas that reserve places at a college for minorities. In *Podberesky* v. *Kirwan,* 38 F.3d 147 (4th Cir 1994). *cert. denied,* 514 U.S. 1128 (1995), the Fourth Circuit held that a college scholarship program for African Americans was unconstitutional under *Croson.* The Fourth Circuit's decision, however, did not equate the scholarship program with the admissions quota struck down in *Bakke,* and it did not turn on the fact that race was a requirement of eligibility for the program.

[49] The statutes and regulations under which DOT has established the contracting program at issue in *Adarand* are different. Racial and ethnic classifications are used in the form of a presumption that members of minority groups are "socially disadvantaged." However, that presumption is rebuttable, and members of nonminority groups are eligible for the program "on the basis of clear and convincing evidence" that they are socially disadvantaged. *Adarand,* 515 U.S. at 207. *See id.* at 259–61 (Stevens, J., dissenting) (arguing that the relevant statutes and regulations in *Adarand* are better tailored than the *Fullilove* legislation, because they "do[] not make race the sole criterion of eligibility for participation in the program." Members of racial and ethnic are presumed to be disadvantaged, but the presumption is rebuttable, and even if it does not get the presumption, "a small business may qualify [for the program] by showing that it is both socially and economically disadvantaged").

[50] *Bakke* is the only Supreme Court affirmative action case that ultimately turned on the "quota" issue. In *Croson,* the Court referred disparagingly to the thirty percent minority subcontracting requirement at issue in the case as a "quota," but that was not in itself the basis for the Court's decision.

[51] Although *Johnson* was a Title VII gender classification case, its reasoning as to the distinction between quotas and goals is instructive with respect to the constitutional analysis of racial and ethnic classifications.

automatically excluded from consideration; all are able to have their qualifications weighed against those of other applicants." *Id. See also id.* at 656–57 (O'Connor, J., concurring in judgment) (agency's promotion decision was not made "solely on the basis of sex;" rather, "sex was simply used as a 'plus factor'").

Finally, *Croson* itself touches on the point. The Court said that in the absence of a waiver mechanism that permitted individualized consideration of persons seeking a share of city contracts pursuant to the requirement that thirty percent of the dollar value of prime contracts go to minority subcontractors, the Richmond plan was "problematic from an equal protection standpoint because [it made] the color of an applicant's skin the sole relevant consideration." 488 U.S. at 508.

4. Comparison of Numerical Target to Relevant Market

Where an affirmative action program is justified on remedial grounds, the Court has looked at the size of any numerical goal and its comparison to the relevant labor market or industry. This factor involves choosing the appropriate measure of comparison. In *Croson,* Richmond defended its thirty percent minority subcontracting requirement on the premise that it was halfway between .067 percent—the percentage of city contracts awarded to African-Americans during the years 1978–1983—and fifty percent—the African-American population of Richmond. The Court in *Croson* demanded a more meaningful statistical comparison and much greater mathematical precision. It held that numerical figures used in a racial preference must bear a relationship to the pool of qualified minorities. Thus, in the Court's view, the thirty percent minority subcontracting requirement was not narrowly tailored, because it was tied to the African-American population of Richmond, and as such, rested on the assumption that minorities will choose a particular trade "in lockstep proportion to their representation in the local population." 488 U.S. at 507.[52]

5. Duration and Periodic Review

Under *Croson,* affirmative action represents a "temporary" deviation from "the norm of equal treatment of all racial and ethnic groups." *Croson,* 488 U.S. at 510. A particular measure therefore should last only as long as it is needed. *See Fullilove,* 448 U.S. at 513 (Powell, J., concurring). Given this imperative, a racial or ethnic classification is more likely to pass the narrow tailoring test if it has a definite end-date,[53] or is subject to meaningful periodic review that enables the government to ascertain the continued need for the measure. The Supreme Court has said that a set end-date is less important where a program does not establish specific numerical targets for minority participation. *Johnson,* 480 U.S. at 640. However, it remains important for such a program to undergo periodic review. *See id.* at 639–40.

Simply put, a racial or ethnic classification that was justified at the point of its adoption may no longer be required at some future point. If the classification is subject to reexamination from time to time, the government can react to changed circumstances by fine-tuning the classification, or discontinuing it if warranted. *See Fullilove,* 448 U.S. at 489 (plurality opinion); *see also Metro Broadcasting,* 497 U.S. at 594; *Sheet Metal Workers,* 478 U.S. at 478 (plurality opinion); *id.* at 487–88 (Powell, J., concurring).

6. Burden

Affirmative action necessarily imposes a degree of burden on persons who do not belong to the groups that are favored by a racial or ethnic classification. The Su-

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[52] *Compare Aiken,* 37 F.3d at 1165 (remanding to lower court, in part, because race-based promotion goals in consent decree were tied to "undifferentiated" labor force statistics; instructing district court on remand to determine whether racial composition of city labor force "differs materially from that of the qualified labor pool for the positions" in question) with *Edwards* v. *City of Houston,* 37 F.3d 1097, 1114 (5th Cir. 1994) (race-based promotion goals in city police department were narrowly tailored, in part, because the goals were tied to the number of minorities with the skills for the positions in question), *reh'g granted,* 49 F.3d 1048 (5th Cir. 1995).

[53] *See Paradise,* 480 U.S. at 178 (plurality opinion) (race-based promotion requirement was narrowly tailored, in part, because it was "ephemeral," and would "endured only until" non-discriminatory promotion procedures were implemented); *Sheet Metal Workers,* 478 U.S. at 487 (Powell, J., concurring) (race-based hiring goal was narrowly tailored, in part, because it "was not imposed as a permanent requirement, but [was] of limited duration"); *Fullilove,* 448 U.S. at 513 (Powell, J., concurring) (race-based classification in public works legislation was narrowly tailored, in part, because it was "not a permanent part of Federal contracting requirements"); *O'Donnell Constr. Co.,* 963 F.2d at 428 (ordinance setting aside a percentage of city contracts for minority businesses was not narrowly tailored, in part, because it contained no "sunset provision" and no "end [was] in sight").

preme Court has said, however, that some burdens are acceptable, even when visited upon individuals who are not personally responsible for the particular problem that the classification seeks to address. *See Wygant,* 476 U.S. at 280–81 (plurality opinion) ("As part of this Nation's dedication to eradicating racial discrimination, innocent persons may be called upon to bear some of the burden of the remedy."). This was implicitly reaffirmed in *Croson* and *Adarand:* in both cases, the Court "recognize[d] that any individual suffers an injury when he or she is disadvantaged by the government because of his or her race, whatever that race may be,"[54] but declined to hold that the imposition of that burden pursuant to an affirmative action measure is automatically unconstitutional.

In some situations, however, the burden imposed by an affirmative action program may be too high. As a general principle, a racial or ethnic classification crosses that threshold when it "unsettle[s] . . . legitimate, firmly rooted expectation[s],"[55] or imposes the "entire burden . . . on particular individuals."[56] Applying that principle in an employment case where seniority differences between minority and nonminority employees were involved, a plurality of the Court in *Wygant* stated that race-based layoffs may impose a more substantial burden than race-based hiring and promotion goals, because "denial of a future employment opportunity is not as intrusive as loss of an existing job." *Wygant,* 476 U.S. at 282–83; *see also id.* at 294 (White, J., concurring). In a subsequent case, however, Justice Powell warned that "it is too simplistic to conclude that hiring [or other employment] goals withstand constitutional muster whereas layoffs do not . . . . The proper constitutional inquiry focuses on the effect, if any, and the diffuseness of the burden imposed on innocent nonminorities, not on the label applied to the particular employment plan at issue." *Sheet Metal Workers,* 478 U.S. at 488 n. 3 (Powell, J., concurring).

In the contracting area, a racial or ethnic classification would upset settled expectations if it impaired an existing contract that had been awarded to a person who is not included in the classification. This apparently occurs rarely, if at all, in the Federal Government. A more salient inquiry therefore focuses on the scale of the exclusionary effect of a contracting program. For example, in *Fullilove,* Justice Powell thought it salient that the contracting requirement at issue in the case reserved for minorities a very small amount of total funds for construction work in the nation (less than one percent), leaving nonminorities able to compete for the vast remainder. For Justice Powell, this rendered the effect of the program "limited and so widely dispersed that its use is consistent with fundamental fairness." *Fullilove,* 448 U.S. at 515. In some instances, conversely, the exclusionary effect of racial classifications in contracting may be considered too large. For example, the lower court in *Croson* held that Richmond's thirty percent minority subcontracting requirement imposed an impermissible burden because it placed nonminorities at a great "competitive disadvantage." *J.A. Croson Co.* v. *City of Richmond,* 822 F.2d 1355, 1361 (4th Cir. 1987). Similarly, an affirmative action program that effectively shut nonminority firms out of certain markets or particular industries might establish an impermissible burden. For example, the dissenters in *Metro Broadcasting* felt that the FCC's distress sale unduly burdened nonminorities because it "created a specialized market reserved exclusively for minority controlled applicants. There is no more rigid quota than a 100% setaside . . . . For the would-be purchaser or person who seeks to compete for the station, that opportunity depends entirely upon race or ethnicity." 497 U.S. at 630 (O'Connor, J., dissenting). The dissenters also dismissed the majority's contention that the impact of distress sales on nonminorities was minuscule, given the small number of stations transferred through those means. The dissenters said that "[i]t is no response to a person denied admission at one school, or discharged from one job, solely on the basis of race, that other schools or employers do not discriminate." *Id.*

C. The Post-*Croson* Landscape at the State and Local Level

Croson has not resulted in the end of affirmative action at the state and local level. There is no doubt, however, that *Croson,* in tightening the constitutional parameters, has diminished the incidence of such programs, at least in contracting and procurement. The post-*Croson* experience of governments that continue to operate affirmative action programs in that area is instructive.[57] Many governments re-

[54] *Adarand,* 515 U.S. at 230 (citing *Croson*).
[55] *Johnson,* 480 U.S. at 638.
[56] *Sheet Metal Workers,* 478 U.S. at 488 (Powell, J., concurring).
[57] A comprehensive review of voluntary affirmative action in public employment at the state and local level after *Croson* is beyond the scope of this memorandum. We note that a number of the programs have involved remedial racial and ethnic classifications in connection with hir-

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evaluated their MBE programs in light of *Croson,* and modified them to comport with the applicable standards. Typically, the centerpiece of a government's efforts has been a "disparity study," conducted by outside experts, to analyze patterns and practices in the local construction industry. The purpose of a disparity study is to determine whether there is evidence of discrimination against minorities in the local construction industry that would justify the use of remedial racial and ethnic classifications in contracting and procurement. Some studies also address the efficacy of race-neutral alternatives. In addition to obtaining a disparity study, some governments have held public hearings in which they have received evidence about the workings of the local construction industry.

Post-*Croson* affirmative action programs in contracting and procurement tend to employ flexible numerical goals and/or bidding preferences in which race or ethnicity is a "plus" factor in the allocation decision, rather than a hard setaside of the sort at issue in *Croson.* It appears that many of the post-*Croson* contracting and procurement programs that rest on disparity studies have not been challenged in court.[58] At least one of the programs was sustained in litigation.[59] Another was struck down as inconsistent with the *Croson* standards.[60] Challenges to other programs were not resolved on summary judgment, and were remanded for further fact finding.[61] Contracting and procurement programs that were not changed after *Croson* have met with a mixed reception in the courts.[62]

III. Application of the *Croson* Standards at the Federal Level

In essence, *Adarand* federalizes *Croson,* with one important caveat: Congress may be entitled to some deference when it acts on the basis of race or ethnicity to remedy the effects of discrimination. The Court in *Adarand* hinted that at least where a Federal affirmative action program is congressionally mandated, the *Croson* standards might apply somewhat more loosely. The Court concluded that it need not resolve whether and to what extent the judiciary should pay special deference to Congress in this area. The Court did, however, cite the opinions of various Justices in *Fullilove, Croson,* and *Metro Broadcasting* concerning the significance of Congress' express constitutional power to enforce the anti-discrimination guarantees of the Thirteenth and Fourteenth Amendments—under Section 2 of the former and Section 5 of the latter—and the extent to which courts should defer to exercises of that authority that entail the use of racial and ethnic classifications to remedy discrimination. *See* 515 U.S. at 230–31. Some of those opinions indicate that even under strict scrutiny, Congress does not have to make findings of discrimination with the same degree of precision as a state or local government, and that Congress may be entitled to some latitude with respect to its selection of the means to the end of remedying discrimination.[63]

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ing and promotion decisions in police and fire departments. Some of the programs have been upheld, and others struck down. *Compare Peightal,* (upholding race-based hiring goal in county fire department under *Croson*) *with Long* v. *City of Saginaw,* 911 F.2d 1192 (6th Cir. 1990) (striking down race-based hiring goal in city police department under *Croson* and *Wygant*).

[58] That has been true in Richmond. It is our understanding that the city conducted a post-*Croson* disparity study and enacted a new MBE program that establishes a bidding preference of "20 points" for prime contractors who pledge to meet a goal of subcontracting sixteen percent of the dollar value of a city contract to MBEs. The program works at the "prequalification" stage, when the city is determining its pool of eligible bidders on a project. Once the pool is selected, the low bidder is awarded the contract.

[59] *See Associated Gen. Contractors* v. *Coalition for Econ. Equity,* 950 F.2d 1401 (9th Cir. 1991), *cert. denied,* 503 U.S. 985 (1992).

[60] *Associated Gen. Contractors* v. *City of New Haven,* 791 F. Supp. 941 (D. Conn. 1992), *vacated on mootness grounds,* 41 F.3d 62 (2d Cir. 1994).

[61] *Coral Constr. Co.* v. *King County,* 941 F.2d 910 (9th Cir. 1991), *cert. denied,* 502 U.S. 1033 (1992); *Concrete Works* v. *City and County of Denver,* 36 F.3d 1513 (10th Cir. 1994), *cert. denied,* 514 U.S. 1004 (1995). The courts in these two cases commented favorably on aspects of the programs at issue and the disparity studies by which they are justified.

[62] We are aware of at least one such program that survived a motion for summary judgment and apparently is still in effect today. *See Cone Corp.* v. *Hillsborough County,* 908 F.2d 908 (11th Cir.), *cert. denied,* 498 U.S. 983 (1990). Others have been invalidated. *See, e.g., O'Donnell Constr.* Co. v. *District of Columbia,* 963 F.2d 420 (D.C. Cir. 1992); *Contractors' Assoc.* v. *City of Philadelphia,* 893 F. Supp. 419 (E.D. Pa. 1995); *Arrow Office Supply Co.* v. *City of Detroit,* 826 F. Supp. 1072 (E.D. Mich. 1993); *F. Buddie Constr. Co.* v. *City of Elyria,* 773 F. Supp. 1018 (N.D. Ohio 1991); *Main Line Paving Co.* v. *Board of Educ.,* 725 F. Supp. 1349 (E.D. Pa. 1989).

[63] Section 1 of the Fourteenth Amendment prohibits states and municipalities from denying persons the equal protection of the laws. Section 5 gives Congress the power to enforce that prohibition. Because Section 1 of the Fourteenth Amendment only applies to states and municipalities, *see United States* v. *Guest,* 383 U.S. 745, 755 (1966), it is uncertain whether Congress may act under Section 5 of that amendment to remedy discrimination by purely private actors. *See Adarand,* 515 U.S. at 254 n. 10 (Stevens, J., dissenting) ("Because Congress has acted with respect to the States in enacting STURAA, we need not revisit today the difficult question of § 5's

In *Fullilove,* Justice Powell's concurring opinion said that, even under strict scrutiny, "[t]he degree of specificity required in the findings of discrimination and the breadth of discretion in the choice of remedies may vary with the nature and authority of a governmental body." *Fullilove,* 448 U.S. at 515 n. 14 (Powell, J., concurring). It was therefore of paramount importance to Justice Powell that the racial and ethnic classification in *Fullilove* was prescribed by Congress, which, Justice Powell admonished, "properly may—and indeed must—address directly the problems of discrimination in our society." *Id.* at 499. Justice Powell emphasized that Congress has "the unique constitutional power" to take such action under the enforcement clauses of the Thirteenth and Fourteenth Amendments. *Id.* at 500. *See id.* at 483 (plurality opinion) ("[I]n no organ of government, state or Federal, does there repose a more comprehensive remedial power than in the Congress, expressly charged by the Constitution with the competence and authority to enforce equal protection guarantees."). Justice Powell observed that when Congress uses those powers, it can paint with a broad brush, and can devise national remedies for the national problem of racial and ethnic discrimination. *Id.* at 502–03 (Powell, J., concurring). Furthermore, Justice Powell said that through repeated investigation of that problem, Congress has developed familiarity with the nature and effects of discrimination: "After Congress has legislated repeatedly in an area of national concern, its Members gain experience that may reduce the need for fresh hearings or prolonged debate when Congress again considers action in that area." *Id.* at 503. Because Congress need not redocument the fact and history of discrimination each time it contemplates adopting a new remedial measure, the findings that supported the *Fullilove* legislation were not restricted to the actual findings that Congress made when it enacted that measure. Rather, the record included "the information and expertise that Congress acquires in the consideration and enactment of earlier legislation." *Id.* A court reviewing a race-based remedial act of Congress therefore "properly may examine the total contemporary record of congressional action dealing with the problems of racial discrimination against [minorities]." *Id.* Finally, Justice Powell gave similar deference to Congress when it came to applying the narrow tailoring test. He said that in deciding how best to combat discrimination in the country, the "Enforcement Clauses of the Thirteenth and Fourteenth Amendments give Congress a . . . measure of discretion to choose a suitable remedy." *Id.* at 508.

Justice O'Connor's opinion in *Croson* is very much in the same vein. She too commented that Congress possesses "unique remedial powers . . . under § 5 of the Fourteenth Amendment." *Croson,* 488 U.S. at 488 (plurality opinion) (citing *Fullilove,* 448 U.S. at 483 (plurality opinion)). By contrast, state and local governments have "no specific constitutional mandate to enforce the dictates of the Fourteenth Amendment," but rather are subject to its "explicit constraints." *Id.* at 490 (plurality opinion). Therefore, in Justice O'Connor's view, state and local governments "must identify discrimination, public or private, with some specificity before they may use race-conscious relief." *Id.* at 504. Congress, on the other hand, can make, and "has made national findings that there has been societal discrimination in a host of fields." *Id.* It may therefore "identify and redress the effects of society-wide discrimination" through the use of racial and ethnic classifications that would be impermissible if adopted by a state or local government. *Id.* at 490 (plurality opinion).[64] Justice O'Connor cited her *Croson* opinion and reiterated these general points about the powers of Congress in her *Metro Broadcasting* dissent. *See* 497 U.S. at 605 (O'Connor, J., dissenting) ("Congress has considerable latitude, presenting special concerns

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applicability to pure regulation of private individuals."); *Metro Broad.,* 497 U.S. at 605 (O'Connor, J., dissenting) ("Section 5 empowers Congress to act respecting the States, and of course this case concerns only the administration of Federal programs by Federal officials."). Nevertheless, remedial legislation adopted under Section 5 of the Fourteenth Amendment does not necessarily have to act on the states directly. Indeed, when Congress seeks to remedy discrimination by private parties, it may be indirectly remedying discrimination of the states; for in some cases, private discrimination was tolerated or expressly sanctioned by the states. Private discrimination, moreover, often can be remedied under the enforcement provisions of the Thirteenth Amendment. Section 1 of that amendment prohibits slavery and involuntary servitude. Section 2 gives Congress the power to enforce that prohibition by passing remedial legislation designed to eliminate "the badges and incidents of slavery in the United States." *Jones* v. *Alfred Mayer Co.,* 392 U.S. 409, 439 (1968). The Supreme Court has held that such legislation may be directed at remedying the discrimination of private actors, as well as that of the states. *Id.* at 438. *See also Runyon* v. *McCrary,* 427 U.S. 160, 179 (1976). In *Fullilove,* the plurality opinion concluded that the Commerce Clause provided an additional source of power under which Congress could adopt race-based legislation intended to remedy the discriminatory conduct of private actors. See *Fullilove,* 448 U.S. at 475 (plurality opinion).

[64] Justices Kennedy and Scalia declined to join that part of Justice O'Connor's opinion in *Croson* that drew a distinction between the respective powers of Congress and state or local governments in the area of affirmative action.

for judicial review, when it exercises its unique remedial powers . . . under § 5 of the Fourteenth Amendment.") (internal quotations omitted).

It would be imprudent, however, to read too much into Justice Powell's opinion in *Fullilove* and Justice O'Connor's opinion in *Croson.* They do not, for example, support the proposition that Congress may simply assert that because there has been general societal discrimination in this country, legislative classifications based on race or ethnicity are a necessary remedy. The more probable construction of those opinions is that Congress must have some particularized evidence about the existence and effects of discrimination in the sectors and industries for which it prescribes racial or ethnic classifications. For example, Congress established the *Fullilove* racial and ethnic classification to remedy what the Court saw as the well-documented effects of discrimination in one industry—construction—that had hindered the ability of minorities to gain access to public contracting opportunities. *See Fullilove,* 448 U.S. at 505–06 (Powell, J., concurring); *see also id.* at 473 (plurality opinion).

Based on this reading of *Croson* and *Fullilove,* the endorsement in *Adarand* of strict scrutiny of Federal affirmative action programs does not mean that Congress must find discrimination in every jurisdiction or industry affected by such a measure (although it is unclear whether, as a matter of narrow tailoring, the scope of a classification should be narrowed to exclude regions and trades that have not been affected by the discrimination that is to be remedied). State and local governments must identify discrimination with some precision within their jurisdictions; Congress's jurisdiction is the nation as a whole. But after *Adarand,* Congress *is* subject to the *Croson* "strong basis in evidence" standard. Under that standard, the general history of racial discrimination in the nation would not be a sufficient predicate for a remedial racial or ethnic classification. In addition, evidence of discrimination in one sector or industry is not always probative of discrimination in other sectors and industries. For example, a history of lending discrimination against minorities arguably cannot serve as a catch-all justification for racial and ethnic classifications benefitting minority-owned firms through the entire economy; application of the narrow tailoring test would suggest that if lending discrimination is the problem being addressed, then the government should tackle it directly.[65]

Furthermore, under the new standard, Congress probably does not have to hold a hearing or draft a report each time it adopts a remedial racial or ethnic classification. But where such a classification rests on a previous law or series of laws, those earlier measures must be supported by sufficient evidence of the effects of discrimination. And if the findings in the older laws are stale, Congress or the pertinent agency may have to demonstrate the continued relevance of those findings; this would satisfy the element of the narrow tailoring test that looks to the duration of classifications and whether they are subject to reevaluation. Where the record is sparse, Congress or the relevant agency may have to develop it. That endeavor may involve the commissioning of disparity studies of the type that state and local governments around the country undertook after *Croson* to demonstrate that remedial racial and ethnic classifications in public contracting are warranted. Together, the myriad state and local studies may provide an important source of evidence supporting the use by the Federal Government of national remedial measures in certain sectors of the economy.

Whatever deference a court might accord to Federal remedial legislation after *Adarand,* it is undecided whether the same degree of deference would be accorded to nonremedial legislation. In *Metro Broadcasting,* the majority gave substantial deference to congressional judgments regarding the need for diversity in broadcasting and the linkage between the race of a broadcaster and programming output. *Metro Broad.,* 497 U.S. at 566, 572–73, 591 n. 43. The dissenters did not do so, precisely because the classifications were nonremedial and hence, in their view, did not implicate Congress' powers under the Enforcement Clauses of the Thirteenth and Fourteenth Amendments. *Id.* at 605, 628–29 (O'Connor, J., dissenting).

Finally, many existing Federal affirmative action programs are not specifically mandated by Congress. Courts are unlikely to accord Federal agencies acting without a congressional mandate the same degree of deference accorded judgments made by Congress itself. Agencies do not have the "institutional competence" and explicit "constitutional authority" that Congress possesses. *Adarand,* 515 U.S. at 253 (Ste-

[65] Patterns and practices of bank lending to minorities, may, however, reflect a significant "secondary effect" of discrimination in particular sectors and industries, *i.e.,* because of that discrimination, minorities cannot accumulate the necessary capital and achieve the community standing necessary to qualify for loans.

vens, J., dissenting).[66] Although some existing agency programs were not expressly mandated in the first instance in legislation, they may nonetheless be viewed by a court as having been mandated by Congress through subsequent congressional action. For example, in *Metro Broadcasting,* the programs at issue were established by the FCC on its own; Congress's role was limited to FCC oversight hearings and the passage of an appropriations rider that precluded the FCC from using any funds to reconsider or cancel its programs. 497 U.S. at 572–79. The majority concluded that this record converted the FCC programs into measures that had been "specifically approved—indeed, mandated by Congress." *Id.* at 563.

Under strict scrutiny, it is uncertain what level of congressional involvement is necessary before a court will review an agency's program with deference. What may be required is evidence that Congress plainly has brought its own judgment to bear on the matter. *Cf. Adarand,* 515 U.S. at 252 (Stevens, J., dissenting) ("An additional reason for giving greater deference to the National Legislature than to a local lawmaking body is that Federal affirmative-action programs represent *the will of our entire Nation's elected representatives* . . . .") (emphasis added); *id.* at 255 (Stevens, J., dissenting) ("*Congressional deliberations* about a matter as important as affirmative action should be accorded far greater deference than those of a State or municipality.") (emphasis added).

IV. Conclusion

Adarand makes it necessary to evaluate Federal programs that use race or ethnicity as a basis for decisionmaking to determine if they comport with the strict scrutiny standard. No affirmative action program should be suspended prior to such an evaluation. The information gathered by many agencies in connection with the President's recent review of Federal affirmative action programs should prove helpful in this regard. In addition, appended to this memo is a nonexhaustive checklist of questions that provides initial guidance as to what should be considered in that review process. Because the questions are just a guide, no single answer or combination of answers is necessarily dispositive as to the validity of any given program.

WALTER DELLINGER,
Assistant Attorney General,
Office of Legal Counsel.

Appendix: Questions to Guide Review of Affirmative Action Programs

I. Authority

Is the use of racial or ethnic criteria as a basis for decisionmaking mandated by legislation? If not mandated, is it expressly authorized by legislation? If there is no express authorization, has there been any indication of congressional approval of an agency's action in the form of appropriations riders or oversight hearings? These questions are important, because Congress may be entitled to some measure of deference when it decides that racial and ethnic classifications are necessary.

If there is no explicit legislative mandate, authorization, or approval, is the program premised on an agency rule or regulation that implements a statute that, on its face, is race-neutral? For example, some statutes require agencies to give preferences to "disadvantaged" individuals, but do not establish a presumption that members of racial groups are disadvantaged. Such a statute is race-neutral. Other statutes, like those at issue in *Adarand,* require agencies to give preferences to "disadvantaged" individuals, but establish a rebuttable presumption that members of racial groups are disadvantaged. Such a statute is race-conscious, because it authorizes agencies to use racial criteria in decisionmaking.

II. Purpose

What is the objective of the program? Is it intended to remedy discrimination, to foster racial diversity in a particular sector or industry, or to achieve some other purpose? Is it possible to discern the purpose from the face, the relevant statute or legislation? If not, does the record underlying the relevant legislation or regulation shed any light on the purpose of the program?

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[66] *See Milwaukee County Pavers Ass'n,* 710 F. Supp. at 1540 n. 3 (noting that for purposes of judicial review of affirmative action measures, there is a distinction between congressionally mandated measures and those that are "independently established" by a Federal agency), *aff'd,* 922 F.2d 419 (7th Cir.), *cert. denied,* 500 U.S. 954 (1991); *cf. Bakke,* 438 U.S. at 309 (opinion of Powell, J.) (public universities, like many "isolated segments of our vast governmental structure are not competent to make [findings of national discrimination], at least in the absence of legislative mandates and legislatively determined criteria").

A. Factual Predicate: Remedial Programs

If the program is intended to serve remedial objectives, what is the underlying factual predicate of discrimination? Is the program justified solely by reference to general societal discrimination, general assertions of discrimination in a particular sector or industry, or a statistical underrepresentation of minorities in a sector or industry? Without more, these are impermissible bases for affirmative action. If the discrimination to be remedied is more particularized, then the program may satisfy *Adarand.* In assessing the nature of the factual predicate of discrimination, the following factors should be taken into account:

1. **Source.** Where can the evidence be found? Is it contained in find set forth in a relevant statute or legislative history (committee reports and hearings)? Is evidence contained in findings that an agency has made on its own in connection with a rulemaking process or in the promulgation of guidelines? Do the findings expressly or implicitly rest on findings made in connection with a previous, related program (or series of programs)?
2. **Type.** What is the nature of the evidence? Is it statistical or documentary? Are the statistics based on minority underrepresentation in a particular sector or industry compared to the general minority population? Or are the statistics more sophisticated and focused? For example, do they attempt to identify the number of qualified minorities in the sector or industry or seek to explain what that number would look like "but for" the exclusionary effects of discrimination? Does the evidence seek to explain the secondary effects of discrimination—for example, how the inability of minorities to break into certain industries due to historic practices of exclusion has hindered their ability to acquire the requisite capital and financing? Similarly, where health and education programs are at issue, is there evidence on how discrimination has hampered minority opportunity in those fields, or is the evidence simply based on generalized claims of societal discrimination? In addition to any statistical and documentary evidence, is there testimonial or anecdotal evidence of discrimination in the record underlying the program—for example, accounts of the experiences of minorities and nonminorities in a particular field or industry?
3. **Scope.** Are the findings purported to be national in character and dimension? Or do they reflect evidence of discrimination in certain regions or geographical areas?
4. **"Authorship".** If Congress or an agency relied on reports and testimony of others in making findings, who is the "author" of that information? The Census Bureau? The General Accounting Office? Business and trade associations? Academic experts? Economists? (There is no necessary hierarchy in assessing authorship, but the identity of the author may affect the credibility of the findings.)
5. **Timing.** Since the adoption of the program, have additional findings of discrimination been assembled by Congress or the agency that could serve to justify the need for the program when it was adopted? If not, can such evidence be readily assembled now? These questions go to whether "post-enactment" evidence can be marshaled to support the conclusion that remedial action was warranted when the program was first adopted.

B. Factual Predicate: Nonremedial Programs

Adarand does not directly address whether and to what extent nonremedial objectives for affirmative action may constitute a compelling governmental interest. At a minimum, to the extent that an agency administers a nonremedial program intended to promote diversity, the factual predicate must show that greater diversity would foster some larger societal goal beyond diversity for diversity's sake. The level and precision of empirical evidence supporting that nexus may vary, depending on the nature and purpose of a nonremedial program. For a nonremedial program, the source, type, scope, authorship, and timing of underlying findings should be assessed, just as for remedial programs.

III. Narrow Tailoring

A. Race-Neutral Alternatives

Did Congress or the agency consider race-neutral means to achieve the ends of the program at the time it was adopted? Race-neutral alternatives might include preferences based on wealth, income, education, family, geography. In the commercial setting, another such alternative is a preference for new, emerging businesses. Were any of these alternatives actually tried and exhausted? What was the nature

and extent of the deliberation over any race-neutral alternatives—for example, congressional debate? agency rulemaking? Was there a judgment that race-neutral alternatives would not be as efficacious as race-conscious measures? Did Congress or the agency rely on previous consideration and rejection of race-neutral alternatives in connection with a prior, related race-conscious measure (orseries of measures)?

B. Continued Need

How long has the program been in existence? Even if there was a compelling justification at the time of adoption, that may not be the case today. Thus, an agency must determine whether there is a continued need for the program. In that regard, does the program have an end date? Has the end date been moved back? Is the program subject to periodic oversight? What is the nature of that oversight—does Congress play a role through hearings/reports, or does the agency conduct the review or oversight on its own? Has the program ever been adjusted or modified in light of a periodic review? What were the results of the most recent review and oversight conducted by either Congress or the agency? Is there evidence of what might result if the racial classification were discontinued? For example, is there evidence of the current level of minority participation in government contracting where racial criteria are not used (which may speak to whether discrimination can be remedied without a preference)?

C. Pool of Beneficiaries

Are the benefits of the program spread relatively equally among minority individuals or businesses? Is there information on whether the same individuals or businesses tend to reap most of the benefits, and if so, whether those beneficiaries have overcome discrimination? If the program is intended to remedy discrimination against minorities, does it include among its beneficiaries subgroups that may not have been discriminated against? Is there a procedure for tailoring the pool of beneficiaries to exclude such subgroups? Is there a mechanism for evaluating whether the program is needed for segments within a larger industry that have been the locus of discrimination?

D. Manner in Which Race is Used

Does the program establish fixed numerical set-asides? Is race an explicit requirement of eligibility for the program? If there is no such facial requirement, does the program operate that way in practice? Or is race just one of several factors—a "plus"—used in decisionmaking? Could the objectives of a program that uses race as a requirement for eligibility be achieved through a more flexible use of race?

E. Burden

What is the nature of the burden imposed on persons who are not included in the racial or ethnic classification that the program establishes? Does the program displace those persons from existing positions/contracts? Does it upset any settled expectations that they have? Even if that is not the case, the burden may be impermissible where the exclusionary impact is too great. What is the exclusionary impact in terms of size and dimension? What is the dollar value of the contracts/grants/positions in question? Does the exclusionary impact of the program fall upon a particular group or class of individuals or sectors, or is it more diffuse? What is the extent of other opportunities outside the program? Are persons who are not eligible for the preference put at a significant competitive disadvantage as a result of the program?

SUBMITTED BOOK BY HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM ILLINOIS *

THE COLOR OF MONEY

Black Banks and the Racial Wealth Gap

Mehrsa Baradaran

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*__Editor's note:__ the book, in its entirety, is retained in Committee file. It can be accessed online at: *https://digitalcommons.law.uga.edu/books/138/*.

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Jacket design by Tim Jones
Photograph: The Dunbar National Bank Building in Harlem, New York City circa 1925, by General Photographic Agency / Hulton Archive / Getty Images

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Historian Manning Marable has lamented that "the most striking fact about American economic history and politics is the brutal and systemic underdevelopment of Black people."[18] When the Emancipation Proclamation was signed in 1863, the Black community owned a total of 0.5 percent of the total wealth in the United States. This number is not surprising; slaves were forbidden to own anything, and the few freed Blacks living in the North had few opportunities to accumulate wealth. What is staggering is that more than 150 years later, that number has barely budged—Blacks still own only about one percent of the wealth in the United States.[19] When Martin Luther King stood on the steps of the Lincoln Memorial in

[18] Manning Marable, *How Capitalism Underdeveloped Black America* (Chicago: Haymarket Books, 2015), 1.
[19] Dalton Conley, *Being Black, Living in the Red: Race, Wealth, and Social Policy in America* (Berkeley: University of California Press, 2010), 25.

1963, he said that "America has given the Negro people a bad check, a check which has come back marked 'insufficient funds.'"[20]

* * * * *

SUBMITTED CASE BY HON. SALUD O. CARBAJAL, A REPRESENTATIVE IN CONGRESS FROM CALIFORNIA

In the United States District Court for the District of Columbia

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and

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and

Civil Action No. 1:00CV02445
Judge: JAMES R. ROBERTSON
Third Amended Class Action Complaint

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[20] Martin Luther King Jr., "I Have a Dream," Speech, Lincoln Memorial, Washington, D.C., August 28, 1963.

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Plaintiffs,
v.
MICHAEL JOHANNS, *Secretary,*
The United States Department of Agriculture,
14th and Independence Avenue, S.W.,
Washington, D.C. 20250
Defendant.

Third Amended Class Action Complaint (For Declaration Judgment, Review of Agency Action, Violations of Equal Credit Opportunity Act, and Other Relief)

I. Overview

The Congress has created, and heavily funded with taxpayer dollars, loan programs specifically targeted to provide assistance to those family farmers unable to secure needed capital elsewhere. The United States Department of Agriculture ("USDA"), acting through the Farm Service Agency ("FSA") and formerly through the Farmers Home Administration ("FmHA") (until 1994), is required to administer

this loan program in a fair, equitable and nondiscriminatory manner. In addition, USDA administers taxpayer funded benefit and disaster relief programs which significantly impact family farmers and which USDA is likewise legally obliged to administer free of discrimination.

This lawsuit arises because, unfortunately, for decades USDA has systematically discriminated against Hispanic farmers and ranchers ("Hispanic farmers"); indeed, against nonwhite male farmers generally. Black farmers, Native American farmers and female farmers have separately initiated litigation attacking the problem. At the core of each lawsuit is the same problem. Despite repeated warnings of the consequences of doing so, USDA has maintained, and continues to maintain, a system of administering its farm credit and non-credit benefit programs that gives virtually unfettered discretion to local officials to enforce highly subjective eligibility criteria that, in turn, give vent to hostility toward minority farmers which deprives them of an equal, fair opportunity to participate in such programs.

The hostility toward Hispanic farmers and the resulting discrimination are hallmarks of the decentralized system through which USDA distributes and administers its loan and benefit programs. More particularly, this discrimination manifests itself, among other ways, by seeking to discourage those Hispanic farmers who would dare attempt to avail themselves of USDA farm credit and non-credit benefit programs. This discouragement took various forms: first, Hispanics were consistently discouraged from even applying for loans or benefits; second, those Hispanics who nevertheless persisted in filing an application for loans or benefits experienced long delays in processing their applications; third, they experienced a high denial rate based upon highly subjective eligibility criteria; fourth, those Hispanics to whom loans were granted either experienced prejudicial delays in receiving the needed loans, received less than the requested loan amount or were subject to burdensome supervised bank accounts ("SBAs"), and fifth, when those farmers eventually needed loan servicing assistance, they received delayed or no such assistance. The difficulty confronting Hispanic farmers is compounded because the USDA mechanism for handling their discrimination complaints—which USDA encouraged aggrieved minority farmers to file—was useless. USDA failed to investigate the complaints, willfully avoided processing or resolving the complaints, stretched the review process out over many years, conducted meaningless or "ghost" investigations, or simply failed to do anything. And, USDA has to date failed to take meaningful remedial action to address the situation.

This situation is all the more egregious both because there is no real dispute about the facts and because it has persisted for so long. Beginning in 1965, the United States Commission on Civil Rights ("Civil Rights Commission") has published a series of studies documenting the nature and extent of USDA's discrimination against minority farmers in the delivery of loan and benefit programs. Congressional committees, the General Accounting Office ("GAO") and others outside USDA have recognized the pervasiveness of the problem and urged USDA to reform. Indeed, USDA conducted its own internal investigations of the problems, conceded that the critics were correct, and yet has failed effectively to address, much less to remedy, the problem. Consequently, notwithstanding all the publicity about this discrimination that infects USDA's farm credit and non-credit benefit programs and not withstanding all of USDA's lip service to reform, little has changed for Hispanic farmers.

USDA partially addressed essentially identical complaints by Black farmers in the *Pigford, et. al.* v. *Glickman,* Civil Action No. 97–1978 and 185 F.R.D. 82 (D.D.C. 1999) (approving Consent Decree) ("*Pigford*"), but has steadfastly refused to accommodate the concerns of Hispanic farmers. While the *Pigford* decree refers to certain remedial relief that relief has proven to be largely illusory in implementation and, for all practical purposes, the Black farmer class received only monetary damages (some $850M to date). This left the USDA farm and loan benefit system untouched and has become a source of consternation and discontent to Black farmers who received liquidated damages only to be confronted by the same discrimination the next time they applied for USDA farm credit. In addition, USDA has proven unable or unwilling to reform itself. Congress has likewise been unable or unwilling to rectify the situation. Out of desperation Hispanic farmers have chosen the only avenue open to them in their search for fair and equal treatment. Given the growing numbers of Hispanics who wish to farm in a effort to improve their economic lot, and given the existence of USDA loan and benefit programs enacted by Congress for the express purpose of assisting beginning farmers and ranchers and enabling existing family farms to continue to operate, it is imperative that the Court ensure that the necessary reforms are finally undertaken. In so doing, the Court will not only fix the system for Hispanic farmers but for all farmers—minority and majority farmers. Secondarily, the Court should address the damages that are the natural con-

sequence of the discrimination described herein. In that connection, the use of computer modeling to calculate any such damages will facilitate the class-wide treatment of such claims. As the experience of the *Pigford* class members makes abundantly clear, to award money damages without taking the necessary remedial action to eradicate the systemic discrimination that pervades USDA's credit and benefit programs is, in the final analysis, a prescription for continued discrimination. This case presents an opportunity to complete the unfinished business left in the wake of the *Pigford* decree and to eradicate once and for all the discrimination that infects the USDA's farm credit and benefit programs.

II. Jurisdiction

1. Jurisdiction is founded upon 15 U.S.C. § 1691e(a), 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, 42 U.S.C. § 2000d, 5 U.S.C. § 706 and 7 U.S.C. § 2279.

III. Venue

2. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e).

IV. Parties

3. Plaintiff and proposed Class representative Guadalupe L. Garcia, Jr., is an Hispanic American farmer and resident of Dona Ana County, New Mexico. He and his father and brother, also Hispanic American farmers, farmed together as G.A. Garcia and Sons Farm. They produced cotton, peas, alfalfa, and hay on their farm. They owned two farms in Dona Ana County, one with 550 acres of arable land and the other with 78 acres of arable land. They also leased land occasionally for their farm operation.

4. In 1986, plaintiff Garcia worked with the assistance of the FmHA personnel to develop a farm and home plan and an application for direct loans, but FmHA rejected the application. In 1988, plaintiff applied for primary loan servicing but was denied this servicing after a 2 year delay. Again, in 1994, FSA refused to work with plaintiff on a farm debt restructuring with guaranteed loans. Finally in 1998, when plaintiff needed to sell part of the land to service delinquent debt and had found a buyer, FSA refused to provide financing to allow the sale to take place. In each instance, plaintiff timely filed for the FSA financial assistance programs or loans and was qualified for the assistance and loans, but, due to willful and continuous racial/ethnic discrimination by the local and state FSA offices, was denied the assistance and loans. In each instance, similarly situated white farmers received more favorable treatment. As a result, plaintiff suffered severe economic losses, including a farmer's ultimate penalty—their farms were sold at a foreclosure sale in 1999.

5. Plaintiff filed several complaints with USDA about this treatment. Guadalupe L. Garcia, Jr., registered a complaint regarding the discrimination with the FSA official that assisted plaintiff prepare the farm and home plan/loan application in 1986. Again, in the early 1990s, he filed a complaint with the office of Senator Dominici and USDA. In 1998 and 2000, he filed additional complaints with USDA's Office of Civil Rights. USDA never acted on these complaints thereby causing plaintiff further damages.

* * *

6. Plaintiffs and proposed Class representatives Tony and Patricia Jimenez are Hispanic farmers and residents of Mariposa County, California. They operate a 299 acre cattle ranch. Tony Jimenez has lived on a cattle ranch since he was 9 years old, and has life-long experience operating dairy and beef cattle ranches.

7. They received a $200,000 farm ownership loan from FmHA to acquire the ranch in 1989 and had sought an operating loan at the same time. The operating loan was absolutely essential to enable them to operate the ranch at full and efficient capacity, which was necessary so that they could service the large ownership debt. They were denied the operating loan without explanation. They reapplied for the operating credit in 1990 but were denied. In 1992, they applied for an emergency loan, but were turned down. In 1992, they also requested a 60 day extension on their loan because cattle prices were at a 20 year low and they needed to sell cattle to make their loan installment to FmHA. This too was denied. In December 1995, the Jimenezes paid FSA (formerly FmHA) more than $52,000 to bring the mortgage on the ranch up to date, and at the same time they asked for a loan deferral and an adjustment in the interest rate on the remainder due on the mortgage loan to reflect substantial reduction in interest rates since 1990. FSA did not provide them the application for this servicing for 4 months. Then, after holding the application for 2 years, FSA denied it in October 1998.

8. This extended pattern of denial of loans and services—treatment different than that received by similarly situated white farmers—was a series of acts of willful and continuous racial/ethnic discrimination, and as a result of the discrimination, the

ranch operation has suffered severe economic losses and the Jimenezes are on the verge of losing their farm to foreclosure. They filed civil rights complaints with USDA and Members of Congress in a timely fashion, but these complaints have never been acted on, causing them further damages.

* * *

9. Plaintiffs and proposed Class representatives Mr. Edward and Mrs. Norma Flores come from a long tradition of farming. They began farming in 1972. For 16 years, Mr. and Mrs. Flores farmed over 300 acres. Their crops included chili peppers, cotton and cabbage.

10. Between 1985 and 1988, USDA discriminated against Mr. and Mrs. Flores on at least four separate occasions. Their experience is typical of other Hispanic farmers in their area.

11. In January 1985, Mr. and Mrs. Flores applied at their local FmHA office for an operating loan of approximately $100,000. They needed the loan to prepare for planting their crops by March, but funding was delayed until late May, well after planting season.

12. A similar incident occurred a year later in 1986. They again applied for an operating loan in January, which they did not receive until late May. In addition, FmHA demanded excessive collateral for the loan. Mr. and Mrs. Flores were required to put up their land (valued at $413,000) and equipment (valued at $60,000) for a loan in the amount of $80,000.

13. In 1987, Mr. and Mrs. Flores sought assistance from FmHA to refinance their farm, because they were facing foreclosure by the Federal Land Bank. Mr. and Mrs. Flores needed to take advantage of the lower interest rate offered by FmHA, as opposed to the high 14% interest they were paying. When they asked the local FmHA agent about refinancing, he replied "You're in a real mess," and refused them an opportunity to apply.

14. Mr. and Mrs. Flores were discriminated against because they are Hispanic farmers. Similarly situated white farmers did not receive such treatment. In 1987, Mr. Flores complained regarding this discriminatory treatment.

15. In 1988, Mr. Flores returned to the local FmHA office to attempt again to refinance his farm. Contrary to FmHA regulations, the local FmHA office agent refused to discuss refinancing with Mr. Flores until Mr. Flores father had cleared a separate unrelated debt with FmHA.

16. 1988 was the last year the Flores family farmed. As a result of FmHA discrimination, they lost everything, including eight farm leases—all of which were taken over by white farmers.

* * *

17. Plaintiff and proposed Class representative Gloria Palacios Moralez is an Hispanic farmer and resident of Fresno County, California. Her parents were sharecroppers for 25 years, including when she was growing up; and she learned farming from them. She also took college courses in agricultural economics, and was selected to be a Kellogg fellow. She owned and operated an 80 acre farm from 1980 to 1998. Up until 1994, she grew various field crops and grapes. In 1998, after repeatedly being denied loans and services from FSA, her land was sold by court order and she lost it.

18. Ms. Moralez acquired her farm land in 1980 with a $200,000 limited resource farm ownership loan from FmHA. However, even in this instance, FmHA engaged in discriminatory conduct against her by working hard to discourage her from getting the loan; she got it only through her own dogged persistence and hard work. Originally, FmHA would not even let her apply for the loan although she clearly had the background and training to qualify for FmHA farm financing. However, after she refused to take no for an answer, she was allowed to apply—but then only after she was forced to write a special essay and make special presentations to the Fresno County FmHA staff and county committee. These unusual requirements were never applied to white farmers who sought to apply to FmHA for farm ownership loans. Further, the chairman of the county committee told her to her face that farming was "not a proper business for a woman, much less a Mexican woman with two kids." Once she filed her loan application, it was improperly rejected two times before it finally was accepted. One rejection was based on the premise that the property she was trying to acquire did not have sufficient water to farm it correctly. However, this same property was being farmed at that time by two white farmers whose farming operations were financed with FmHA operating loans. Another reason her application was initially rejected was that the FmHA county office asserted that she was proposing to pay too much for the land. However, at the same time, the county office was making farm ownership loans to white farmers to buy similar

land in the area her farm was located *at even higher prices* than she proposed to pay.

19. In 1981, Gloria Moralez applied to the Fresno County FmHA for an equipment loan of $50,000. She was approved for only $26,300. As a result, she could only acquire used equipment in poor condition that caused her severe problems in growing her crops and reduced her production. She also received an operating loan of $31,200 to plant cotton. Her loan funds were put in a supervised bank account. To her information and belief, no similarly situated white farmers in her area were subject to this sort of treatment regarding reduced funding for equipment loans and the supervised account. Further, the Fresno County FmHA staff told her at that time that she should never apply for another FmHA loan, because they would make sure she never got one. In fact, she never did get another FmHA loan.

20. She continued throughout the years up to 1998 to seek FmHA and FSA loans, services, and benefits, but was always unfairly discouraged and ultimately denied. Her applications included ones for restructuring her debt, so-called "1951–S" servicing, and disaster payments. The 1951–S servicing is an example of the unfair discouragement she received. FmHA valued her farm low for 1951–S purposes so she could not benefit from 1951–S restructuring; but just 6 months later when she was in bankruptcy, FmHA insisted that the farm had a much greater value for purposes of the bankruptcy action.

21. In 1993, she applied for disaster payments for losses to her grape crop in 1993 caused by a grape disease known as phomophis. This disease reduced her yield by 69 percent. The Fresno county office told her that the[r]e was no such disease. However, this disease in fact has become epidemic in California in recent years and a threat to the grape industry statewide, with the state and Federal Governments spending millions on its eradication. Also, the county office accused her of fraudulently submitting two claims for payments on the loss. In fact, what happened was that she had submitted her disaster application in September 1993, then in December 1993 checked with the Fresno County FmHA to see where it stood. At that time, she was told that they could not locate the September application, and that she must fill out a second application, which she did. Further, when she appealed the denial of disaster benefits to the county committee, she attempted to have a court reporter transcribe the meeting. However, the county committee refused to allow the reporter to attend the meeting, stating that she had to give notice 7 days in advance. The problem was that they had scheduled the meeting 1 day in advance.

22. As a result of FmHA/FSA's unfair discouragement and denials, Gloria Moralez could never obtain the financing or program payments she needed to adequately farm her land, and thus her farming enterprise foundered. When she became seriously ill and her mother died in January of 1992, Gloria Moralez was forced to file Chapter 12 bankruptcy. During the 5 years she was in bankruptcy, FmHA/FSA continued to harass her. The agency made several attempts to foreclose on her land even though the bankruptcy court had issued a stay on foreclosure proceedings. The agency had gone so far as to order its Kansas City financial office to cut a check for $220,000 so it could buy the land back at foreclosure, even though there was a freeze against foreclosure.

23. She filed discrimination complaints with USDA in 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1992, 1993, and 1994 regarding the denials and problems she was having with FmHA/FSA, but only on one occasion received a response to her complaint—that regarding the denial of disaster payments in 1993 described above. However, even that action to respond to her complaints was tainted. First of all, she did not get a response to her complaint until 1998. At that time, she received a letter in response to her complaint purportedly signed by an official working for defendant by the name of Wardell Townsend. The letter stated that USDA found no discrimination. The problem with the letter was that Townsend, who supposedly made this conclusion, had left USDA about 1 year prior to the date he supposedly signed the letter.

24. The long and persistent pattern of denial of loans and services by FmHA/FSA during the period from 1981 on—treatment different than that the agency gave to similarly situated white farmers—was a series of willful and continuous racial/ethic discrimination; and as a result of the discrimination, Morelez's farm operation suffered severe economic losses and she ultimately lost her 80 acre farm. The absolute refusal by defendant to respond to her repeated complaints of discrimination caused her further damage as the complaints were never investigated and the wrongs committed against her thus have remained un-remedied.

* * *

25. Plaintiff and proposed Class representatives Rodolfo and Beatrice Garza are Hispanic Americans residents of Zapala County, Texas, who farmed in the 1980s.

Rodolfo Garza had been trained in agriculture at the local junior college, and, in 1983, he and Beatrice Garza acquired 39 acres of farm land in Zapala County from Beatrice's parents for the purpose of starting a vegetable production operation. This land is located in the Wintergarden area of Texas, which is renown for its production of fruits and vegetables. Their hometown, Crystal City, is known as the Spinach Capital of the World. Unable to get FSA financing to operate their farm, they farmed to the extent they could using their personal funds. They successfully put in several crops of spinach, onions, and grain sorghum.

26. In 1984 and 1986, the local newspaper ran articles about the availability, at the local FSA office, of loan funds for farming. In 1984, the Garzas sought a loan to irrigate and put in crops on all 39 acres. They submitted an application to the local FSA office, and waited for a response. FSA never responded, so Beatrice Garza contacted the office and was told that no money was available for loans. However, when she reminded the office of the article in the local newspaper, they simply told her that she and her husband did not qualify. Again in 1986, having read another article about the availability of funds, the Garzas applied for an operating loan again. They were turned down again. The Garzas knew that a number of white farmers who were friends of theirs and similarly situated farmers were able to obtain operating loans from FSA without any trouble. These included Charles Carr, Lake Smith, and Dorothy Hodges. In fact, these farmers advised the Garzas to apply to FSA for financing.

27. Concerned about these repeated denials, Beatrice Garza timely complained by letter to the Secretary of Agriculture in 1986, but never received even a response to the letter. Having been frustrated at obtaining financing from FSA and unable to finance the farm through local cooperative or commercial banks, the Garzas had to abandon their farm operation and sell the land. As a result of the discriminatory acts, the Garzas have suffered substantial economic losses and as a result of the Secretary of Agriculture ignoring their complaint about the loan denials, the Garzas suffered further damages.

* * *

28. Plaintiff and proposed Class representatives Larry and Robert Chavarria are third-generation Hispanic American farmers in Kings County, California. They have been farming for 17 years. They primarily grow crops on the family farm owned by their mother. It is a 640 acre tract with irrigation that is ideally suited for cotton and other row crops, as well as fruits and vegetables. Their grandfather cleared the land in 1944, and their family over the course of years has installed irrigation equipment on the land. They farm together as a general partnership, the Chavarria Farm Co. Neither Larry, Robert, nor the partnership had any dealings with FSA prior to 1997.

29. In 1995, the partnership suffered severe losses to their cotton crop, as did many other farmers in that area of California. The area was declared a disaster area and the Chavarrias sought to obtain a disaster loan from FSA to cover losses from the 1995 crop. Larry began his inquiries in September 1996, and filed the application in January 1997. Although the application was complete and demonstrated that the Chavarrias and the partnership fully qualified for assistance, the Kings County FSA improperly rejected the application on grounds that were later determined by the National Appeal Division ("NAD") to be without merit. In doing so, the FSA office gave excess credence to the assertions of a white landowner from whom the Chavarrias were leasing farm land and with whom the Chavarrias had a dispute regarding the white landowner's efforts to revoke the lease.

30. Larry Chavarria appealed the county office decision to the NAD and won the appeal. The hearing officer's decision substantially discounted the credibility of the white land owner and questioned the county office's giving weight to that person's assertions and the county office's abortive efforts to set Mr. Chavarria in a "sting" regarding the crops grown on the disputed lease land.

31. Even though Larry Chavarria won the appeal, the Kings and Tulane County FSA office continued to subject him and the partnership to unfair treatment. That office has denied them Production Flexibility Contract payments for the 1997 crops; it has been uncooperative and unwilling to work with him on servicing the emergency loan following a second disaster in the area in 1998.

32. FSA's initial loan denial and inadequate loan servicing were treatment different than that the agency gave to similarly situated white farmers, and amounted to willful and continuous racial/ethnic discrimination. As a result of the discrimination, the Chavarria farm operation suffered substantial economic losses.

33. Larry Chavarria filed a complaint with the Office of Civil Rights ("OCR") regarding this discrimination in 1999. Incredibly, the OCR responded that FSA's denial of the loan and related unfair acts did not raise an issue of discriminatory con-

duct by a USDA employee, so it was refusing to investigate the complaint. Further, the response letter was dated April 28, 2000, but was not postmarked until September 12, 2000. The refusal by defendant's agency to respond to the complaint of discrimination caused Larry and Robert Chavarria and the partnership further damage as the complaint was never investigated and the wrongs committed against them thus have remained un-remedied.

* * *

34. Plaintiff and proposed Class representative Rigoberto Banuelos has been farming in the Fresno, California vicinity since 1988. He acquired a 10 acre parcel in January 1986 and another 20 acre parcel in May 1988. Mr. Banuelos grows seedless grapes that are used to make raisins.

35. In 1988, 1991, and 1992, he went to the Fresno, California FmHA office to inquire into applying for loan assistance. On each visit Mr. Banuelos was told that there was no money available and that no one in the Fresno office spoke Spanish so they could not talk to him. Although Mr. Banuelos informed the FmHA officials that his wife, who accompanied him on each visit, spoke English well, he was ignored. He never received an application and was told to try private banks because FmHA could not help him.

36. Although Mr. Banuelos repeatedly complained that FmHA did not treat him as fairly as they treated white farmers, he was not able to secure a loan from FmHA. Consequently, he was unable to install a new irrigation system on his farm that would have doubled his productivity.

* * *

37. Plaintiffs and proposed Class representatives Modesto Rodriguez, Ruperto Rodriguez and Modesta Salazar are shareholders of Rodriguez Brothers Inc ("RBI"). RBI is a family owned farm of 523 acres located outside of Pearsall, TX. The Rodriguez family has owned the farm since 1952. From 1982 to 1997, Modesto Rodriguez was the principal operator of the farm.

38. During the time period covered by the complaint, RBI borrowed funds from the Frio County FmHA office. Many, if not most, of the loans made to RBI were required to be placed in SBAs despite many years of farming experience. In 1989, RBI submitted a written complaint alleging that FmHA and its Frio County supervisor discriminating against RBI by, among other things, imposing SBAs on RBI and USDA's failure to release SBA funds to permit RBI to feed its livestock during a drought.

39. In that same year, RBI also sought primary loan servicing. Nine months later its application was denied. RBI appealed the adverse decision and the NAD hearing officer ruled that the county supervisor had acted improperly in denying the loan application and that RBI was entitled to a loan and loan servicing. The hearing officer also found that the continued use of SBAs was not appropriate and reversed FmHA's decision to impose a SBA. Despite the favorable ruling by the NAD hearing officer on behalf of RBI, USDA, more than a decade later, has yet to provide the required loan servicing to RBI to which it was declared to be entitled.

* * *

40. Defendant, Michael Johanns, is Secretary of the United States Department of Agriculture, and is the Federal official responsible for the administration of the statutes, regulations and programs that are the focus of this action.

V. General Background: The USDA Farm Loan and Benefit Programs and How They Are Administered

A. Brief Description of the Programs and How USDA Implemented Them

41. The Federal agricultural programs at issue in this litigation have their genesis in the New Deal agriculture reform legislation aimed at controlling farm production, stabilizing farm income and generally helping farmers remain operational to the extent possible. In enacting this legislation, Congress recognized that the maintenance of a diverse domestic base of producers of food and fiber—particularly family farms and ranches—was a matter of national security.

42. Congress provided for the creation of the Agricultural Stabilization and Conservation Service ("ASCS") as the division of USDA charged with the responsibility for administering these programs. The basic approach to stabilizing farm income and commodity prices was to allow farmers to borrow against their crops and, if prices remained low, the crops would be forfeited to USDA with farmers receiving a high enough support price to permit them to pay off their crop loans and to keep enough money to remain economically viable. The ASCS was responsible for managing the commodities forfeited to USDA, to purchase other commodities as part of

an effort to raise prices and to inspect the warehouses in which the commodities were stored. The amount of funds available to farmers in these programs and the manner in which the programs are to be administered are periodically modified by Congress with each new farm bill.

43. Because Congress wanted to maximize the input of local farmer interests in order to ensure that the administration of the ASCS programs truly reflected local needs, it established a decentralized network of county committees ("COC") each composed of three county farmers elected by the farmers from each county. Each COC hired both the county supervisor who actually ran the county office as well as the local staff who administered the distribution of such payments in each county. The legislation also provided for a state level committee and a state executive director. Each COC determined which farmers were eligible for support and benefit payments and worked with the state committee and its director to calculate the amount each farmer was entitled to. Although the Secretary of Agriculture, with presidential approval, technically appoints the state executive director and the state ASCS committee members, the tradition is that the senior member of each state's congressional delegation who is of the same political party as the President actually controls the selection process. The county committee, the county supervisor and the county staff are state or county employees whose salaries and benefits are paid from Federal funds appropriated as part of the USDA budget. Despite this fact, the Secretary of Agriculture and the Washington headquarters staff have never effectively managed the state and county offices.

44. In addition to ASCS, the New Deal reforms enacted by Congress created three additional farm agencies. The FmHA which loaned money to farmers who could not obtain credit elsewhere for land purchases, operating expenses and construction of homes on their farms, and also provided technical assistance and (unlike traditional lenders) worked closely with farmers in an effort to help them survive. These loans include "farm ownership," "operating," and "continuing assistance" loans, as well as loans that restructure existing loans and "emergency disaster" loans. Congress specifically designed such programs to provide assistance to those family farms, particularly small, minority and otherwise disadvantaged farmers who typically cannot secure loans from private lenders. FmHA thus became the lender of last resort.

45. In creating FmHA, Congress established a separate, stand-alone FmHA county committee system which in most important respects paralleled the above-described ASCS county committee network. In each state, there was a politically appointed FmHA director, and he (unlike ASCS) appointed local county FmHA committees whose functions were to initially determine eligibility for loans and then to review recommendations by the county FmHA offices regarding which loan applications should be approved. The county FmHA offices, unlike ASCS, were staffed by Federal employees of USDA.

46. The Soil Conservation Service ("SCS") was created to assist farmers in improving and maintaining the productivity of their land. Finally, Congress established the Federal Crop Insurance Corporation ("FCIC") to manage the federally subsidized crop insurance programs.

47. As a consequence of the way Congress structured the mechanisms for administering these farm programs, USDA became a decentralized institution that placed broad, largely unfettered discretion in local officials to apply highly subjective eligibility criteria to farmers seeking to participate in USDA credit and benefit programs. Historically, USDA has permitted each of the core farm loan and benefit agencies within USDA to function essentially as uncoordinated and independent agencies, each with its own distinct policies, procedures and record keeping requirements and its own separate network of county committees. Given the vast sums of taxpayer dollars channeled into farm loan and benefits programs via the USDA—until recently it ranked second only to the Department of Defense in the total amount of Federal dollars appropriated to it—the virtual lack of true transparency and meaningful accountability which has long characterized USDA stewardship of such monies is unprecedented.

48. Numerous congressional oversight efforts, GAO studies and other reports—all uniformly critical of the manner in which USDA administered the farm loan and benefit programs—prompted Congress in 1994 to fundamentally reorganize USDA. In the fall of 1994 ASCS and FCIC were merged to form a new FSA, and the FmHA was split in two with its farm loan division folded into FSA and its home and business loan division absorbed by a newly created Rural Development Agency ("RDA").

49. The attempt to merge FmHA's farm loan division with the myriad ASCS farm programs has proven to be extraordinarily difficult because the policies, procedures and particularly the "culture" of each agency were so distinct. The overriding problem is that FmHA employees were direct employees of the Federal Government operating within policies, procedures and record keeping systems promulgated by

USDA headquarters to a much greater extent than ASCS, whereas the members and staff of the ASCS county committees were employees operating outside the Federal employee structure in a decentralized manner notwithstanding that Federal funding underwrote their salaries. Additionally, the orientation of each agency and its distinct COC network was markedly different, *e.g.,* ASCS distributed subsidies and disaster payments which generally do *not* have to be repaid, whereas FmHA made loans which had to be repaid.

50. Because the parallel decentralized county committee networks which traditionally played a substantial role in the administration of both ASCS benefit programs and FmHA loan programs was obviously unworkable in the revamped system, it was incumbent upon the Secretary to blend the two networks. It wasn't until the late 1990s that the Secretary decided to make the ASCS COC network preeminent, causing the FmHA network to atrophy. Although progress has been made in merging these disparate entities, in many areas the intramural tensions and resulting dysfunction remain problematic because of resistance of FmHA employees to accept county employees as coequal colleagues and because the ASCS county employees feared federalization.

51. The current structure is that in each state the Secretary appoints a state FSA director who is a political appointee anointed by state political apparatus. Thus, in point of fact the state FSA director is often more beholden to his political benefactors within the state than to the Secretary. Furthermore, the surviving county committee system, along with state director and state committee, created by Congress, continues to exist and function notwithstanding the absorption of ASCS by FSA, thereby perpetuating the conflicts and confusion which plagues the administration of these farm programs.

B. An Overview of the Process By Which FSA Administers Farm Loan and Benefit Programs

52. Generally speaking, the process begins when the Congress annually appropriates specific amounts of taxpayer dollars to fund the various farm loan programs. The Secretary of USDA then allocates a specific portion of those funds to each local FSA office for distribution to eligible farmers and ranchers. Should a particular local office not commit all the funds allocated to it for a particular program, those funds are transmitted back to the Secretary for reallocation to those county offices which need them.

53. Virtually every farmer has to borrow the money needed to finance the next season's crops—the cost of seed, fertilizer, additional equipment or land. Crop and equipment loans are very time sensitive—the application needs to be approved and the loan made in advance of the upcoming planting season.

54. Many farmers are able to secure the necessary financing from private lenders. For new farmers and those whose financial condition fails to meet the standards set by private lenders, the lender of last resort is USDA which offers both direct loans and guaranteed loans (the loan is made via a commercial bank on the USDA approved list and USDA guarantees it).

55. The first step in the process of securing a USDA farm loan is for the farmer to visit the county FSA office to obtain a copy of the loan application form.

56. The next step is for the farmer to fill out the loan application and to prepare a Farm and Home Plan which essentially is a financial (cash flow) plan for his farming operation. As noted, the regulations created by USDA (7 CFR § 1901 *et seq.*) to govern the loan program are enormously detailed and complex. As a consequence, most farmers need considerable assistance to fully and appropriately complete the complex application paperwork, particularly the Farm and Home Plan, which is central to the application. In recognition of this, USDA regulations direct local FSA loan officers and their staff to provide assistance—particularly to family farmers—in their efforts to secure the financing necessary to remain operational. Increasingly, those farmers who can afford to do so hire third party "loan packagers" to guide them through the application process. In sum, in order for the USDA loan program to accomplish its goal of helping those farmers most in need, it is obviously imperative that a spirit of cooperation and understanding exist between the farmer and the local FSA personnel.

57. Once all the necessary paperwork is completed to the satisfaction of the local county FSA loan officer, the application is formally deemed submitted and the review approval process technically begins to run. The FSA loan officer reviews the file and makes a recommendation which he transmits to the COC for approval. Once approved, the file is sent back to the FSA loan officer who executes the formal loan documents and arranges for the transmittal of funds to the farmer.

58. Prior to the 1994 reorganization the farm loan application/approval process was all handled within the FmHA, with the county committee making the threshold

determination regarding eligibility and then, if the applicant is deemed eligible, with the county director deciding both whether the paperwork was properly completed and ultimately whether to approve the application. Then the county committee staff would administer the loan and provide any necessary servicing.

59. Should an applicant be unhappy with the decision, he has the right to appeal the decision to the state FmHA committee and, if still unsatisfied, can seek administrative review via the National Appeals Division ("NAD") which is headquartered at USDA headquarters in Washington and maintains a network of regional and state offices.

60. Additionally, the Equal Credit Opportunity Act ("ECOA") prohibits discrimination in credit based on sex, marital status, race, color, age, national origin, or religion. 15 U.S.C. § 1691(a). If an FSA loan or loan service is denied on discriminatory grounds, the farmer can file a discrimination complaint with the defendant and the FSA Civil Rights Office (for FmHA, formerly the Equal Opportunity ("EO") office) or with the Office of Civil Rights ("OCR") (formerly known as the Office of Civil Rights Enforcement and Adjudication ("OCREA" or "CREA")).

61. As regards benefit payments, Congress must first appropriate funds earmarked for disaster (freeze; flood; drought; hurricane[,] *etc.*) relief. Then the funds are allocated to the affected states for distribution to eligible farmers. Prior to the 1994 reorganization a farmer had to visit the local ASCS county office to ascertain whether such funds had been allocated to that county, how many funds remained available and whether the farmer qualified for such payments. The process is administered pursuant to ASCS regulations (7 CFR part 700, *et seq.* and Commodity Credit Corporation ("CCC") regulations (7 CFR part 1400 *et seq.*). The ASCS county staff was the initial point of contact and aided the county supervisor in making recommendations to the ASCS county committee as regards eligibility and the amount of benefits to be paid to each farmer. Approval by the county committee was the key. Those not receiving a favorable response had the right to appeal to the state committee. Post reorganization, farmers denied benefits continue to have a right of appeal but such appeals are rechanneled via FSA's NAD. Additionally, the Constitution and Title VI of the Civil Rights Act of 1964 prohibit exclusion from participation in Federal programs based on race, color or national origin. With respect to ASCS-type applications, if a farm program application is denied on discriminatory grounds, the farmer can file a complaint of discrimination with the defendant or OCR.

62. Post reorganization the functions of the ASCS county office have been consolidated with the local FSA office, although many of the county staffers still work there. The allocation of disaster funds available to the affected counties is made at the Federal and state levels, but the determinations regarding eligibility (including inspections of the damage) and the distribution of the funds is carried out at the local FSA level after the county committee formally approves recommendations by the local FSA office regarding eligibility and distribution amounts.

VI. Systemic Discrimination Against Hispanic Farmers Has Pervaded the Administration of Farm Loan and Benefit Programs By USDA from 1981 To Date

A. The Various Ways In Which Hispanic Farmers and Ranchers Experienced Discrimination When They Sought Farm Loans and Benefits

63. At the outset it must be emphasized that historically those areas of the United States where there was a substantial Hispanic population, Hispanics experienced systemic *de jure* and *de facto* discrimination not unlike that experienced by Blacks in other parts of the country. And, USDA's decentralized administration of credit and benefit programs gave full vent to those regional and local prejudices.

64. In addition, for those Hispanic farmers who are not conversant with the finer points of written English the application forms and the extensive directions explaining how to fill them out, which until recently were available only in English, were daunting obstacles. These obstacles were made all the more daunting to some Hispanic farmers because most local FSA offices, and virtually all of the county committees and county offices, lacked personnel sufficiently [conversant] in Spanish to provide the desperately needed guidance. Even more fundamentally, the putative class has encountered a wall of hostility, manifested in variety of ways, from the staff of such offices. Thus, the Congressional mandate that the local FSA and county offices work closely and helpfully with *all* applicants has consistently fallen on deaf ears in both those decentralized USDA outposts serving areas with heavy Hispanic farm constituencies and USDA headquarters which is primarily charged with carrying out that mandate.

65. Such local offices are dominated by white males who mirrored the anti-Hispanic prejudices which permeated those areas of the country and, to a large extent,

continue to do so. There was and continues to be hostility toward Hispanics in many of these county and state offices. That hostility manifests itself in a variety of ways, including attempting to discourage Hispanic farmers from availing themselves of farm credit and non-credit benefit programs.

66. Hostility and discouragement pervade every stage of the credit or benefit process. Starting with obtaining an application, the Hispanic farmers are often discouraged from even obtaining an application. Indeed, it is common for Hispanic farmers to be told that they are too late because all the loan and/or benefit monies are gone, hence it was pointless to provide an application to them. Consequently, a number of Hispanic farmers simply gave up and went home without an application when so informed. Those Hispanic farmers who nevertheless pressed for a copy of an application form were often refused a form because office personnel told the farmers that they either were too late or the office did not have applications, only to discover that white farmers not only still received applications but succeeded in obtaining loan or benefits notwithstanding that the funds allegedly had already been spent or the supply of applications already exhausted.

67. None of the county offices or FSA offices employed any type of "receipt for service" system which recorded the fact that Hispanic (or any other) farmers visited the office to inquire about programs availability. Thus, there is no transparency as regards conduct in this crucial aspect of program administration.

68. Similarly, many Hispanic farmers were advised during their initial visit that they did not qualify for either loans or benefits—this without any application having even been filled out. Such tactics repeatedly occurred notwithstanding that the regulations promulgated pursuant to the ECOA and USDA's own regulations proscribe efforts to discourage minority farmers from applying for loans. 7 CFR § 1910.

69. Those Hispanics who succeeded in obtaining the application forms were often denied the assistance needed to both comprehend and properly complete the application. They would be told that the applications was self-explanatory, and should be completed by the farmer at home. Hispanic farmers who nevertheless requested help in completing the application were often made to feel stupid for requesting assistance and told that the office personnel did not have time to assist them. In some instances, they were urged to retain the services of expensive loan packagers, which few could afford to do.

70. Those Hispanic farmers who persisted and completed the application then had to successfully navigate a two-step process. First, the applicant had to demonstrate that he or she was eligible to receive either a loan or whatever form of benefits (usually disaster benefits) he or she sought. The second step is securing approval of the application itself. For most of the period covered by this complaint, the county committee made this critically important eligibility determination—the FmHA county committee for loans and the ASCS county committee for benefits and, post the 1994 reorganization, the FSA county committee for both loans and benefits. This localized decision making structure was, from the perspective of Hispanics, fatally flawed in two crucial respects.

71. First, the county committees were dominated by local white male farmers in what can best be described as a closed system. The Civil Rights Action Team ("CRAT"), a group of senior USDA officials appointed in 1996 by then Secretary Glickman to conduct a comprehensive investigation of alleged systemic discriminatory conduct by USDA, reported that:

> In 1994, 94 percent of all county committees had no female or minority representation. Minority producers were 4.7 percent of eligible voters, but held only 2.9 percent of county committee seats. . . . GAO found that in 1995, only 36 of the 101 counties with the largest concentration of minority farmers had at least one minority county committee member. CRAT Report at p. 3.

72. Thus, in those counties with the largest concentration of Hispanic farmers, the county committees are populated virtually exclusively by non-Hispanics who invariably reflect regional and local anti-Hispanic prejudices. Compounding the problem is the obvious conflict of interest which lies at the core of this localized administrative process—*e.g.,* the dominant group of farmers (white non-Hispanic males) controls the distribution of monies for which they themselves also compete. The playing field is clearly not level.

73. The second major defect in the USDA system is the unfettered discretion vested in the county committees in applying the highly subjective criteria governing the USDA credit and benefit programs. This combination of anti-Hispanic bias and unfettered discretion invites and facilitates discrimination.

74. For example, in administering USDA loan programs, the county committee was, for most of the period covered by the complaint, required to consider seven criteria: (1) United States citizenship; (2) the legal capacity to incur loan obligations;

(3) education and/or farming experience in managing and operating a farm or ranch; (4) character and industry to carry out the proposed operation; (5) a commitment to carry out undertakings and obligations; (6) inability to obtain sufficient credit elsewhere; and (7) farm size (the farm to be no larger than a family farm). Once eligibility was determined, the county executive director or loan officer had to approve the loan by determining, *inter alia,* whether the farmer had a viable farm and home plan. All the criteria except citizenship and age are highly subjective and thus easily subverted by persons practicing discrimination.

75. Similarly, in administering the disaster benefit and other benefit programs, the county committees are vested with broad discretion in determining which farmers are eligible to receive benefits. The criteria used are also highly subjective. For example, the farmer applicant must establish that his disaster related loss isn't related to "the neglect or malfeasance of the producer '. . . or . . .' the failure of the producer to follow good farming practices for the commodity and practice." 7 CFR § 1437.9(b)(1) and (3). Terms such as "neglect" and "good farming practices" can easily be applied in a subjective, discriminatory and arbitrary manner and given the generalized language in which such decisions are phrased, adverse decisions are difficult to reverse on appeal. The county committees readily understand all this.

76. The regulations promulgated by USDA to govern the administration of its farm loan and benefit programs have not only failed to prevent the discrimination experienced by Hispanic farmers, but have in fact contributed to and facilitated that discrimination by vesting in local official unfettered discretion to apply highly subjective eligibility criteria. Despite repeated warnings that the combination of unfettered discretion and highly subjective eligibility criteria invites and facilitates discrimination, USDA has done nothing to curtail the delegated discretion or to reduce the subjectivity in the eligibility criteria.

77. The record keeping procedures maintained by the county committees and the local and state USDA offices are grossly inadequate to reveal the true nature and extent of anti-Hispanic discrimination, which has long pervaded the administration of its farm loan and benefit programs. Despite the fact that this historic inadequacy has been well documented throughout the entire period covered by this complaint and indeed from at least the mid 1960s, USDA has done nothing to improve its record keeping in a way that would bring transparency to its lending practices. Thus the farm loan and benefit programs suffer from a total lack of transparency regarding the actions at the county and state levels where the discrimination has taken root. Without transparency there obviously is no accountability, hence the intractability of the discrimination which has long infected USDA.

78. As early as 1982 the Civil Rights Commission reported its findings regarding USDA's discrimination against minorities, noting that as the lender of last resort, the USDA applied primarily subjective criteria. The report noted that: "[the] regulations intended to implement these goals leave room for a wide range of subjective implementation. . . . The problem of subjectivity permeates much of the FmHA loan decision process. . . . Lack of specific criteria for loan determinations potentially enhances FmHA's flexibility and ability to serve clients. It also creates loopholes which allow for discriminatory treatment." United States Commission on Civil Rights, *The Decline of Black Farming In America,* pp. 80–81 (1982).

79. The various consequences of the decades of discrimination practiced by USDA against Hispanic farmers in the administration of its farm loan and benefit programs are:

(a) many Hispanics abandoned their intention to apply for a loan because USDA erroneously asserted that all the loan funds had already been allocated or because the USDA officials refused to provide loan application materials;

(b) information about availability of disaster payments or other benefit programs was either not communicated effectively to Hispanics at all or too late for them to apply;

(c) as regards both loan and benefit programs, Hispanics typically experienced hostility, lack of civility, no cooperation or an unwillingness to provide assistance or information at all stages of the application process;

(d) USDA personnel exercised unfettered discretion discriminatorily to declare Hispanics ineligible to obtain loans or to receive benefits;

(e) USDA personnel exercised unfettered discretion discriminatorily to deny approval of loans or payments of benefits to Hispanics deemed eligible to apply for loans or benefit payments;

(f) in those instances in which defendant approved loans or benefit payments to Hispanics, approvals were often untimely (well after the planting season began) and/or for amounts much less than requested;

(g) defendant often demanded that Hispanics provide a greater amount of collateral for loans than would otherwise be required thereby exposing Hispanics to far greater risk;

(h) defendant often conditioned its approval of a loan to Hispanics upon a willingness to accept a supervised loan account which required Hispanics to periodically submit to a monitoring of their farming operations by the local FSA office as a condition to receiving each incremental release of previously approved loan funds, which is both burdensome and insulting;

(i) should Hispanics experience difficulty in making loan payments (as all farmers and rancher periodically do given the inherent vicissitudes of nature and commodity markets), defendant failed to provide loan servicing and to otherwise work closely and cooperatively as required by law and regulation in an effort to avoid foreclosure; and

(j) defendant invariably accelerated the foreclosure process when Hispanics experienced repayment difficulties.

80. Non-Hispanics, particularly white males, experienced the above described problems to a much lesser extent, if at all, than did Hispanics because they did not experience similarly discriminatory policies, procedures and attitudes by defendant.

B. The Anti-Hispanic Discrimination Which Pervades USDA Makes It Virtually Impossible for Plaintiffs To Secure Redress Through the USDA Appeals Processes

81. Applicants denied loans or benefits can pursue administrative appeals. Prior to the 1994 consolidation, FmHA and the ASCS each operated parallel but separate administrative appeals processes. Thereafter the NAD was created to handle all such appeals, but NAD had no authority to consider discrimination complaints.

82. When a Hispanic farmer appealed an adverse decision to the NAD and prevailed, often the loan supervisor and county committee would simply refuse to implement the NAD decision and purport to undertake a complete review of the application, often requiring the submission of new information because the application was by then more than 90 days old. Notwithstanding the favorable decision by the NAD with respect to the appeal, the local officials frequently rejected the revised or reviewed application, thereby forcing the farmer to either undertake yet another appeal or give up.

83. Because there has long been a recognition that discrimination pervades the administration of USDA farm loan and benefit programs, USDA permits applicants to file a complaint of discrimination either with FSA Civil Rights Office (formerly the FmHA Equal Opportunity Office) or with Departmental Office of Civil Rights ("OCR") (formerly designated as the Office of Civil Rights Enforcement and Adjudication) ("OCREA").

84. In 1983, the enforcement capability of EO and OCREA was so severely curtailed through lack of funding and lack of interest that USDA essentially had no capability to investigate civil rights complaints. This development was not publicized, so plaintiffs, putative class members and other minorities continued in good faith to file discrimination complaints not knowing that the investigative staffs had been disbanded and that the complaints were ignored. This constituted a willful failure by USDA to investigate discrimination in violation of the 1964 Civil Rights Act and the ECOA that continued at least until the mid-1990s.

85. USDA's refusal to eliminate discrimination from the administration of its programs and its unwillingness to recognize and endorse the civil rights of Hispanic and other minority farmers have been widely known, discussed and condemned at least since the mid-1960s. Detailed findings demonstrating the pervasiveness of the abuses and the immediate need for meaningful reform are contained in internal reports by USDA's CRAT and a series of subsequent progress reports by USDA's Office of Inspector General to then Secretary Glickman and issued in 1997, and reports by GAO, the Civil Rights Commission and various congressional oversight committees.

86. USDA's blatant disregard of the requirements of ECOA and the 1964 Civil Rights Act—particularly the effective dismantling of the OCR—prompted Congress to enact special legislation in 1998 (§ 741 of the Omnibus Consolidated Appropriation's Act for Fiscal Year 1999) which waived, *inter alia,* the ECOA's statute of limitations applicable to claims regarding farm credit arising between January 1, 1981 and December 31, 1996.

87. USDA has codified regulations, 7 CFR Part 15—"Nondiscrimination," which state USDA's ostensible policy of nondiscrimination in federally assisted and conducted programs in compliance with Title VI of the Civil Rights Act of 1964. The regulations should have served as a basis for civil rights compliance and enforcement with respect to participants in FSA programs; however, USDA admitted that

the regulations have long been outdated and never accurately reflected the Department's agencies, programs and laws. *See* OIG Report at 5.

88. The February 27, 1997 OIG Report addressed complaints of discrimination within FSA as well as ten other USDA agencies. OIG found, *inter alia,* that the FSA's discrimination complaint process lacked integrity and accountability, had no effective tracking system, had no process for reconciliation, was in disorder, failed to resolve discrimination complaints, and had a massive backlog. OIG found that the FSA staff responsible for processing the discrimination complaints consisted of two untrained and unqualified people. Hundreds of unresolved complaints were over a decade old. OIG found no management oversight within FSA with respect to the handling of civil rights complaints.

89. At the same time that OIG released its report, the USDA CRAT Report was released, condemning USDA's lack of civil rights enforcement and accountability as a cause of the drastic decline in the number of minority farmers.

90. In the CRAT Report, the USDA described the pattern and practice of disparate treatment experienced by minority and limited resource farmers applying to USDA for loans:

> The minority or limited-resource farmer tries to apply for a farm-operating loan through the FSA county office well in advance of planting season. The FSA county office *might claim to have no applications available* and ask the farmer to return later. Upon returning the farmer might receive an application *without any assistance* in completing it, then be asked repeatedly to correct mistakes or complete oversight in the loan application. Often those requests for correcting the application could be stretched for months, since they would come only if the minority farmer contacted the office to check "on the loan processing." *By the time processing is completed, even when the loan is approved, planting season has already passed* and the farmer either has not been able to plant at all, or has obtained limited credit on the strength of an expected FSA loan to plant a small crop, usually without the fertilizer and other supplies necessary for the best yields. The farmer's profit is then reduced. CRAT Report at 15 (emphasis added).

91. USDA admitted in the CRAT Report that (a) discrimination complaints at USDA were often ignored, and

(a) that farmers reported that even when there was a finding of discrimination, USDA refused to pay damages. CRAT Report at 22–23;

(b) its record keeping on discrimination complaints was "non-existent," that a backlog existed, and that the largest number of complaints against a single USDA sub-agency was against FSA. CRAT Report at 24–25; and

(c) a lack of diversity in FSA county offices combined with a lack of outreach to small and limited-resource farmers to directly and adversely affects that participation of Hispanics and other minorities in USDA programs (CRAT Report at 26–27), as well as program delivery to minorities and women. CRAT Report at 45.

92. USDA admitted that cultural insensitivity interferes with Hispanic participation:

> Customers at the recent listening sessions reiterated the special needs of different minority and socially disadvantaged communities. All communities agreed that they are overlooked when information is released about available USDA programs. USDA agencies do not make use of minority community organizational and media outlets to be sure all eligible participants know about their programs. Cultural barriers prevent the communication necessary for good service by USDA programs.
>
> Young men and women who want to follow in the family footsteps, either by taking over the family farm or by buying their own, oftentimes find it difficult to obtain financing for their ventures. According to several speakers at the listening sessions, FSA has denied loans to new or beginning farmers despite years of working on their family farm or receiving advanced degrees in agriculture. CRAT Report at 27.

93. In sum, USDA admitted that USDA does not support or enforce civil rights:

> USDA does not have the structure in place to support an effective civil rights program. The Assistant Secretary for Administration lacks authority and resources essential to ensure accountability among senior management ranks. There has been instability and lack of skilled leadership at the position of USDA Director of Civil Rights. Dividing up the Department's Civil Rights office

between policy and complaints has further exacerbated the problem. The division of responsibility for civil rights among different USDA offices and agencies has left confusion over enforcement responsibilities. Finally, OGC is perceived as unsupportive of civil rights. CRAT Report at 56.

94. On September 29, 1997, USDA's Office of Inspector General ("OIG") issued Phase II of the OIG Report on Civil Rights Issues, entitled "Minority Participation In Farm Service Agency's Farm Loan Programs—Phase II" ("OIG Report II"), which found, *inter alia,* that (a) USDA had resolved only 32 of the 241 outstanding discrimination complaints reported in the OIG Report (back in February 1997) and (b) the backlog of discrimination complaints had increased from 241 to 474 for FSA and from 530 to 984 for all of USDA.

95. On September 30, 1998, the USDA's Office of Inspector General released its "Report to the Secretary on Civil Rights Issues—Phase V" ("OIG Report V") which found that significant problems within OCR persisted. It found, *inter alia:*

a. The Department through [OCR], has not made significant progress in reducing the complaints backlog. Whereas the backlog stood at 1,088 complaints on November 1, 1997, it still remains at 616 complaints as of September 11, 1998. OIG Report V, cover letter to Secretary.

b. The backlog is not being resolved at a faster rate because [OCR] itself has not attained the efficiency it needs to systematically reduce the caseload. Few of the deficiencies we noted in our previous reviews have been corrected. *The office is still in disarray, providing no decisive leadership and making little attempt to correct the mistakes of the past.* We note with considerable concern that after 20 months [OCR] has made virtually no progress in implementing the corrective actions we thought essential to the viability of its operations. OIG Report V at i (emphasis added).

c. Most conspicuous among the uncorrected problems is the *continuing disorder within* [OCR]. The database [OCR] uses to report the status of cases is *unreliable and full of errors,* and the files it keeps to store needed documentation are *slovenly and unmanaged.* Forty complaint *files could not be found,* and another 130 complaints that were listed in USDA agency files were not recorded in [OCR]'s database. *Management controls were so poor* that we could not render an opinion on the quality of CR's investigations and adjudications. OIG Report V at iii (emphasis added).

d. Of equal significance is the absence of written policy and procedures. OIG Report V at iii.

e. The absence of formal procedures and accurate recording raises questions about due care within the complaints resolution process. *We found critical quality control steps missing at every stage of the process.* Staff members with little training and less experience were put to judging matters that carry serious legal and moral implications. *Many of* [OCR]'s *adjudicators, who must determine whether discrimination occurred, were student interns.* Legal staff members with the Office of General Council ("OGC"), who review [OCR]'s decisions for legal sufficiency, have had to return over half of them because they were based on incomplete data or faulty analysis. We noted that a disproportionately large percent of the 616 cases of unresolved backlog had bottlenecked in the adjudication unit. OIG Report V at iii (emphasis added).

96. Upon information and belief, this systemic pattern of ineffectiveness has continued. As reported on March 10, 2000, OIG Report VII stated:

a. This is our *seventh* attempt to provide CR with constructive ways to overcome its inefficiencies. Based on the results of our review and on the operating environment we observed at [OCR], we cannot report encouraging news. OIG Report VII. Viadero cover letter at 1 (emphasis is original).

b. Based on the findings of our current review on [OCR]'s poor record of responding to our past recommendations, it is difficult to recognize any significant level of progress. Unless [OCR] implements a management plan that addresses effective leadership, changing organizational culture, customer focus, and process re-engineering, we question whether future complaints of discrimination in the distribution of program benefits will receive due care. OIG Report VII, Viadero cover letter at 1–2.

c. Many other critical issues remain unresolved. Most notably, [OCR] did not reengineer its complaints resolution process. Although, [OCR] officials had previously agreed that the system they used to process complaints was neither effective nor efficient and although we recommended a major transformation

of this system, *no significant changes in how complaints are processed have been made.* As a result, we cannot conclude that all complaints are processed with due care. OIG Report VII at i (emphasis in original).

d. Since February 1997, we have issued six reports on civil rights issues relating to the program complaints process administered by CR. Those six reports contained 67 recommendations, 54 of which were directed at CR (the remaining 13 were directed at the Farm Service Agency). During the current review, we found that 41 recommendations (all directed at [OCR]) have not been adequately addressed by [OCR], based on the actions taken as of December 1, 1999. As a result, we still have concerns that [OCR] may not be providing due care when processing complaints alleging discrimination in USDA programs. OIG Report VII at 14.

97. Upon information and belief, the systematic pattern of ineffectiveness is still affecting USDA today. Among other things, in its February 2003 report, the EEOC found that:

a. sub-components to USDA's OCR "'what they want to do' because they have no accountability to [OCR]", EEOC Report at 9;

b. OCR does not investigate complaints of discrimination within the regulatory time period. Data supplied by USDA indicates that it takes OCR on average 594 days to complete an EEO investigation. The EEOC regulations require such an investigation to be completed within 180 days, unless the complainant agrees to an extension of time in writing, for a maximum of 270 days. *Id.* at 16–17;

c. OCR does not have an effective EEO complaint tracking system and process. *Id.* at 18;

d. data entered into the system is unverified and unreliable. *Id.* at 20; and

OCR's current interpretation of what is a complaint and when it is officially received undercounts the actual number of complaints being made to OCR and provides a distorted picture of complaint activity. *Id.*

98. In sum, USDA's willful disregard of, and failure to properly investigate, discrimination complaints from Hispanics farmers began with the disbanding of civil rights enforcement functions in 1983. Furthermore, even after February 1997, when the enforcement staff of the OCR was formally reestablished, USDA has failed to afford meaningful investigation and review of discrimination complaints. Finally, USDA continues to turn a blind eye toward the discrimination against Hispanic farmers in the administration of USDA farm loan and benefit programs which still persists in many local areas which contain large numbers of Hispanics.

VII. Statute of Limitations Is Waived

99. On October 21, 1998, President Clinton signed into law the Omnibus Consolidated Appropriations Act for Fiscal Year 1999, P.L. 105–277, Div. A, § 101(a) [§ 741], 112 Stat. 2681 (codified at 7 U.S.C. § 2279, Note). Said legislation waives the statute of limitations for plaintiffs in this case. In connection with claims arising from acts of discrimination by USDA in its administration of the farm loan and disaster assistance programs which occurred between January 1, 1981 and December 31, 1996.

100. In addition, other ostensible applicable statutes of limitations applicable to various putative class members are tolled because the failure of such plaintiffs to file timely complaints was caused by actions or inactions caused by USDA of which plaintiffs were unaware owing to defendant's conduct.

101. Finally, as to acts of discrimination suffered by plaintiffs from October 13, 1998 and beyond the date of the filing of this complaint, there is no statute of limitations issue.

VIII. Class Action Allegations

102. Plaintiffs generally bring this class action on behalf of Hispanics who farmed or ranched, or attempted to farm or ranch, during the period January 1, 1981 to the present and who were discriminated against by the USDA on the basis of national origin when they sought to participate on equal terms in farm loan and disaster benefit programs and who complained to USDA about such discrimination. The predominant purpose in doing so is to achieve definitive and lasting reform of the USDA policies, procedures and practices which permitted this discrimination to occur and endure for so many years, to the end that the transparency and resulting accountability essential to such reform be achieved. A secondary, but important, purpose is to establish a fair and equitable method of permitting recovery of monetary damages suffered as a consequence of such discrimination to the maximum extent feasible.

103. The discrimination practiced against plaintiffs occurred at various stages in the process by which USDA administered its farm loan and non-credit benefit programs. Consequently, there are several distinct groups of plaintiffs differentiated by the particular stage of the process where they experienced discrimination, to wit:

a. *Subclass A*—those Hispanics whom defendant sought to discourage from availing themselves of USDA farm loan or non-credit benefit programs by refusing to provide either an application form or assistance in completing the application and pursuing the application process[.]

b. *Subclass B*—those Hispanics whom defendant sought to discourage from availing themselves of USDA farm loan or non-credit benefit programs by protracted delays in the processing of their applications and the funding of approval loans.

c. *Subclass C*—those Hispanics whom defendant sought to discourage from availing themselves of the USDA farm loan and non-credit benefit programs by the use of highly subjective criteria to reject their applications.

d. *Subclass D*—those Hispanics whom defendant sought to discourage from availing themselves of the USDA farm loan or non-credit benefit programs by subjecting Hispanic farmers to supervised bank accounts[.]

e. *Subclass E*—those Hispanic farmers whom defendant sought to discourage from availing themselves of farm credit or non-credit benefit programs by delaying or denying loan servicing.

104. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)–(4) and, as appropriate, 23(b)(1), (b)(2) and, or (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy and predominance and superiority requirements of those provisions.

105. The class is so numerous that individual joinder of all the members is impractical and that compelling each plaintiff to institute and pursue a separate action to secure the remedial relief essential to the eradication of systemic, pervasive discrimination practiced against each, and/or to recover monetary damages as compensation for the economic harm caused by discrimination, is both impractical and a needless burden on the courts. The number of Hispanic farmers in the United States in 2002, the date of the last published Agricultural Census, is approximately 50,592, for *all* of whom securing remedial relief is essential.

106. Common questions of law and fact exist as to all members of the class, whether viewed as a Rule 23(b)(2) or (b)(3) class, and predominate over any questions affecting only individual members of the class. These common legal and factual questions spring from a central undisputed and overriding reality that for decades the USDA knowingly tolerated the existence of pervasive discrimination in the administration of its farm loan and disaster benefit programs created by a highly decentralized, localized system of county committees who were free to act on a wholly subjective basis with no meaningful supervision from senior management of USDA. This core factual reality does not vary from class member to class member and may be established without reference to individual circumstances of any particular class member. Consequently, the general combination of wholly subjective decision making by local officials reflecting the prevailing prejudices of each locale, and the lack of oversight by USDA produced a pattern and practice of discrimination in areas which Hispanic farmers were concentrated, and this pattern and practice were perpetuated for years in violation of law.

107. Additional common questions include:

(a) Did USDA attempt to deny Hispanics farm credit and loan servicing in violation of the ECOA?

(b) Did USDA seek to deny Hispanic farmers access to noncredit farm benefit programs?

(c) Did USDA attempt to discourage Hispanics from availing themselves of farm credit and loan servicing in violation of the ECOA, Regulation B promulgated pursuant thereto, and USDA's own regulations with respect to farm credit?

(d) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by denying them applications and assistance in completing applications?

(e) Did defendant's attempts to discourage Hispanic farmers from availing themselves of farm credit by denying them applications and assistance in completing applications violate the ECOA, Regulation B promulgated pursuant thereto and USDA's own regulations?

(f) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by delaying the processing of their loan applications?

(g) Did defendant's attempts to discourage Hispanic farmers from availing themselves of farm credit by delaying the processing of their loan applications violate the ECOA, Regulation B promulgated pursuant thereto and USDA's own regulations?

(h) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by using highly subjective criteria to reject their loan applications?

(i) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by using highly subjective criteria to reject their loan applications violate the ECOA, Regulation B promulgated pursuant thereto and USDA's own regulations?

(j) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by subjecting them to supervised bank accounts?

(k) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by subjecting them to supervised bank accounts violate the ECOA, Regulation B promulgated pursuant thereto and USDA's own regulations?

(l) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by delaying or denying loan servicing?

(m) Did defendant attempt to discourage Hispanic farmers from availing themselves of farm credit by delaying or denying loan servicing violate the ECOA, Regulation B promulgated pursuant thereto and USDA's own regulations?

(n) Did defendant fail to investigate or to process discrimination complaints made by Hispanic farmers?

(o) Did defendant's failure to investigate or to process Hispanic farmers' civil rights complaints violate the ECOA?

108. Plaintiffs' claims are typical of the claims of the members of the class, all of whom, by virtue of USDA's arbitrary and unlawful actions, have been denied equal access to loans or loan servicing, and to non-credit benefit programs, and were denied due process in the enforcement of their discrimination complaints, and have been subject to USDA's institutional and systematic failure to enforce the civil rights laws intended to benefit plaintiffs and members of the class.

109. Plaintiffs are adequate representatives of the class because they are members of the class and their interests do not conflict with the interests of the members of the class they seek to represent. The named plaintiffs' claims are consistent with the claims of other class members. Plaintiffs' counsel are experienced class action lawyers who will adequately represent the class.

110. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of class members' claims regarding USDA's institutional and systematic deprivation of their civil rights as described in this Complaint is impracticable. Even if any class members could afford to litigate, it would be unduly burdensome to the courts to litigate each individual case. Individual litigation further presents a potential for inconsistent or contradictory judgments and increases the delay and expenses to all parties and the court system in resolving the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication of what essentially is one problem, economies of scale, and comprehensive supervision by a single court. Notice of the pendency of any resolution of this class action can be provided to class members by publication and broadcast; in addition, each class member's farm number, address, application date and payment results is readily available to defendants.

Count I

(Declaratory Judgment)

111. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

112. An actual controversy exists between plaintiffs and class members and defendant as to their rights with respect to defendant's farm loan and non-credit benefit programs.

113. Plaintiffs and the class members pray that this Court declare and determine, pursuant to 28 U.S.C. § 2201, the rights of plaintiffs and class members under defendant's farm programs including their right to equal credit, and to equal participa-

tion in farm loans and disaster benefit programs, and their right to full and timely enforcement of national origin discrimination complaints.

Count II

(Violation of Equal Credit Opportunity Act)

114. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

115. USDA's acts of denying plaintiffs and class members applications for loans and requests for loan servicing, delaying the processing of their applications, rejecting applications on highly subjective eligible criteria, subjecting them to SBAs, denying or delaying loan servicing, and systematically failing to properly process or to investigate their discrimination complaints was discrimination on the basis of national origin and, was contrary to the requirement of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a).

Count III

(Violation of Administrative Procedure Act)

116. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

117. USDA's acts of denying plaintiffs and class members equal access to non-credit benefit programs and of systematically failing to properly investigate and/or process their discrimination complaints were contrary to the requirements of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq*.

Prayer for Relief

Wherefore plaintiffs respectfully request this Court to:

1. declare that the practices, policies, patterns, and procedures described in this Complaint exist at the USDA and that they are unlawful;

2. issue a permanent injunction prohibiting the defendant, the USDA, its officers, agents, employees and successors from engaging in discrimination in the administration of USDA farm loan and non-credit benefit programs as alleged herein, including but not limited to:

(a) refusing to provide applications to, deterring, or otherwise attempting to deter or discourage Hispanic farmers from applying for farm loans and non-credit benefits;

(b) applying more stringent underwriting standards or otherwise discriminatorily denying loans to Hispanic farmers who otherwise were qualified;

(c) providing inadequate or less assistance to Hispanic farmers in completing farm loan applications and/or farm and home plans and in applying for non-credit benefits;

(d) granting loans to Hispanic farmers and ranchers on differential and less advantageous terms than similarly situated white male farmers; and

(e) discriminatorily denying Hispanic farmers and ranchers servicing on their loans, or providing less advantageous servicing to Hispanic farmers than that offered to similarly situated white male farmers.

3. issue a permanent injunction requiring that the USDA adopt lending practices in conformity with the requirements of the Equal Credit Opportunity Act and the AdministrativeProcedure Act;

4. issue an order mandating that USDA remedy its discriminatory patterns and practices by:

(a) taking affirmative action to advertise in appropriate media outlets designed to reach Hispanic farmers that USDA encourages and welcomes Hispanic farmers to avail themselves of all of the services offered by USDA and that any action taken by any USDA employee or representative that in any way makes Hispanic farmers feel unwelcome or seeks to deter them from availing themselves of all services provided by USDA shall be reported to the Secretary via a toll free 800 number and fully investigated;

(b) adopting a system of providing a receipt for service to all farmers and ranchers who visit local FSA offices to inquire about, or to apply for, USDA farm loans or noncredit benefits;

(c) requiring FSA personnel to provide full and equal assistance to all farmers who request it without regard to sex, race, national origin, marital status or any other discriminatory basis proscribed by the ECOA;

(d) providing applications and explanations regarding both the farm loan and disaster benefit programs in Spanish;

(e) providing that those local FSA offices serving areas with large numbers of Hispanic farmers and ranchers employ persons both fluent in Spanish and familiar with Hispanic culture to assist Hispanic farmers and ranchers in applying for farm loan and non-credit benefit programs and in securing appropriate levels of servicing and other forms of assistance as necessary;

(f) providing, for a period sufficient to ensure that long standing discriminatory practices finally end, a system by which Hispanic farmers and ranchers who are or have been aggrieved by conduct at local FSA offices have an opportunity for an expedited review via independent mediators; and

(g) providing that those state and local FSA offices servicing Hispanic farmers and ranchers provide semi-annual reports to the Secretary detailing the particulars of each application for farm loans and disaster benefits by Hispanics and the disposition thereof;

5. to require that USDA, under supervision of the Court, promptly redesign its computerized data collection system as regards its administration of farm loans and non-credit benefit programs in order to ensure that full transparency is achieved and to permanently enjoin defendant and her successors from modifying the data collection system in any manner that has the effect of reducing or in any way hindering the transparency of the data collection system;

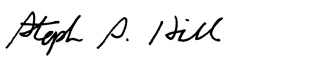
6. once the modernization of the data collection system as described in ¶5 *supra* is accomplished, to require the Secretary to issue public annual reports detailing the extent of Hispanic participation in such programs;

7. to devise a method, consistent with avoiding undue burden upon the Court and defendant and mindful of the public interest in ensuring that fraud be avoided to the maximum extent practicable, by which to award compensatory damages to deserving plaintiffs;

8. award reasonable attorneys' fees and costs, including expert fees, and interest; and

9. order such other and further relief, including but not limited to such specific remedies, as the Court deems just and proper.

Respectfully submitted,



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SUBMITTED REPORT BY HON. ANN KIRKPATRICK, A REPRESENTATIVE IN CONGRESS FROM ARIZONA

Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands

May 2019
GAO–19–464

GAO Highlights

Highlights of GAO–19–464, a report to congressional committees.

Why GAO Did This Study

About 46 million of the 56 million acres of the land that the Federal Government holds in trust for the benefit of Indian Tribes and their members has an agricultural purpose. However, Tribal agriculture and economic development experts have noted that Indian Tribes and their members may need improved access to agricultural credit.

Congress included a provision in statute for GAO to review the ability of FCS to meet the agricultural credit needs of Indian Tribes and their members on Tribal lands. This report describes (1) what is known about the agricultural credit needs of Indian Tribes and their members, (2) barriers stakeholders identified to agricultural credit on Tribal lands, (3) FCS authority and actions to meet those agricultural credit needs, and (4) stakeholder suggestions for improving Indians' access to agricultural credit on Tribal lands.

GAO explored potential data sources on Indians' agricultural credit needs, conducted a literature review, and reviewed statutes and regulations governing Tribal lands and FCS. GAO also reviewed the marketing plans and written responses of a nongeneralizable sample of 11 FCS associations whose territories included Tribal lands with high levels of agricultural activity. GAO interviewed stakeholders from a sample of seven Tribes (generally selected based on Tribal region and agricultural activity), experts in Tribal agriculture and economic development (selected based on relevant publications, Congressional testimonies, and others' recommendations), and representatives from FCS and its regulator, the Farm Credit Administration, and other relevant government agencies.

View *GAO–19–464*.* For more information, contact Alicia Puente Cackley at (202) 512–8678 or *cackleya@gao.gov*.

What GAO Found

Limited data are available on the needs of Indian Tribes and their members for agricultural credit, such as operating or equipment loans, to develop and expand agricultural businesses on Tribal lands. Federal regulations have generally prohibited lenders from inquiring about the personal characteristics, such as race, of applicants on nonresidential loans. Some Tribal stakeholders and experts said that Tribal members may not have applied for agricultural credit because they heard of other Tribal members being denied loans. They said that Tribal members likely obtain agricultural credit from Department of Agriculture programs or Tribal lenders. Another potential source of agricultural credit is the Farm Credit System (FCS), a government-sponsored enterprise that includes 69 associations that lend to farmers and ranchers.

Tribal stakeholders and experts reported a general lack of commercial credit on Tribal lands due to the following factors:

- **Land use restrictions.** Most Tribal lands only can be used as loan collateral in certain circumstances or with Federal permission.
- **Administrative process delays.** Tribal members reported often encountering delays obtaining necessary Federal loan documents.
- **Legal challenges.** Lenders reported concerns about their ability to recover loan collateral due to the unique legal status of Tribes.
- **Loan readiness.** Tribal members may have no or poor credit histories and be unfamiliar with the paperwork required for an agricultural loan, such as a business plan.

FCS is authorized to provide a range of credit services to eligible agricultural producers, which may include Indian Tribes, Tribal businesses, and Tribal members. FCS associations must obtain land as collateral for long-term real estate loans, but are not required to do so for shorter-term loans, such as for operating costs or equipment purchases. Some FCS associations GAO contacted reported making loans to

* *https://www.gao.gov/products/GAO-19-464*.

Indian Tribes or their members. In a sample of 11 FCS associations with Tribal lands in their territory, eight said they have loaned to Tribes or their members in the past 2 years. GAO's review of these 11 associations' marketing plans and written responses to GAO follow-up questions found that seven noted outreach—such as support for agricultural education activities—targeted to Tribes and their members. The other four reported broad and general outreach efforts that also included minority groups.

To improve access to agricultural credit on Tribal lands, stakeholders discussed several options. For example, some stakeholders discussed the potential for partnerships between commercial or government lenders and Tribal lenders (such as Native Community Development Financial Institutions) and increased use of loan guarantees. Some stakeholders also discussed actions Tribes could take to ease barriers to lending, such as adopting their own leasing procedures to reduce administrative processing time with Federal agencies for certain loans.

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Abbreviations

BIA	Bureau of Indian Affairs
FCA	Farm Credit Administration
FCS	Farm Credit System
HEARTH Act	Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012
Interior	Department of the Interior
Native CDFI	Native Community Development Financial Institution
USDA	Department of Agriculture

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May 9, 2019

Hon. PAT ROBERTS,
Chairman;
Hon. DEBBIE STABENOW,
Ranking Minority Member,
Committee on Agriculture, Nutrition, and Forestry,
United States Senate;
Hon. COLLIN C. PETERSON,
Chairman;
Hon. K. MICHAEL CONAWAY,
Ranking Minority Member,
Committee on Agriculture,
House of Representatives;
Hon. RAÚL M. GRIJALVA,

Chairman;
Hon. ROB BISHOP,
Ranking Minority Member,
Committee on Natural Resources,
House of Representatives.

Approximately 46 million acres of the 56 million acres the Federal Government holds in trust for the benefit of Indian Tribes and their members has an agricultural purpose, according to the Department of the Interior's (Interior) Bureau of Indian Affairs (BIA).[1] Agricultural activity on Tribal lands can include farming, ranching, aquaculture, and other agribusinesses.[2] Tribal agriculture and economic development experts have noted that Indian Tribes and their members may need improved access to agricultural credit, such as operating or equipment loans, to develop and expand agricultural businesses on Tribal lands. One source of agricultural credit is the Farm Credit System (FCS), a national network of customer-owned lending institutions.

The Agricultural Improvement Act of 2018 included a provision for us to study the agricultural credit needs of Indian Tribes and their members on Tribal lands, and FCS institutions' authority and resources to meet those needs. This report describes (1) what is known about the agricultural credit needs of Indian Tribes and their members on Tribal lands, (2) the barriers stakeholders and experts identified that Indian Tribes and their members on Tribal lands face in obtaining agricultural credit to meet their needs, (3) FCS's lending authority and lending and outreach activities on Tribal land, and (4) suggestions stakeholders have discussed to improve access to agricultural credit on Tribal lands.

To address all the objectives, we reviewed relevant Federal statutes, regulations, and other legal documentation. We interviewed officials from the Farm Credit Administration (FCA), BIA, the Department of Agriculture (USDA), and FCS's trade association, the Farm Credit Council. We interviewed experts on Tribal agriculture and economic development from advocacy groups and academia, selected based on relevant publications, testimonies before Congress, or recommendations from other experts in these fields. Throughout this report, we refer to them as experts.

We also interviewed stakeholders associated with seven selected Tribes.[3] We first selected six Tribes from locations in different regions (Great Plains, Rocky Mountain, Northwest, Southwest) and one state (Oklahoma). Within these regions, the selected Tribes were those with generally large Tribal land areas with high levels of agricultural activity, as indicated by the USDA 2012 Census of Agriculture data.[4] Four of the six Tribes we contacted to request interviews provided us with various contacts. As a result, for four Tribes, we interviewed Tribal agriculture department employees, Tribal farm employees, or representatives of the Native Community Development Financial Institution (Native CDFI) serving the Tribe.[5] We then selected three additional Tribes based on USDA data or recommendations from experts we interviewed.[6] For these three Tribes, we interviewed employees of Tribal farms or representatives of Native CDFIs or community development corporations. Throughout this report, we refer to Tribal government employees, Tribal farm employees, or representatives of Native CDFIs or community development corporations serving a Tribe as Tribal stakeholders. Although the information we obtained from the Tribal agriculture department employees allowed us to provide anecdotal Tribal perspec-

[1] See Bureau of Indian Affairs, "Branch of Agriculture and Rangeland Development," accessed on April 18, 2019. *https://www.bia.gov/bia/ots/division-natural-resources/branch-agriculture-and-rangeland-development*. BIA officials told us that tracts with agricultural utilization also may have coinciding land uses that do not prohibit or interfere with agriculture purposes. Individuals and Tribes decide how to use their respective lands and report those decisions to BIA.

[2] For purposes of this report, "Tribal lands" refers to reservations (including all land within the reservations' boundaries), trust land, allotments, and restricted fee land. We discuss the types of Tribal lands in more detail later in the Background. Also see *appendix I.*

[3] Our report generally addresses the agricultural credit needs of Tribes and their members in the lower 48 states. See *appendix I.*

[4] Department of Agriculture*, 2012 Census of Agriculture: American Indian Reservations,* Subject Series, Part 5, AC–12–S–5 (Washington, D.C.: August 2014). This was the most recent available version of the reservation data as of April 2019.

[5] CDFIs expand economic opportunity in low-income communities by providing access to financial products and services for local residents and businesses. The Department of the Treasury's CDFI Fund has a Native American CDFI Assistance Program that makes financial and technical assistance awards to Native CDFIs (certified or certifiable CDFIs where at least 50 percent of the activities serve Native Americans, Alaska Natives, and/or Native Hawaiians). There were 68 certified Native CDFIs as of February 2019, according to the CDFI Fund.

[6] We contacted the additional three Tribes to supplement our original sample. For more information, see *appendix I.*

tives, it is not generalizable to the 573 federally recognized Indian Tribes. The views of Tribal farm employees and Native CDFI and community development corporation representatives also cannot be generalized to Tribes but illustrate views on needs, barriers, and other issues from the perspectives of the organizations.

To address the first objective on agricultural credit needs, we also reviewed Federal data sources and Federal regulations related to collecting data on loan applicants' personal characteristics for nonresidential loans.

To supplement the limited data and provide additional information for the second objective on barriers to obtaining agricultural credit, we conducted a review of literature from government and academic reports and identified additional materials through citations in literature we reviewed.

To collect information for the third objective, we reviewed the marketing plans of a nongeneralizable sample of 11 FCS associations whose territories included large Tribal land areas with high levels of agricultural activity. We also obtained written responses from the 11 associations to a series of questions we posed about their lending and outreach to Tribes and their members and any challenges in making loans involving Tribal lands. For more information on our scope and methodology, see *appendix I*.

We conducted this performance audit from December 2018 to May 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Indian Tribes and Tribal Land Types

As of May 2019, the Federal Government recognized 573 Indian Tribes as distinct, independent political communities with certain powers of sovereignty and self-government, including power over their territory and members. The Tribes can vary greatly in terms of their culture, language, population size, land base, location, and economic status. As of the 2010 U.S. Census, about 21 percent, or 1.1 million, of all American Indians lived on Tribal lands.

Tribal lands include many land types (see *table 1*). According to BIA, the Federal Government holds about 46 million acres in trust for Tribes (Tribal trust land) and more than 10 million acres in trust for individual Indians (individual trust land).[7]

Table 1: Tribal Land Types and Definitions

Land type	Description
Trust	The Federal Government holds legal title but the beneficial interest remains with the Indian Tribe or individual Indian.
Restricted fee	An Indian Tribe or individual Indian holds title to the land, but with legal restrictions against alienation or encumbrance (for example, the land cannot be sold or conveyed without the approval of the Secretary of the Interior).
Allotment	Land owned by one or more individual Indians as a result of Federal laws that divided reservation lands and allotted them to individual Tribal members. Allotments can be individual trust land or individual restricted fee land.
Reservation	Land set aside by treaty, Federal law, or Executive Order for the residence or use of an Indian Tribe. The land within the reservation may include a mixture of Tribal trust land, individual trust land, restricted fee land, allotments, and fee-simple land. (Fee-simple land is owned without restriction and can be alienated or encumbered on the owner's initiative unless it is owned by an Indian Tribe. It is the most common type of private land ownership in the United States.)

Source: GAO analysis of Federal laws and regulations. |GAO–19–464.

Some Tribes also have reservations. According to BIA, there are approximately 326 Indian land areas in the United States administered as Federal Indian reservations (including reservations, pueblos, rancherias, missions, villages, and communities). The land within the reservation may include a mixture of Tribal trust land, individual trust land, restricted fee land, allotments, and land without trust or re-

[7] The terms Native American and Indian generally refer to American Indians. In this report, we use the term "Indian" unless citing the work of others that uses "Native American."

stricted status (that is, fee-simple land), which may be owned by Tribes, individual Indians, or non-Indians.[8]

Agricultural Activity on Tribal Lands

Agricultural producers (farmers, ranchers, or producers or harvesters of aquatic products) on Tribal lands can be individual Tribal members, the Tribe itself, or non-Indians who lease the land from the Tribe or Indian owner. According to USDA's 2012 Census of Agriculture, about 75 percent of farms and ranches on 76 selected Indian reservations were operated by agricultural producers that identified as American Indian or Alaska Native (see *table 2*).[9] On these reservations, Indian producers held 61 percent of total farm and ranch acreage. However, the total market value of agricultural products sold from Indian-operated farms and ranches was just over 1/10 of that of non-Indian operated farms and ranches on the 76 selected reservations.[10]

Table 2: Agricultural Activity on 76 Selected Indian Reservations, by Primary Farm or Ranch Operator (2012)

	Total number of farms and ranches	Total share of farms and ranches (%)	Total acreage of farms and ranches (in acres)	Total share of acreage of farms and ranches (%)	Total market value of agricultural products sold (in $1,000s)[a]	Total share of market value of agricultural products sold (%)
Indian-operated	17,948	75	28,560,057	61	361,145	10
Non-Indian operated	5,980	25	18,449,341	39	3,079,386	90
Total	**23,800**	**100**	**47,009,398**	**100**	**3,440,531**	**100**

Source: GAO analysis of 2012 Department of Agriculture Census of Agriculture data. |GAO–19–464.

Notes: For the *Census of Agriculture,* the Department of Agriculture (USDA) primarily collected data through the mail. However, to maximize coverage of American Indian and Alaska Native agricultural producers, USDA staff obtained supplemental information from knowledgeable reservation officials. USDA adjustments for nonresponse, misclassification, or other factors may result in a level of error related to its estimates.

[a]According to USDA officials, sales reported are for the entire farm, both on and off of the reservation. Therefore, if a farm had a small piece of land on the reservation, the entire sales would be reported in these values, even if little of the value was produced on reservation land.

In 2011, USDA, which operates several agricultural programs targeted to traditionally underserved populations, settled a class action lawsuit brought by Native American farmers and ranchers for $760 million (*Keepseagle* v. *Vilsack*).[11] The lawsuit alleged that USDA discriminated against Native Americans in its farm loan and farm loan servicing programs. In 2018, $266 million of the remaining settlement proceeds were used to establish the Native American Agriculture Fund. The Fund will begin awarding grants in 2019 to fund the provision of business assistance, agricultural education, technical support, and advocacy services to Native American farmers and ranchers.

Agricultural Credit and the Farm Credit System

Like other businesses, agricultural producers generally require financing to acquire, maintain, or expand their farms, ranches, or agribusinesses. Types of agricultural loans as categorized by their purpose or maturity may vary by lender but generally include the following:[12]

[8]Beginning in the late 1880s, Federal laws were enacted that divided some reservation lands among individual Tribal members. These allotments were often only held in trust or subject to restrictions on alienation for a limited period of time. Once the trust period and restrictions ended, it was easier for land to be sold or pass out of Indian ownership. In addition, surplus lands within the reservation were sold to non-Indians. As a result, Indian land holdings in the lower 48 states decreased from 138 million acres to 48 million acres and non-Indians may own fee-simple land within a reservation's boundaries. In 1934, the Indian Reorganization Act ended the practice of allotting Indian reservations.

[9]The Navajo Nation, which has the largest reservation in the United States at 16 million acres, operates a large share of the total Indian-operated farms and ranches. According to the *2012 Census of Agriculture,* there were 14,362 Indian-operated farms on the Navajo reservation—approximately 80 percent of all Indian-operated farms and ranches on the 76 reservations detailed in the Census.

[10]All U.S. Census and USDA Census of Agriculture estimates in this report are likely underestimates, as Indian populations historically have been undercounted in census activities. In addition, the reservation data from the *Census of Agriculture* only reflect 76 of 326 total reservations. According to USDA, it based its decisions about which reservation data to publish on factors including approval of Tribal officials, amount of agricultural activity, success of list building, and respondent confidentiality.

[11]Civil Action No. 1:99CV03119 (D.D.C.).

[12]Paul N. Ellinger and Peter J. Barry, *A Farmer's Guide to Agricultural Credit* (Urbana-Champaign, Ill.: The Center for Farm and Rural Business Finance, University of Illinois),

Continued

- **Short-term loans.** These loans are used for operating expenses and match the length and anticipated production value of the operating or production cycle. They are typically secured by the product (crops or livestock).
- **Intermediate-term loans.** These loans are typically used to finance depreciable assets such as equipment, which serves as the loan collateral. The loan terms usually range from 18 months to 10 years.
- **Long-term loans.** These loans are used to acquire, construct, and develop land and buildings with terms longer than 10 years. They are secured by real estate and may be called real estate loans.

Several types of lenders provide credit to U.S. agricultural producers. According to USDA's Economic Research Service, in 2017, FCS and commercial banks provided most agricultural credit in the United States, with respective market shares of 40 and 41 percent. USDA's Farm Service Agency—a lender that focuses on assistance to beginning and underserved farmers and ranchers and also guarantees the repayment of loans made by other lenders—provided three percent, and the remainder was provided by individuals, life insurance companies, and other lenders.[13]

FCS is a government-sponsored enterprise, established in 1916 to provide sound, adequate, and constructive credit to American farmers and ranchers. FCS is regulated by FCA, an independent Federal agency.

FCS's statutory mission includes being responsive to the needs of all types of creditworthy agricultural producers, and in particular, young, beginning, and small farmers and ranchers.[14] According to FCA, FCS is not statutorily mandated to focus on providing financial opportunities to any other group.

FCS lends money to eligible agricultural producers primarily through its 69 lending associations (FCS associations), which are funded by its four banks (FCS banks).[15] All are cooperatives, meaning that FCS borrowers have ownership and control over the organizations. As of 2017, FCS had approximately $259 billion in loans outstanding, of which 46 percent were long-term real estate-based loans; 20 percent were short- and intermediate-term loans (such as for farm equipment or advance purchases of production inputs); and 16 percent were for agribusiness activities, such as agricultural processing and marketing.[16]

FCS associations are not evaluated under the Community Reinvestment Act, which requires certain Federal banking regulators to assess whether financial institutions they supervise are meeting the credit needs of the local communities. FCS receives certain tax exemptions at the Federal, state, and local level.[17]

Limited Data Are Available on Agricultural Credit Needs of Indian Tribes and Their Members

Data on Agricultural Credit Needs for Tribes and Their Members Are Limited

Little data exists on the credit needs of Tribes and their members. One measure of unmet credit needs is the difference between the amount applied for and the amount received. However, we could not determine the amount of agricultural credit that Indian Tribes and their members applied for or received. These data were limited in part because Federal regulations historically have prohibited lenders from

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accessed April 5, 2019, *http://www.farmdoc.illinois.edu/finance/FarmersGuidetoCreditBody.htm*.

[13] Department of Agriculture, Economic Research Service, *U.S. and State-Level Farm Income and Wealth Statistics,* accessed April 18, 2019, *https://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics/*.

[14] FCS associations are required to establish programs for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. These programs must assure that such credit and services are available in coordination with other units of FCS serving the territory and with other governmental and private sources of credit. 12 U.S.C. § 2207(a).

[15] The scope of this report is limited to the FCS banks and FCS associations (collectively, FCS institutions). In addition to the FCS institutions, FCS includes the Federal Farm Credit Banks Funding Corporation, a special-purpose entity that issues and markets debt securities on behalf of FCS banks to raise loan funds. FCS also includes the Federal Agricultural Mortgage Corporation (Farmer Mac), which provides a secondary market for agricultural real estate loans, government-guaranteed portions of certain loans, rural housing mortgage loans, and eligible rural utility cooperative loans. Farmer Mac has no liability for the debt of any other FCS institution, and the other FCS institutions have no liability for Farmer Mac debt.

[16] The rest of the loans were generally for other agriculture-related purposes, such as rural housing or utilities, which are not included in our scope. See Farm Credit Administration, *2017 Annual Report on the Farm Credit System* (McLean, Va.: October 2018).

[17] See, for example, 12 U.S.C. §§ 2023, 2077, 2098, 2134.

asking about the race of applicants for nonresidential loans, including agricultural loans.[18]

Additionally, even if data were available, the unmet need could be greater than that indicated by information on those who may have applied for and did not receive credit. Four Tribal stakeholders and experts told us that Tribal members may choose not to apply for agricultural credit because they were directly discouraged by loan officers, had problems completing paperwork, or had heard of other Tribal members being denied loans.

Two Tribal agricultural experts told us that on some level, the agricultural credit needs of Indian Tribes and their members are the same as other agricultural producers' credit needs. In particular, Tribal stakeholders and experts told us that the Tribal members need short-term loans for operating expenses and intermediate-term loans for equipment. One difference between the agricultural credit needs of Tribal members and other producers is that Tribal members may have a greater unmet need for long-term loans, which are typically secured by real estate, because of difficulties in using Tribal lands as collateral, as discussed later in this report.

Credit needs vary based on the type of operation or borrower.

- **Type of operation.** Some Tribal stakeholders we interviewed told us that members of their Tribes were more likely to participate in ranching than farming, partly because farming has higher start-up costs. For example, one Tribal agricultural expert told us a rancher can start with a few head of cattle and grow the herd over time, but a beginning farmer may need to purchase equipment. Additionally, several Tribal stakeholders told us that land on their reservations was more suitable for ranching than farming.
- **Type of borrower.** Some Tribes have agricultural businesses, which have credit needs different from those of individual Tribal members, according to experts and BIA officials we interviewed. For example, they may be greater or more complex. According to an expert and a Tribal stakeholder, established agricultural businesses likely would be able to receive credit from commercial lenders because they have more resources to pledge as collateral or stronger credit histories. Additionally, if a Tribe has other profitable businesses, it likely will have less difficulty obtaining credit or financing agriculture with those other resources than those without such resources.

According to Tribal stakeholders, experts, and BIA officials we interviewed, Tribal members who obtain agricultural credit likely receive it from USDA's Farm Service Agency, other USDA programs, or Native CDFIs. Some Tribal members receive agricultural credit from local private lenders, but they are typically larger, more established borrowers. One expert told us that Tribal members who are smaller or beginning agricultural producers and cannot access commercial banks instead may borrow money from family members. A 2017 report found that Native business owners were less likely than other business owners to obtain start-up capital from banks.[19]

Some experts we interviewed cited Native CDFIs as growing providers of agricultural credit to Tribal members. A 2014 survey of 41 Native CDFIs—credit unions, community banks, and loan funds—found more than 40 percent provided credit and training to farmers and ranchers.[20] In total, these CDFIs made almost $6 million in agricultural loans annually. However, Native CDFIs are limited in how much agricultural credit they can provide. In the 2014 survey, 56 percent of the Native CDFIs that made agricultural loans reported not having enough capital for such loans, with a total unmet need of at least $3 million in the previous year. One Na-

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[18] With limited exceptions, creditors may not inquire about the race, color, religion, national origin, or sex of an applicant for a credit transaction that is subject to the Equal Credit Opportunity Act. 12 CFR § 1002.5(b). In 2010, the law was amended to require financial institutions to collect information concerning credit applications made by women-owned, minority-owned, and small businesses. The purpose of the data collection is to facilitate enforcement of fair lending laws and identify the business and community development needs of women-owned, minority-owned, and small businesses. 15 U.S.C. § 1691c–2. However, in 2011, the Consumer Financial Protection Bureau advised financial institutions that their obligations under the new provision would not go into effect until implementing regulations were issued. As of April 2019, the bureau has not issued implementing regulations. On a separate note, in cases that did not involve lending, the U.S. Supreme Court has ruled that membership in a federally recognized Indian Tribe is a political, not a racial, classification.

[19] Miriam Jorgensen and Randall K.Q. Akee, *Access to Capital and Credit in Native Communities: A Data Review* (Tucson, Ariz.: Native Nations Institute, 2017).

[20] First Nations Oweesta Corporation, *Food Financing Efforts 2014: Native CDFI Support of Native Farmers & Ranchers* (Longmont, Colo.: 2014). The survey queried all 67 Native CDFIs that were established at the time of the survey and 41 responded for a response rate of 61 percent.

tive CDFI we interviewed said its agricultural loans averaged about $100,000 per borrower, and another said its operating loans were about $50,000–$75,000 and its intermediate-term loans about $100,000.

Stakeholders See Potential for Growth of Agricultural Activity on Tribal Lands That Could Require Access to Credit

Selected literature we reviewed and interviews with some Tribal stakeholders found that Tribes have a growing interest in agriculture, motivated by concerns over Tribal members' access to food, health, and employment opportunities.

- **Food access.** A 2014 USDA study found that about 26 percent of individuals in Tribal areas lived within 1 mile of a supermarket, compared to about 59 percent of all Americans.[21]
- **Health.** According to the Centers for Disease Control and Prevention, American Indians and Alaska Natives have higher rates of obesity and diabetes than white Americans.[22]
- **Employment.** A 2014 Interior report found that, on average, only about 50 percent of Native American adults in Tribal statistical areas were employed either full or part-time.[23]

Two commissioned reports on Tribal agriculture say that Indian Tribes' vast land base represents an untapped opportunity for Tribes to increase agricultural production, including growing their own healthful foods and economic development.[24] But, as previously discussed, for reservations featured in USDA's 2012 Census of Agriculture, non-Indian producers received a large share of the agricultural revenue. Additionally, the agricultural products grown on Tribal lands typically do not feed Tribal members and instead are sold into the general agriculture commodity system.

Furthermore, these reports and experts we interviewed noted that the growth of agriculture on Tribal lands could require access to credit. For example, one Tribal agriculture expert told us some Tribes are interested in transitioning to "value-added" agriculture, which aims to help the community that produces raw agricultural materials capture the value of the products as they progress through the food supply chain (for example, by processing crops they grow or transitioning to more profitable products, such as organic). Value-added agriculture initiatives might require building facilities or acquiring more expensive inputs, and Tribes likely would need financing to support these initiatives. According to some experts and a study we reviewed, if Tribes and their members cannot access affordable credit, it could limit the growth of these initiatives.[25]

Stakeholders Reported That Tribes and Their Members Face Multiple Barriers to Obtaining Agricultural Credit on Tribal Lands

Tribes and their members face several barriers to obtaining agricultural credit, including land tenure issues, administrative challenges, lenders' legal concerns, and loan readiness issues. As a result, there is limited commercial lending on Tribal lands.

Land Tenure Issues May Present Hurdles to Obtaining Agricultural Credit

Ten Tribal stakeholders and experts we interviewed cited difficulties in using Tribal lands as collateral as a barrier to obtaining credit because of Federal laws or other constraints.

- **Tribal trust and restricted fee lands.** Federal law generally prohibits lenders from obtaining an ownership interest in Tribal trust and restricted fee lands. As a result, Tribes are not able to use their 46 million acres of Tribal trust or restricted fee lands as collateral for a loan. However, Tribes can lease

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[21] Phillip Kaufman, *et al., Measuring Access to Healthful, Affordable Food in American Indian and Alaska Native Tribal Areas,* EIB–131 (Washington, D.C.: December 2014).

[22] Centers for Disease Control and Prevention, *Summary Health Statistics: National Health Interview Survey: 2017. Tables A4a* and *A–15* (Atlanta, Ga.: 2017). Data were only available for American Indians and Alaska Natives as a combined group.

[23] Department of the Interior, Office of the Assistant Secretary—Indian Affairs, *2013 American Indian Population and Labor Force Report* (Washington, D.C.: Jan. 16, 2014). The report defined "Tribal statistical areas" as geographic areas identified by the Census that define the boundaries of reservations or comparable Tribal areas for the purposes of statistical data collection.

[24] Echo Hawk Consulting, *Feeding Ourselves: Food Access, Health Disparities, and the Pathways to Healthy Native American Communities* (Longmont, Colo.: 2015) and First Nations Development Institute, Time for the Harvest: Native Food Systems in Perspective (Longmont, Colo.: February 2004).

[25] Echo Hawk Consulting.

such lands to other parties, including a Tribal business or Tribal member who wishes to use the land for agricultural purposes (lessees). These lessees can then pledge their "leasehold interest" in the lands as collateral for a loan, but may face challenges in doing so.[26] For example, in general, leases of Tribal trust and restricted fee lands must be approved by BIA and comply with its leasing regulations, which stipulate that agricultural leases generally have a maximum term of 10 years.[27] While BIA generally allows leased Tribal trust and restricted fee lands to be subject to a leasehold mortgage, three Tribal stakeholders and experts we interviewed said that BIA's maximum term for agricultural leases often was insufficient for obtaining an agricultural loan.[28]

- **Individual trust and restricted fee lands.** Unlike Tribal trust and restricted fee lands, the owners of individual trust and restricted fee lands can use these lands as collateral for a loan with permission of the Secretary of the Interior.[29] However, many tracts of individual trust and restricted fee lands are allotments with fractionated ownership. According to nine Tribal stakeholders and experts we interviewed, fractionated land is a barrier to agricultural activity and obtaining credit. Fractionated land occurs when an allottee dies without a will and ownership is divided among all the heirs, but the land is not physically divided. Thus, multiple owners (in some cases thousands) can have an ownership interest in the land and may have different ideas about how the land should be used. Interior estimated that out of the 92,000 fractionated tracts (representing more than 10 million acres), more than half generated no income in 2006–2011.[30] For agricultural leases and leasehold mortgages on fractionated lands, BIA regulations require consent from owners of a majority interest in such lands.[31] However, according to Interior, some allotments have thousands of co-owners, some of whose whereabouts are unknown, which could make it difficult to obtain their permission for an agricultural lease or a leasehold mortgage.[32]

Additionally, as a result of allotment, many Indian reservations contain different land ownership types, creating a "checkerboard" pattern of lands that can make the establishment and financing of large-scale agricultural projects difficult. For example, in addition to Tribal and individual trust and restricted fee lands, reservations also may include lands that passed out of trust during the allotment period and were bought by non-Indians. Thus, multiple tracts within a large-scale agricultural project may need to be leased and financed separately because they have different owners and may be subject to different laws. This can also make legal jurisdiction unclear, which is a concern for private lenders financing projects on such lands, as discussed below.

Experts and Tribal stakeholders we interviewed reported that the barriers to collateralizing various types of Tribal lands make it difficult for Tribes and Tribal

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[26] The lessee must obtain approval of the Secretary of the Interior to pledge a leasehold interest as collateral. When a borrower uses a leasehold interest as collateral, upon default, the lender has the right to exercise control over the land for the remaining term of the underlying lease.

[27] An agricultural lease may have a term of up to 25 years if substantial investment in the improvement of the land is required. However, some Tribes may have statutory authority to enter into agricultural leases for longer than 10 or 25 years. In addition, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) authorizes Tribes to develop their own agricultural leasing regulations and, once those regulations are approved by the Secretary of the Interior, to issue agricultural leases of their trust and restricted fee lands without BIA approval. Under the HEARTH Act, Tribes may issue agricultural leases of Tribal trust and restricted fee lands for a term of 25 years with up to two renewal terms of 25 years each. The HEARTH Act does not authorize Tribes to assume responsibility for leasing individual trust and restricted fee lands. Pub. L. No. 112–151, § 2,126 Stat. 1150, 1151 (2012) (codified at 25 U.S.C. § 415(h)). Tribes also may be able to lease their trust and restricted fee land without Interior approval pursuant to other statutory authority.

[28] In general, lenders require that the term of the lease be longer than the term of the loan. Therefore, a 10 year lease would not be sufficient collateral for most long-term real estate loans, which have terms longer than 10 years.

[29] Individual trust and restricted fee land also can be subject to a leasehold mortgage with the approval of the Secretary of the Interior, like Tribal trust and restricted fee land. In such cases, lessees may encounter the same difficulties as described previously for leasehold mortgages.

[30] Department of the Interior, *Land Buy-Back Program for Tribal Nations: Initial Implementation Plan* (Washington, D.C.: Dec. 18, 2012).

[31] 25 CFR §§ 162.207(c), 162.230(a). BIA also may grant an agricultural lease on behalf of all of the individual Indian owners of a fractionated tract if (1) they cannot agree on a lease within a specified time period after BIA's written notification to them of its intention to grant an agricultural lease on their behalf and (2) the land is not being used by an Indian landowner. 25 CFR § 162.209(b).

[32] Department of the Interior, *Land Buy-Back Program for Tribal Nations.*

members to access different types of agricultural loans. Most long-term loans—typically used for larger projects—generally need to be secured by real estate, which make these inaccessible to Tribes and Tribal members who do not have land that can be encumbered. For example, an Indian agricultural producer who operates on trust land and wants to build an agricultural facility for a value-added operation may not be able to obtain a long-term loan unless he or she has other unrestricted land to pledge as collateral. In addition, according to the former Executive Director of the Intertribal Agriculture Council, when most agricultural producers face economic distress, they can pledge land as security and receive an extended period of time (20–40 years) to pay off the debt.[33] Tribal members may not have that option, making it difficult to obtain credit in an emergency (such as adverse weather). In addition, according to a Tribal agriculture expert and three Tribal stakeholders, Tribal trust land is not counted as an asset on balance sheets, which may affect an agricultural lender's assessment of a borrower's creditworthiness for various types of loans.

Administrative Process Delays May Deter Lenders and Borrowers

Processes at Interior—particularly at BIA—can increase the amount of time it takes to obtain a loan, which can discourage both lenders and borrowers, according to Tribal stakeholders and experts. Most of the Tribal stakeholders and experts we interviewed told us that Tribal members often encounter delays when seeking necessary documentation from BIA. For example, for loans involving trust or restricted fee lands, BIA needs to provide a title status report to the lender that identifies the type of land ownership and current owners. Two Tribal stakeholders told us that BIA takes months to produce a certified title status report. By that time, the growing season could be over. A representative from a Native CDFI serving a Tribe in the Great Plains said it can take years to receive these reports. BIA reported that in Fiscal Year 2017, it certified 95 percent of land titles within 48 hours.[34] However, BIA's performance on this measure has varied considerably over the last several years, and BIA officials told us that it can take significantly longer to process title status reports for complicated cases.

Tribal members also can encounter administrative challenges at other points in the process. One Native CDFI representative told us she found out that BIA did not record a leasehold mortgage when the CDFI attempted to foreclose on the loan, which almost prevented the CDFI from recovering the loan collateral. In other cases, Interior's Appraisal and Valuation Services Office might need to conduct an appraisal, such as for an agricultural lease. According to Interior policy, these appraisals should be completed within 60 days, but one Tribal economic development expert said they routinely take much longer.

Lenders Reported Having Legal Concerns about Recovering Collateral Involving Tribal Lands

As a result of the unique legal status of Tribes, some lenders, including FCS associations, reported concerns about their ability to recover loan collateral if the borrower defaulted on a loan involving Tribal lands. Seven of the 11 FCS associations we contacted told us that they had legal concerns of this nature, and six of the associations said they had experienced the issues themselves. These concerns primarily arise from the following issues:

- **Tribal sovereign immunity.** Tribes are distinct, independent political communities with certain inherent powers of self-government and, as a result of this sovereignty, have immunity from lawsuits. A lender cannot sue to enforce the terms of a loan agreement with a Tribe unless the Tribe waives its sovereign immunity in connection with the agreement. Private lenders therefore might be hesitant to make a loan because they would not be able to sue the Tribe if any disputes arose. We previously reported that Tribes may waive sovereign immunity in agreements or contracts on a case-by-case basis and some Tribes have formed separate companies to conduct business that are not immune from lawsuits.[35] However, Tribal government officials may decide that waiving the

[33] *Breaking New Ground in Agribusiness Opportunities in Indian Country,* Senate Committee on Indian Affairs, 115th Cong. (Jan. 17, 2018); statement of Ross Racine, Executive Director, Intertribal Agriculture Council.

[34] BIA met its 48 hour processing goal in 71 percent and 46 percent of cases in Fiscal Years 2016 and 2015, respectively. See Department of the Interior, *U.S. Department of the Interior 2018/2019 Annual Performance Plan and 2017 Report* (Washington, D.C.: Mar. 8, 2018).

[35] GAO, *Indian Issues: Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands, GAO–11–543T* (*http://www.gao.gov/products/GAO-11-543T*) (Washington, D.C.: April 7, 2011).

Tribe's sovereign immunity for purposes of enforcing the loan agreement is not in the Tribe's best interest. Additionally, Tribal sovereign immunity would not bar lenders from seeking to foreclose on loans made to individual Tribal members.

- **Legal jurisdiction.** Loans made to Indian Tribes or their members and secured by Tribal lands or collateral located on Tribal lands may be subject to Tribal laws, rather than state laws. In addition, it is sometimes unclear whether Federal, state, or Tribal courts would have jurisdiction in the event of a default or foreclosure. If Tribal laws govern but do not adequately provide for the lender's foreclosure, or if there is not a legal forum to hear the foreclosure lawsuit, lenders may be unable to recover the loan collateral. To address these types of concerns, some Tribes have adopted secured transaction codes modeled after the Uniform Commercial Code, which can help to assure lenders of their ability to recover collateral in the event of default.[36]
- **Unfamiliarity with Tribal laws.** Laws and court systems vary among the nation's 573 Tribes, making it more difficult and costly for lenders to learn Tribal laws. For example, one FCS association noted that it has many federally recognized Tribes in its region, each of which may have different laws.

If lenders have concerns regarding their ability to recover loan collateral in the event of a default, lenders may not make loans involving Tribal lands due to concerns that the loan would not meet safety and soundness requirements.

Potential Borrowers May Need Assistance with Loan Readiness

Five Tribal stakeholders we interviewed said some Tribal members may need assistance—such as credit repair and technical assistance for loan applications—to become ready for agricultural loans. Some Tribal members have no credit history, which can be a barrier to obtaining a loan. One study found that compared to off-reservation counterparts, reservation residents were more likely to have no credit history and when credit scores were available, they were lower on average.[37] Many Native CDFIs provide credit builder or credit repair products to help Tribal members qualify for larger loans, such as small business loans.[38]

Four Tribal stakeholders we interviewed said members of their Tribes sometimes need technical assistance to complete the paperwork required for agricultural loans, such as a business plan. One Tribal member who owns a ranch told us that the first time he tried to apply for a loan, he had trouble completing the required paperwork and ultimately chose not to apply. He felt Tribal members seeking credit would benefit from assistance in completing loan applications. One Native CDFI representative told us that her organization provides technical assistance to its borrowers to help them complete loan paperwork but noted that commercial lenders often did not provide these services.

Barriers Have Limited Commercial Lending on Tribal Lands

We and others have noted that the barriers described above have depressed commercial lending on Tribal lands. In 2010, we found that banks were reluctant to do business on Tribal lands because of the cumbersome procedures and their lack of experience.[39] More recently, a report for the Department of Housing and Urban Development surveying lenders found that BIA processing times were a major challenge in making mortgage loans involving Tribal lands.[40] A Native CDFI representative told us that lenders have little incentive to engage in a lengthy underwriting process, particularly if the loan is for a small amount and if other potential borrowers have less complicated circumstances. Some experts have described Tribal lands as "credit deserts."[41] For example, one study of three different areas of Tribal

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[36] Office of the Comptroller of the Currency, *Commercial Lending in Indian Country: Potential Opportunities in a Growing Market,* COMMUNITY DEVELOPMENTS INSIGHTS (Washington, D.C.: February 2016).

[37] Valentina Dimitrova-Grajzl, *et al.,* "Consumer Credit on American Indian Reservations," *Economic Systems,* vol. 39 (2015): p. 518.

[38] First Nations Oweesta Corporation, *Snapshot 2018: The Growing Native CDFI Movement,* accessed April 19, 2019. *https://www.oweesta.org/wp-content/uploads/2018/11/Snapshot-2018-Growing-NCDFI-Movement_web.pdf.*

[39] GAO, *Native American Housing: Tribes Generally View Block Grant Program Effective, but Tracking of Infrastructure Plans and Investments Needs Improvements, GAO–10–326* (*http://www.gao.gov/products/GAO-10-326*) (Washington, D.C.: Feb. 25, 2010).

[40] David Listokin, *et al., Mortgage Lending on Tribal Land: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs* (Washington, D.C.: January 2017).

[41] For example, see Echo Hawk Consulting and Racine.

lands found that few financial institutions or automated teller machines were located on these reservations.[42] One Native CDFI representative told us that in her experience, many people on her reservation never had a bank account. She noted that when people do not have a bank account, it can be challenging for them to see themselves as potential borrowers.

Similarly, our analysis found that the land tenure issues, administrative process delays, lenders' legal concerns, and loan readiness issues can make agricultural loans involving Tribal lands more time-consuming and costly to underwrite. For example, one FCS association told us that loans involving Tribal lands require specialized legal analysis, which may be an additional expense that it would not incur for otherwise comparable loans. These same issues can increase a lender's exposure to the risks inherent in agricultural lending because they can affect the borrower's ability to repay the loan, the adequacy of the collateral to secure the loan, and the lender's ability to recover the collateral in the event of a default.[43] According to FCA, consistent with the purposes of the Farm Credit Act of 1971, the ability of a lender to collect loans is an important element of the institution's safety and soundness, and the continued availability of credit.

Finally, some stakeholders said they believe that discrimination also contributes to the lack of commercial lending on Tribal lands. Four experts, a Tribal stakeholder, and a BIA representative told us that they believe that some commercial lenders do not want to make loans involving Tribal lands because of bias. As previously discussed, the plaintiffs in the *Keepseagle* case that USDA settled for $760 million alleged that USDA discriminated against Native American farmers and ranchers in certain programs. According to a Tribal economic development expert, Tribal members who face discrimination or other negative experiences with commercial lenders may share these experiences with other Tribal members and deter them from applying for credit.

FCS Laws Allow for Lending on Tribal Lands, and Some FCS Associations Reported Lending to Tribes or Tribal Members

We found that FCS generally has authority to make loans involving Tribal lands. Of the 11 FCS associations we contacted with Tribal lands in their territories, some reported that they had recently made loans to Indian Tribes or their members, and their outreach to these populations included support for agricultural education.

FCS Laws Allow for Lending on Tribal Lands

Generally, FCS has authority to provide a broad range of credit services to eligible agricultural producers, which may include Tribes, Tribal businesses, and individual Tribal members operating on various types of Tribal lands.[44] However, borrowers must meet various eligibility and underwriting criteria that are required by law. For example, applicants for agricultural loans must be determined to be eligible borrowers, which means they must own agricultural land or be engaged in the production of agricultural products, including aquatic products.[45]

Also, long-term real estate loans (which have terms of up to 40 years) made by FCS institutions must be secured by a first-position lien on interests in real estate, thus enabling FCS to obtain ownership or control of the land in the event of default.[46] FCA has determined that this statutory requirement can be satisfied, for example, with leasehold interests in real estate—such as that held by a Tribal member leasing reservation land from a Tribe-provided that the lease grants the borrower significant rights to the land, and the loan is made on a safe and sound basis.[47] As noted earlier, BIA regulations often limit agricultural leases of Tribal lands to a term of up to 10 years. In such cases, FCS associations similarly may limit the term of the related loan (to less than 10 years). According to FCA, when

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[42] Jorgensen and Akee.

[43] According to the Office of the Comptroller of the Currency, the risks associated with agricultural lending are credit, interest rate, liquidity, operational, price, compliance, strategic, and reputation. See Office of the Comptroller of the Currency, *Comptroller's Handbook, Safety and Soundness: Agricultural Lending,* version 1.3 (Washington, D.C.: Oct. 15, 2018).

[44] For example, eligible borrowers can be individual U.S. citizens, as well as legal entities established pursuant to the laws of any Tribal authority and legally authorized to conduct business. 12 CFR § 613.3000. Groups of individual Tribal members operating as a cooperative also may qualify, provided they meet the criteria set forth in 12 CFR § 613.3100.

[45] Persons furnishing farm-related services also may be eligible. See 12 U.S.C. § 2017 and 12 CFR § 613.3000.

[46] 12 U.S.C. § 2018(a)(2).

[47] Farm Credit Administration, "Mortgage Lending: Does a mortgage loan secured by a first lien on rural real estate that an eligible borrower leases meet the requirements of section 1.10(a)(2) of the Farm Credit Act of 1971?" *Legal Opinion Summary* 07–01 (McLean, Va.: June 12, 2007).

loans are for shorter terms than the leases, the FCS association's first lien is preserved, as required by law, and the loan is prudent from a safety and soundness perspective.

FCA has not issued written guidance indicating whether interests in other types of Tribal lands—such as individual trust or restricted fee lands—also satisfy the requirement for a first-position lien on interests in real estate. However, FCA has the authority to determine what types of interests in real estate will satisfy this requirement. Also, according to FCA, there is no statutory requirement that short- and intermediate-term loans be secured with interests in real estate; such loans instead can be secured by other collateral, such as equipment, crops, livestock, and business revenues.

In addition to making direct loans to agricultural producers, FCS has authority to lend to non-FCS institutions, such as commercial banks and credit unions, which in turn make agricultural loans to FCS-eligible borrowers. These other financing institutions are known as OFIs.[48]

According to FCA, the OFI lending authority allows FCS banks to fulfill their mission as a government-sponsored enterprise by enhancing the liquidity of OFIs, thereby lowering the cost of agricultural credit. As noted earlier, FCS is required to establish programs to serve young, beginning, and small farmers and ranchers, but it is not statutorily mandated to focus on providing financial opportunities to any other group of eligible agricultural producers.

Notwithstanding the authorities described above, FCS must comply with other applicable laws and requirements. For example, FCS institutions are subject to safety and soundness oversight by FCA, including with respect to loan underwriting. FCS institutions also must comply with applicable Federal, state, and Tribal laws governing any Tribal lands or property thereon used as loan collateral. FCS associations may obtain Farm Service Agency guarantees on loans to borrowers who otherwise may not meet FCS underwriting requirements. However, by law, loans made by FCS associations are not eligible for a similar BIA loan guarantee program.[49]

Some FCS Associations Reported Lending to Indian Tribes or Their Members, and Selected Associations' Outreach to These Populations Included Education

Lending

Based on information from selected FCS associations located near Tribal lands, some FCS associations have lent to Indian Tribes or their members in the last 2 years.[50] Of the 11 FCS associations we contacted with Tribal lands in their territories, representatives of eight told us they had loaned to Tribes or their members in the last 2 years—primarily to individual Tribal members. We made the following observations based on the associations' responses:

- **Limited data on lending amounts.** Representatives of ten of the 11 FCS associations we queried stated that they either do not collect or do not maintain data on lending to specific racial populations, thus making it difficult to provide more detailed information on lending to Indian Tribes and their members.[51] However, four representatives provided estimates of their recent lending to this population on Tribal lands. One association cited more than $25 million in total loans outstanding to a small number of Tribes and Tribal entities. Another as-

[48] In particular, FCS generally must assure funding to any creditworthy OFI that (1) maintains at least 15 percent of its loan volume at a seasonal peak in loans and leases to agricultural producers, and (2) establishes a financing relationship with FCS for at least 2 years. 12 CFR § 614.4540. All such obligations funded through FCS must be endorsed with the full recourse or unconditional guarantee of the OFI. 12 CFR § 614.4570. According to the *2017 FCS Annual Report,* FCS had outstanding loan volume to OFIs of $857 million as of December 31, 2017. This amount represented less than ½ of 1 percent of FCS's loan portfolio. FCS also may partner with non-FCS lenders through loan syndications and participations, typically to reduce credit risk and comply with lending limits. Also, under its similar-entity authority, FCS may participate with non-FCS lenders that originate loans to those who are not eligible to borrow directly from FCS, but whose activities are functionally like those of eligible borrowers.

[49] FCS associations are instrumentalities of the Federal Government and thus their loans are ineligible for BIA guaranties. 12 U.S.C. §§ 2071, 2091; 25 U.S.C. § 1486, 25 CFR § 103.10.

[50] We sent questionnaires to the associations on March 14, 2019. Therefore, the "last 2 years" generally would refer to loans made since March 2017.

[51] A representative of the remaining association stated that the association collects data related to all of its lending, including loans to Indian borrowers. As noted earlier, creditors are generally prohibited from inquiring about the race and other personal characteristics of an applicant for a credit transaction that is subject to the Equal Credit Opportunity Act. 12 CFR § 1002.5(b). One exception is that creditors may collect such data from credit applicants in order to assess the creditor's compliance with the Equal Credit Opportunity Act. However, lenders may not use this information in decisions about whether to provide credit or when setting the terms of the credit.

sociation reported making about $5.5 million in new loans to Tribes or their members on Tribal lands in the last 2 years. A third reported a $3 million revolving line of credit to a family farm, and the fourth said it had made approximately $150,000 in five separate loans to two Tribal members.

- **Loan purposes.** Seven associations reported on the type of credit they extended to Indian Tribes and their members on Tribal lands. In general, they made short-term operating loans and short- and intermediate-term loans for the purchase or refinance of items such as machinery and equipment, livestock, vehicles, or buildings and improvements. Two associations also reported making long-term real estate loans. The other association that reported lending to Tribes or their members did not report on the types of loans it made.
- **Type of collateral.** Representatives of the eight associations that reported lending to Tribes or their members all indicated that the associations secured loans with personal property, such as crops, livestock, or equipment. In addition, the associations that reported making real estate loans said they secured the loans with fee-simple land.

Representatives of three FCS associations said they had not loaned to Indian Tribes in the past 2 years. One association had not received any credit applications from Tribal members, and another could not say if it had served Tribal members because of a lack of racial data on borrowers.[52] The third association had not provided loans to Tribal members in the past 2 years, but the representative stated that it provided several letters of credit to guarantee the payments of BIA leases on Tribal land.

Although the FCS associations we contacted stated they have the resources to lend to Tribes and their members on Tribal lands, a few key factors affect their lending decisions. Representatives of all 11 FCS associations stated their associations had adequate financial capacity and resources to make potentially more complicated or time-consuming loans, such as those involving Tribal lands. In general, they stated that the factors they consider in deciding whether to loan to Indian Tribes or their members on Tribal lands are the same as for any comparable loan—for example, creditworthiness, loan purpose, and the ability to secure a lien on collateral. However, as described earlier, some FCS association representatives described challenges related to Tribal law, jurisdiction, Tribal sovereign immunity, and recovery of collateral as complicating the lending process to Indian Tribes and their members on Tribal lands. Although three of the 11 FCS associations we queried reported making loans to Tribes that had waived their sovereign immunity for those contracts, most loans the associations reported were to individual Tribal members and secured by personal property or fee-simple land.

According to two Tribal stakeholders we interviewed, Indian Tribes or Tribal members who received loans from FCS or other commercial lenders may have larger agricultural operations, a longer credit history, and property that can be more easily used as collateral. For example, an established rancher may be able to secure operating loans with his or her cattle herd or interests in fee-simple land, thus preventing the need to rely on trust land as collateral.

Outreach

At the national level, FCS—through its trade association, the Farm Credit Council—conducts and facilitates outreach to Tribes and Tribal stakeholder groups. According to a representative of the Farm Credit Council, the Council and representatives of associations with Tribal lands in their territories participate in an informal FCS working group focused on outreach and lending on Tribal lands. One association representative described the group as sharing examples of lending success or reasons for missed opportunities; local, regional or national sponsorship opportunities; local or regional agricultural education events; and relevant legal proceedings, such as the *Keepseagle* settlement.

At the institution level, FCS associations must prepare annual marketing plans describing, among other things, how they will be responsive to the credit needs of all eligible and creditworthy agricultural producers in their respective territories, with a focus on diversity and inclusion.[53] The marketing plan must detail strategies and actions to market their products and services to potential borrowers who may

[52] As noted earlier, in cases that did not involve lending, the U.S. Supreme Court has ruled that membership in a federally recognized Indian Tribe is a political, not a racial, classification.

[53] FCS marketing plans are also required to include strategies and actions to promote diversity and inclusion within the association's workforce and management, on the basis that diverse perspectives within institutions can help increase diversity among customers. See, generally, 12 CFR § 618.8440 and 77 *Fed. Reg.* 25577 (May 1, 2012).

not have been considered previously for reasons other than eligibility or creditworthiness. However, FCS associations are not required to achieve specific outcomes or quantifiable results.

Our nongeneralizable review of the marketing plans of the 11 selected FCS associations with Tribal lands in their territories and our analysis of their written responses to our queries for additional information found that outreach to Tribes and their members focused on educational and charitable initiatives and direct marketing about agricultural lending, or did not directly target Tribal populations.

- Seven of the 11 associations discussed actual or planned outreach to Indian Tribes or their members in their marketing plans or written responses.
  - Four of those seven associations cited financial support of specific agricultural education activities for Tribes and their members. Two associations reported making charitable donations that benefited Tribal members.
  - Four of the seven associations reported direct marketing to potential Tribal borrowers. However, in one case, the marketing was a one-time conversation with a Tribe regarding financing for a new facility. The other three associations reported that they called potential Indian borrowers, sought referrals from existing Tribal member customers, or conducted meetings with Tribal government officials.
- In general, the four remaining associations, in their marketing plans and written responses, addressed outreach to minority producers through broader methods, such as participation in ethnic group organizations or through inclusion in the association's overall outreach and marketing efforts. In addition, five of the 11 associations discussed outreach to minority producers in conjunction with their statutorily-mandated outreach to young, beginning, and small farmers. According to FCA officials, FCA's guidance on providing credit to young, beginning, and small farmers, as well as to local food producers, would be broadly applicable to socially disadvantaged or minority populations that fall within the program definitions.

Most of the Tribal stakeholders with whom we spoke either were not familiar with FCS or did not know of the Tribe or any of its members receiving FCS loans. One Native CDFI representative noted that although he was not familiar with any members of his Tribe receiving FCS loans, he thought other nearby Tribes or their members had worked with FCS.

FCA also encouraged FCS associations to develop underwriting procedures to facilitate lending on Indian reservations.[54] FCA identified one FCS association that developed such procedures, and another one of the associations we queried noted that they had such procedures. The first association provided an overview of its procedures, which identified links to information on borrower and collateral eligibility and actions that require BIA approval, among other topics. According to representatives of the second association, its procedure manual directs loan officers to treat Tribal members' applications for loans secured by personal property the same as any other applications. In addition, they said the manual contains instructions for working with BIA for real estate loans to Tribal members on trust land and for making direct loans to Tribes.

Stakeholders Discussed Lender Partnerships, Loan Guarantees, and Other Options to Improve Agricultural Credit Access on Tribal Lands

Our review of literature and interviews with experts, Tribal stakeholders, FCS associations, Farm Credit Council representatives, and FCA officials identified the following options for improving access to agricultural credit on Tribal lands.

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[54] In general, lenders must comply with applicable fair lending laws, including the Equal Credit Opportunity Act. For example, with regard to mortgage lending in Indian Country, the Office of the Comptroller of the Currency has stated that while lenders may consider risks and costs in setting the terms and conditions for loans, the procedures should be based on documented differences in risks and costs, rather than speculative or generalized assumptions. See Office of the Comptroller of the Currency, *Guide to Mortgage Lending in Indian Country* (Washington, D.C.: 1997). FCA took a similar position in the past, when it evaluated an institution's procedures for lending on Indian reservations. In that case, the institution's procedures required additional security in the form of government guarantees on any loan for which reservation land was pledged as collateral. The association based the additional security requirement in part on generalized concerns that Tribal courts were inadequate forums in which to recover collateral, rather than evidence regarding the courts of the specific Tribe in question. FCA ultimately determined that the institution's procedures were not consistent with the Equal Credit Opportunity Act, and required that the procedures be withdrawn.

- **Partnerships with local lenders.** Tribal economic development experts and Tribal stakeholders cited the importance of commercial or government lenders partnering with Native CDFIs and other Indian-owned lenders, which are the most capable of navigating the challenges related to Indian agricultural credit. According to these experts and stakeholders, if larger commercial or government lenders worked with Native CDFIs or other Tribal lenders (such as Tribal banks or economic development corporations) to provide funds or conduct outreach, the Tribal organizations could more efficiently reach Indian Tribes and their members. They noted these organizations are familiar with Tribal members and the administrative processes for obtaining loans on Tribal land. Partnership with Tribal lenders and other Tribal businesses also could support Tribes' efforts to improve members' loan readiness, according to literature we reviewed and a Tribal economic development expert and a Native CDFI representative we interviewed.[55]

  Commercial and government lenders may need to clarify whether Tribal lenders with which they might partner meet their lending requirements. For example, although FCS banks have authority to lend to OFIs, which in turn can lend to FCS-eligible borrowers, only certain types of CDFIs may qualify as OFIs.[56] In addition, this authority does not extend to long-term funding, and thus cannot be used to fund agricultural real estate loans made by OFIs.[57] One FCS bank that commented on a 2004 FCA rule noted the latter statutory limitation as a major impediment to OFI program expansion.
- **Flexibility with collateral requirements.** As noted earlier, multiple stakeholders we interviewed discussed the challenges related to collateralizing trust land. In addition, FCA officials cited the need for a statutory change or clarification of the requirement that long-term loans made by FCS be secured by a first lien on interests in real estate.[58] They said that by removing or clarifying this requirement, lenders would have authority to provide larger, longer-term loans to creditworthy Tribes or Tribal members who cannot mortgage their Tribal lands.
- **Guarantees.** Some stakeholders we interviewed mentioned loan guarantees as an option to improve access to agricultural credit on Tribal lands. For instance, FCA officials and Farm Credit Council representatives told us they had spoken with leadership of the Native American Agriculture Fund (created as part of the *Keepseagle* settlement) regarding the potential establishment of a loan guarantee fund, such as a first-loss fund, which would step in to purchase a loan in default (thus substantially reducing credit risk to the lender). In addition, three of the 11 FCS associations we queried identified guarantees as a possible way to increase FCS lending to Indian Tribes and their members on Tribal lands.

  FCS associations still face challenges in using guarantees. With regard to the first-loss loan guarantee fund, FCS associations still must adhere to the FCS statutory requirement for a first-position lien on interests in real estate for long-term loans. According to an FCA official, although the first-loss loan guarantee fund could mitigate repayment risk, a statutory change or clarification would be necessary for FCS associations to accept guarantees in lieu of real estate for long-term loans. And as noted earlier, FCS loans are statutorily ineligible for BIA's loan guarantee program. Two FCS associations noted that re-

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[55] The executive director of a Native CDFI has noted that because Native CDFIs are mission-driven, they offer development services—such as financial education and business training—that banks do not. See Tanya Fiddler, "Working Together: Effective Partnerships between Native CDFIs and Banks Bridge the Financing Gap in Indian Country" August 2013, accessed on March 21, 2019. *https://www.occ.gov/publications/publications-by-type/other-publications-reports/cdi-newsletter/extending-credit-indian-country-aug-2013/indian-country-ezine-article-7-working-together.html*. In addition, a 2017 study on mortgage lending on Tribal lands similarly noted the importance of commercial lenders partnering with Tribes and local nonprofits serving Tribal members to provide homebuyer education. See David Listokin, *et al., Mortgage Lending on Tribal Land.*

[56] OFIs can include banks, credit unions, agricultural credit corporations, and certain other entities engaged in the making of loans to agricultural producers. 12 U.S.C. § 2015(b)(1)(B) and 12 CFR § 614.4540. The preamble to an FCA rule confirms that CDFIs that are community development banks or community development credit unions could qualify as an OFI. 69 *Fed. Reg.* 29852, 29860 (May 26, 2004). However, most Native CDFIs operate as loan funds chartered as state corporations, the eligibility of which the preamble to the FCA rule did not address.

[57] 69 *Fed. Reg.* 29852, 29859 (May 26, 2004).

[58] Two FCS stakeholders called for statutory or regulatory clarification on whether leasehold interests in real estate can satisfy this statutory requirement. But as noted earlier, FCA already published a legal opinion to that effect (07–01).

moval of this restriction could increase FCS lending on Tribal lands. Finally, FCA officials stated that challenges FCS associations face in making loans involving Tribal lands also can extend to Farm Service Agency guarantees on those loans. In other words, to obtain such guarantees, FCS associations must navigate issues around land tenure, legal jurisdiction, and Tribal laws.

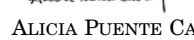
- **Tribal options.** In addition, stakeholders discussed the following Tribal actions that could increase credit access for Tribes and their members:
  - Representatives of two FCS associations noted that waivers of sovereign immunity (limited to specific contracts) by Tribes may increase lending involving Tribal lands, as it helps to enable lenders to enforce the terms of loans made to Tribes. According to the Office of the Comptroller of the Currency, some banks have negotiated limited waivers of sovereign immunity (restricted to a specific transaction). As noted earlier, Tribes may decide that waiving sovereign immunity is not in their best interest. In addition to the limited waivers of sovereign immunity, representatives of three FCS institutions stated that increased adoption of uniform commercial laws (such as the Uniform Commercial Code) by Tribes could increase lending involving Tribal lands.
  - One Tribal economic development expert told us that Tribes that adopted their own leasing regulations under the HEARTH Act have seen substantially increased economic development. As noted earlier, the HEARTH Act provides Tribes with greater flexibility to enter into leases for agriculture or other purposes. Once a Tribe's leasing regulations have been approved by the Secretary of the Interior, Tribes may negotiate and enter into agricultural leases with 25 year terms without further approval by the Secretary.[59] The combination of longer lease terms and the ability to conduct business outside of the BIA approval process can expedite the process of obtaining a leasehold mortgage on Tribal trust and restricted fee land. As of May 1, 2019, the Secretary had approved agricultural leasing regulations for seven Tribes under the HEARTH Act.[60]

Agency Comments

We provided a draft of this report to FCA, Interior, and USDA for review and comment. FCA and USDA provided technical comments, which we incorporated as appropriate. In comments provided in an email, Interior officials noted that efforts to simplify the Secretary of the Interior's approval process could provide faster mortgage determinations and thus may result in expanded lending and production opportunities for Indian agricultural producers.

We are sending copies of this report to the appropriate congressional committees, the Chairman and Chief Executive Officer of the Farm Credit Administration, the Secretary of the Interior, and the Secretary of Agriculture. In addition, the report is available at no charge on the GAO website at *http://www.gao.gov*.

If you or your staff have any questions about this report, please contact me at (202) 512–8678 or *cackleya@gao.gov*. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in *appendix II*.



ALICIA PUENTE CACKLEY,
Director, Financial Markets and Community Investment.

Appendix I: Objectives, Scope, and Methodology

Our objectives in the report were to describe (1) what is known about the agricultural credit needs of Indian Tribes and their members on Tribal lands, (2) the barriers stakeholders and experts identified that Indian Tribes and their members on Tribal lands face in obtaining agricultural credit to meet their needs, (3) the Farm

[59] 25 U.S.C. § 415(h).

[60] In addition, the Secretary of the Interior approved the Navajo Nation's agricultural leasing regulations pursuant to other statutory authority, thus allowing the Tribe to lease its trust and restricted fee land for agricultural purposes without Secretarial approval. 25 U.S.C. § 415(e). We recently reported BIA's review and approval process for 42 proposed leasing regulations that Tribes submitted in 2012–2017 often took at least a year. We recommended that Interior and BIA develop a clearly documented process with established time frames for each step in the process for reviewing proposed Tribal leasing regulations submitted under the HEARTH Act. Interior concurred with the recommendation but had not implemented it as of May 2019. See GAO, *Indian Programs: Interior Should Address Factors Hindering Tribal Administration of Federal Programs, GAO–19–87* (*http://www.gao.gov/products/GAO-19-87*) (Washington, D.C.: Jan. 3, 2019).

Credit System's (FCS) lending authority and lending and outreach activities on Tribal land, and (4) suggestions stakeholders have discussed to improve access to agricultural credit on Tribal lands.

For the purpose of this report, we use the term "Tribal lands" to refer to reservations (including all land within the reservations' boundaries), trust land, allotments, and restricted fee land. In general, our report focuses on the agricultural credit needs of Tribes and their members in the lower 48 states.

To describe what is known about the agricultural credit needs of Indian Tribes and their members on Tribal lands, we explored various potential data sources on agricultural loans that Indian Tribes and their members applied for or received. We reviewed available data from the Consumer Financial Protection Bureau and Department of Agriculture (USDA). For example, we obtained borrower-reported loan data from USDA's Agricultural Resource Management Survey, but for several data fields related to Indian producers on Tribal lands, sample sizes were too small or the coefficients of variation were too high to produce reliable estimates. We also reviewed provisions of the Equal Credit Opportunity Act, Federal regulations, and other legal documentation pertaining to collection of data regarding the personal characteristics of applicants for nonresidential loans.

To describe what is known about Indian Tribes and their members' agricultural credit needs and the barriers they face in obtaining agricultural credit, we conducted a literature review. We conducted searches of various databases, such as EBSCO, ProQuest, Google Scholar, and Westlaw to identify sources such as peer-reviewed academic studies; law review articles; trade and industry articles; reports from government agencies, nonprofits, and think tanks; and Congressional transcripts related to Tribal agriculture, barriers to accessing credit on Tribal lands, and FCS. We identified additional materials through citations in literature we reviewed. In addition, we reviewed statutes and the Department of the Interior's Bureau of Indian Affairs' (BIA) regulations related to use and ownership of Tribal lands, including leasing.

To describe FCS's authority and lending and outreach activities on Tribal lands, we reviewed statutes and regulations governing FCS, as well as written guidance issued by the Farm Credit Administration (FCA). We also reviewed the marketing plans of a nongeneralizable sample of 11 FCS associations (16 percent of the 69 FCS associations that lend directly to agricultural producers) whose territories included large Tribal land areas with high levels of agricultural activity, including the Tribes we interviewed (described below). We selected an additional FCS association but on closer review realized it did not have a significant amount of Tribal land in its territory; we therefore excluded this association from our analysis. For comparison purposes, we also reviewed three marketing plans from FCS associations that did not have significant Tribal populations in their territories. In addition to reviewing the marketing plans, we sent the 11 FCS associations a questionnaire about their lending and outreach to Tribes and their members and any challenges in making loans involving Tribal lands. We also asked these associations about any suggestions to improve access to agricultural credit on Tribal lands. We received responses from all 11 FCS associations, and followed up with some associations to clarify information they provided. While the sample allowed us to learn about many important aspects of FCS associations' lending and outreach to Tribes and their members on Tribal lands, it was designed to provide anecdotal information, not findings that would be representative of all of 69 FCS lending associations.

To address all four objectives, we attempted to interview representatives of six Tribes. First, we selected these Tribes to represent five regions (Great Plains, Rocky Mountain, Northwest, Southwest) and a state (Oklahoma) that—according to experts we interviewed—have Tribes engaged in agricultural activity. Within these regions, we generally selected large Tribal land areas that have high levels of agricultural activity, as indicated by the USDA *2012 Census of Agriculture* data.[1] Specifically, we selected Tribes based on number of farms, land in farms, and market value of agricultural products. In addition, we selected one of the six Tribes because two experts recommended that we speak with them. For the six Tribes, we contacted Tribal government leaders and employees of the relevant government offices, such as the agriculture or Tribal lands departments.

- For two of the six Tribes, we interviewed employees of the Tribal agriculture department. One of these interviews also included representatives of the Native Community Development Financial Institution (Native CDFI) that serves the reservation.

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[1] Department of Agriculture, *2012 Census of Agriculture: American Indian Reservations,* Subject Series, Part 5, AC–12–S–5 (Washington, D.C.: August 2014).

- For the third Tribe, we received written responses from a Tribal farm.
- For the fourth Tribe, we interviewed a representative of the Native CDFI that serves the reservation.
- For this series of interviews, we only received information relating to four Tribes. We did not obtain meetings with relevant Tribal government officials for the last two Tribes.

We also contacted farms or Native CDFIs associated with an additional three Tribes based on USDA data or recommendations from experts we interviewed. For one of these Tribes, we interviewed a Tribal farm employee and a representative of the Tribe's community development corporation. For the second Tribe, we interviewed a Tribal farm employee. For the third Tribe, we interviewed a representative of the Native CDFI that serves the reservation.

In summary, we interviewed employees of two Tribal agriculture departments, employees of three Tribal farms, and representatives of three Native CDFIs and one Tribal community development corporation. Throughout this report, we refer to Tribal government employees, Tribal farm employees, or representatives of Native CDFIs or community development corporations serving a Tribe as "Tribal stakeholders." Although the information we obtained from the Tribal agriculture employees allowed us to provide anecdotal Tribal perspectives, it is not generalizable to the 573 federally recognized Indian Tribes. In addition, the views of Tribal farm employees and Native CDFI and community development corporation representatives cannot be generalized to Tribes but illustrate views on needs, barriers, and other issues from the perspectives of the organizations.

In addition, for all four objectives, we interviewed the following:

- **Experts on agricultural and economic development on Tribal lands.** We interviewed subject matter experts on Tribal agriculture and economic development from various organizations, including advocacy and academia. Specifically, we interviewed representatives of the following organizations: the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis, First Nations Oweesta Corporation, the Indian Land Tenure Foundation, the Indigenous Food and Agriculture Initiative at the University of Arkansas, the Intertribal Agriculture Council, and the Native American Agriculture Fund. We selected these organizations based on relevant publications, testimonies before Congress, or recommendations from other experts. These organizations work with a number of Tribes and thus could speak to general trends or commonalities in Tribal agriculture and economic development. Throughout the report, we refer to the representatives of these organizations as "experts."
- **Agency and trade group representatives.** We interviewed officials from FCA, USDA (including the Farm Service Agency, Economic Research Service, and National Agricultural Statistics Service), and BIA. We also interviewed representatives of the Farm Credit Council, the national trade association for the Farm Credit System.

We conducted this performance audit from December 2018 to May 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

ALICIA PUENTE CACKLEY, (202) 512–8678, *CackleyA@gao.gov*

Staff Acknowledgements

In addition to the contact named above, Karen Tremba (Assistant Director), Lisa Reynolds (Analyst in Charge), Miranda Berry, Tom Cook, Anne-Marie Fennell, John Karikari, Marc Molino, Kirsten Noethen, Barbara Roesmann, Jeanette Soares, and Farrah Stone made significant contributions to this report.

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SUBMITTED QUESTIONS

Response from Hon. Thomas "Tom" J. Vilsack, Secretary, U.S. Department of Agriculture

Questions Submitted by Hon. Alma S. Adams, a Representative in Congress from North Carolina

Question 1. Secretary Vilsack, with more than 5,700 operations, North Carolina ranks second in the U.S. for total poultry and egg production.

As I've raised before, in a state where the population is 22 percent Black, only 57 of farms have an African American principal producer. That's less than one percent.

As you're aware, there are allegations of Black farmers being discriminated against through poultry contract grower relationships, and that some stakeholders are concerned that the final rule issued by the previous Administration does not go far enough to protect contract growers, particularly contract growers of color.

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[1] *https://facebook.com/usgao*.
[2] *https://flickr.com/usgao*.
[3] *https://twitter.com/usgao*.
[4] *https://youtube.com/usgao*.
[5] *https://www.gao.gov/feeds.html*.
[6] *https://www.gao.gov/subscribe/index.php*.
[7] *https://www.gao.gov/podcast/watchdog.html*.

Mr. Secretary, will you commit to continuing to work on this important issue to ensure Black farmers and other farmers of color are not discriminated against in their production contracts?

Answer. Yes, I am fully committed to ensuring that farmers of color are not discriminated against in production contracts. To that end, we are hard at work preparing proposed rules under the Packers and Stockyards Act to set clear, enforceable rules of the road that protect Black farmers and farmers of color to the greatest extent possible. We have also announced a new enforcement policy, via Frequently Asked Questions, that addresses the problematic aspects of a Packers and Stockyards Act rule published by the previous administration. This new enforcement policy highlights USDA's intent to utilize other provisions of the Packers and Stockyards Act to the fullest extent of the law to protect producers from racial discrimination, retaliation, and denial of associational rights. Throughout this process, we are in contact with a wide range of stakeholders in the poultry industry to better understand their concerns and are committed to monitoring the facts on the ground to more quickly and better address these issues as they emerge. We invite those who are facing these challenges to contact us, including anonymously as appropriate. (*https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq*)

ATTACHMENT

[*https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq*]

USDA Agricultural Marketing Service
U.S. DEPARTMENT OF AGRICULTURE



Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act

August 2021

9 CFR § 201.211 Undue or unreasonable preferences or advantages.[1]
Packers and Stockyards Act 9 CFR § 201-206[2]
Visit the Packers and Stockyards Act webpage[3]

General Policy

Question: *What is the Packers and Stockyards Act?*

Answer: The Packers and Stockyards Act (the P&S Act or the Act) promotes fairness and competition in livestock, meat, and poultry for the benefit of producers, growers, and the public. The Act also provides payment protection and prohibits deception and fraud in the livestock, meat, and poultry industries. The U.S. Department of Agriculture's (USDA) Packers and Stockyards Division (PSD), located within the Agricultural Marketing Service (AMS), is charged with enforcing the Act and protecting the rights of livestock producers and poultry growers under the Act.

Question: *Why did USDA develop a rule on undue and unreasonable preferences? Is it all that USDA will be doing on undue preferences?*

Answer: The 2008 Farm Bill (Title XI of the Food, Conservation and Energy Act of 2008)(P.L. 110-246), required USDA to write regulations under the P&S Act's provisions that prohibit packers, swine contractors, and live poultry dealers from engaging in undue preferences to some over others in the livestock and poultry industries. The rule "Undue and Unreasonable Preferences and Advantages" was finalized in December 2020 and became effective in January 2021. Since then, USDA has announced its intent to update those and other provisions through a series of three rulemakings under the P&S Act. However, until those new rulemakings are complete, the December 2020 final rule remains in effect. (USDA, "*USDA to Begin Work*

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[1] *https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=b74225c6eb76359a245b8953706e6916&rgn=div5&view=text&node=9:2.0.1.1.2&idno=9#se9.2.201_1211.*†
Editor's note: references annotated with † are retained in Committee file.
[2] *https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=b74225c6eb76359a245b8953706e6916&rgn=div5&view=text&node=9:2.0.1.1.2&idno=9#se9.2.201_1211.*†
[3] *https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act.*

to Strengthen Enforcement of the Packers and Stockyards Act," [4] Press Release, June 11, 2021.)

Question: *What are the criteria established in the December 2020 final rule?*

Answer: The final rule established four criteria the Secretary of Agriculture will consider when determining whether conduct by packers, swine contractors or live poultry dealers represents an undue or unreasonable preference or advantage. Those criteria include whether the preference or advantage cannot be justified on the basis of a cost savings related to dealing with different producers, sellers, or growers; cannot be justified on the basis of meeting a competitor's prices; cannot be justified on the basis of meeting other terms offered by a competitor; and cannot be justified as a reasonable business decision. However, as elaborated below, the criteria are not exhaustive and not determinative. (Agricultural Marketing Service, USDA, "*Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act,*" [5] Final Rule, December 11, 2020.)

Question: *How will PSD enforce the criteria in the December 2020 final rule? Will some criteria be weighed more heavily than others? Can other criteria be considered?*

Answer: Section 201.211 of the final rule lists the criteria for consideration and provides that "the Secretary [of Agriculture] is not limited to those four . . . [T]he Secretary may also consider other factors relevant to each situation on a case-by-case basis." That is, the criteria are not exhaustive and not determinative. PSD will enforce the provisions of the regulation by reviewing the specific facts of each case to determine how it is handled. Certain circumstances will require some criteria to be weighted more than others, including criteria not specifically listed. The criteria listed in the final rule are not a safe harbor, and a finding regarding one of them will not eliminate potential liability under the P&S Act should other criteria suggest violations.

Question: *Do the criteria also apply to "unfair, unjustly discriminatory or deceptive practices and devices" that are prohibited in Section 202(a) of the Packers and Stockyards Act?*

Answer: No. The criteria were written to respond to the 2008 Farm Bill requirement that the Secretary develop criteria to consider when determining if an undue or unreasonable preference or advantage has occurred in violation of the P&S Act. Unfair, unjustly discriminatory, and deceptive practices and devices are not specifically included under these criteria.

Question: *How does PSD decide if an unfair, unjustly discriminatory, or deceptive practice or device has occurred in violation of the Act?*

Answer: PSD considers potential violations of Section 202(a) of the P&S Act on a case-by-case basis. Some conduct is deemed "unfair" under the Act, such as failing to timely pay for livestock and poultry purchases. (See Section 409, P&S Act.) Other conduct is "unfair" based upon enforcement cases and PSD regulations. PSD investigates and gathers evidence to decide if a violation has occurred. Additionally, many practices that PSD considers undue prejudices may also be evaluated by PSD as unfair, unjustly discriminatory, or deceptive practices under Section 202(a) of the P&S Act.

Question: *Is Packers and Stockyards Act analysis limited by the "rule of reason" approach under antitrust laws such as Section One of the Sherman Act?*

Answer: The December 2020 rule states PSD may consider the "rule of reason" approach described in cases such as Chicago Board of Trade v. United States, 246 U.S. 231 (1918), but also that it is not limited by or to that analysis and it maintains a flexible approach. Like the Sherman Act, the statute is textually susceptible to both "rule of reason" type analysis, but also "*per se*" rules for certain types of conduct. The unique circumstances applicable to the markets where PSD investigates or has enforcement authority also inform the competition analysis in distinct and important ways, including allowing for simplified competitive effects analysis where common market characteristics inform consideration of specific types of conduct. In addition, the PSD has long taken the position that a violation of section 202(a) or (b) of the P&S Act may be established without proving an industry-wide injury to competition. Moreover, the December 2020 final rule does not determine what evidence would be required or necessarily used in a court of law. The future rulemakings, mentioned above, are expected to elaborate on these points.

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[4] *https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act.*†

[5] *https://www.federalregister.gov/documents/2020/12/11/2020-27117/undue-and-unreasonable-preferences-and-advantages-under-the-packers-and-stockyards-act.*†

Discrimination and Retaliation

Question: *How would PSD handle a case where a packer, swine contractor, or poultry company withheld a contract offer or cancelled or terminated a contract on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status, where the producer or grower was capable of meeting the terms of the contract?*

Answer: PSD would investigate as, based on the information provided, the contract termination may have violated Sections 202(a) and/or 202(b) of the P&S Act. As the December 2020 final rule noted, "Issues of retaliation and racial discrimination typically would arise in complaints of undue or unreasonable prejudices or disadvantages."

Question: *Is retaliation prohibited? For example, if a producer or grower makes public statements criticizing a packer, swine contractor, or poultry company, and the packer or poultry company in turn terminates an existing contract with the producer or grower, would that contract termination be an unfair practice?*

Answer: The December 2020 final rule noted, "Existing law prohibits retaliation.. Issues of retaliation. typically would arise in complaints of undue or unreasonable prejudices or disadvantages." PSD will investigate allegations of coercion, intimidation, or retaliation against any producer or grower as termination of a contract under such circumstances may violate Sections 202(a) and/or 202(b) of the P&S Act.

Industry-specific Circumstances: Poultry

Question: *I have a poultry growing (broiler) house that does not have the latest technology that some of the other growers in the local area have. (A) When it came time to renew my poultry growing contract, the poultry company cut the number of birds placed on the farm, offered me a lower contract price, or threatened to terminate the contract, unless I upgrade my houses. Is this an undue or unreasonable prejudice or an unfair practice? (B) The growers with the upgraded houses have received a higher base price. Are they receiving an undue preference or advantage over me?*

Answer: It depends. (See *Packers and Stockyards Act Regulation 201.216.*[6])

- In part (A), PSD could investigate whether this was an undue or unreasonable prejudice or an unfair practice. For example, decreasing the number of birds or your contract rate, or threatening to terminate your contract, could result in PSD investigating whether coercion or retaliation was present. PSD could also investigate whether any higher pay offered by the poultry company if the grower makes the upgrades is adequate for the grower to reasonably recoup the cost of the upgrades.
- In part (B), PSD could investigate whether the poultry company's payment of higher contract rates to the growers who upgrade their houses was an undue preference. While PSD could consider, for example, whether the upgraded housing results in a cost savings to the poultry company through lower feed conversion or lower bird mortality, other factors will also be examined on a case-by-case basis and appropriately weighed to determine if an undue preference was involved. PSD would examine, for example, whether there is evidence of a pattern and practice of racial discrimination, or whether benefits available from the poultry company or its regular business partners are available to growers, including those growers that participate in associations.

Question: *My integrator recorded a delivery of 40,000 pounds of feed to me but delivered only one-half that amount, based on how the feed looks in my feed bins. Can they do that?*

Answer: A poultry company's failure to deliver the full amount of feed shown on the feed mill's scale ticket and recorded to a grower's account is a material breach of the contract and an unfair and deceptive practice in violation of the P&S Act. Note that it can be difficult to judge the weight of feed based on how it appears in the feed bin. Pelleted feed that weighs the same as starter (or crushed) feed may appear to take up more room in a feed bin when the weight is the same. The type and quality of feed ingredients can also affect how feed looks inside a feed bin.

Question: *Some growers have not received sufficient information from poultry companies to determine the accuracy of their pay. Could this be an unfair or deceptive practice?*

Answer: Yes. Regulations require that poultry growers receive all information necessary to calculate and verify their settlement pay. PSD would consider it an un-

[6] *https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act.*

fair and deceptive practice for a poultry company to refuse to provide a grower with the information and data used to determine compensation, upon the grower's request. This data would include, but is not limited to, feed conversion rates, feed analysis, origination, and any other factor that impacts pay. (See *Packers and Stockyards Act Regulation 201.100(d).*[7])

Question: *The contract I got from the poultry company requires any disputes about my contract to be resolved in State A where the company is incorporated. My poultry farm is located in State B. Do I have to go to court in State A?*

Answer: No. The P&S Act requires that any disputes related to poultry growing contracts or swine production or marketing contracts be resolved within the federal judicial district in which the principal part of the performance takes place. In your example, any legal action such as a lawsuit must occur within the federal judicial district in State B where your farm is located. (See *Section 209(a) of the Packers and Stockyards Act (7 U.S.C. § 197b(a)).*[8])

Industry-specific Circumstances: Cattle

Question: *The beef packer that I sell fed cattle to routinely refuses to put a fixed price in the contract, but instead ties the contract to a spot market that trades and whose prices are reported several days later. The packer may not bid in that market, and there may not even be enough bidders in the market for there to be a reported price. Is that an unfair or deceptive practice?*

Answer: Based on the information provided, PSD may investigate to determine if the packer engaged in efforts to lower the spot market price. One factor that may be considered in the investigation is the level of regional concentration. Price manipulation violates the P&S Act.

Question: *A packer offers to buy cattle from my neighbor on a negotiated spot market live weight basis. The same packer will take my cattle only if I agree to sell them on its standard market formula. The cattle are the same quality. Is this a violation of the Packers and Stockyards Act?*

Answer: Based on the information provided, PSD would investigate whether the packer is consistently treating you less favorably than other similar producers and if that treatment rises to the level of an undue prejudice. PSD may also investigate whether the packer is providing a preference to your neighbor that cannot be justified as cost savings, meeting a competitor's price or terms, or as a reasonable business decision. In furtherance of policy set out in the Agricultural Fair Practices Act of 1967 (7 U.S.C. § 2301 *et seq.*), PSD generally would not view cost savings to include circumstances where multiple producers can meet reasonable terms of delivery on a cooperative or aggregated basis.

Question: *The beef packer that I sell fed cattle to on a negotiated basis routinely offers higher negotiated prices for cattle of the same quality to a feeder whose cattle are certified as organic. My cattle are not certified as organic. Since the quality of the cattle, including yield grade, is the same as the organic cattle, does the premium paid for the organic cattle constitute an undue preference or advantage?*

Answer: Based on the information provided, no. Products with special characteristics, *e.g.,* organic, generally have higher retail prices. Therefore, packers are willing to pay more for cattle that are certified as organic.

Industry-specific Circumstances: Hogs

Question: *I grow hogs on a contract basis. I believe that the waste from many of the neighboring growing structures is being handled improperly, resulting in what I believe could be air and water pollution violations. I spoke to my state legislator at a community town hall, and recently, I shared my concerns with a reporter. I think my swine contractor knows I have spoken up to the government and the media about the pollution. As my contract is nearing renewal time, if my swine contractor proposes a less favorable formula for my hogs, is this a violation under the Packers and Stockyards Act?*

Answer: Possibly. PSD would investigate if the swine contractor was retaliating against you based on concerns regarding redress of grievances through governmental agencies or legislative representatives, or with exercising freedoms of press or association, regarding compliance with environment laws. As the December 2020 final rule noted, "Farmers have the right to file complaints regarding wrongdoing, speak with media and elected officials, and form and join farmer associations. If re-

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[7] *https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act.*
[8] *https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act.*

taliation occurs, there is likely discrimination, which may be unlawful under the P&S Act or other laws."

Further Engagement

Question: *How do I report what I believe may be a violation of the P&S Act?*

Answer: PSD has a toll-free hotline that you can call to voice complaints or concerns. You can make anonymous or confidential complaints. Although you will need to leave your name and contact information so that PSD can call you back, .PSD will not disclose the name of a person who is complaining without the person's authorization. The hotline number is 1-833-DIAL PSD (1-833-342-5773).

You can also contact the PSD Headquarters Office at (202) 720-7051 or *PSDWashingtonDC@usda.gov*, or any of the three PSD regional offices. You can reach the Eastern Regional office at (404) 562-5840 or *PSDAtlantaGA@usda.gov*, the Midwestern Regional Office at (515) 323-2579 or *PSDDesMoinesIA@usda.gov*, or the Western Regional Office at (303) 375-4240 or *PSDDenverCO@usda.gov*.

Question: *Where can I find more information about how the Packers and Stockyards Act protects me? How can I offer views about what should be done?*

Answer:

- For general information about P&S Act and regulations, you can visit *https://www.ams.usda.gov/services/enforcement/psd*.
- If you have a specific question, or wish to share your views on regulations or on these FAQs, contact the Headquarters Office at (202) 720-7051 or *PSDWashingtonDC@usda.gov*. You may also write to the Chief Legal Officer, Packers and Stockyards Division, Rm. 2097-S, STOP 3601 1400 Independence Ave. SW, Washington, D.C. 20250-3601.

USDA may update Packers and Stockyards Act FAQs from time to time.

Question 2. Mr. Secretary, I was glad to see USDA's press release last week, outlining the gaps in USDA's previous COVID–19 aid, and committing to distributing the new "Pandemic Assistance for Producers" more equitably.

This issue is important to me—last Congress I introduced the Local and Regional Farmer and Market Support Act (Local Farmer Act), which would target COVID–19 aid directly to farmers of color and local and regional food producers and markets as they cope with the economic impacts of the coronavirus pandemic.

I'd like to hear more about what USDA is envisioning in terms of its rules for new programs to ensure we're putting a greater emphasis on outreach to small and socially disadvantaged producers, specialty crop and organic producers. Is the agency considering setting-aside portions of these relief funds for farmers of color?

Answer. Reaching beyond the traditional row crop producers to serve the full set of potential USDA customers is a top priority. But it isn't a simple task and will take time and a combination of actions.

The pandemic assistance program is a good example of the challenges and opportunities. The first round of payments through the CFAP 1 program was well suited to USDA's traditional customers and crops, but the program and rules were not tailored to all types of crops and especially many specialty crops were excluded. The next round of assistance, CFAP 2, did not include as many barriers for specialty crops, smaller scale livestock or diversified producers. But solving the eligibility issues were not enough to actually get underserved producers enrolled, as the previous Administration failed to conduct sufficient outreach to underserved producers.

The Biden-Harris Administration recognized the gaps and disparities in the previous versions of pandemic assistance and re-opened the CFAP 2 program in April 2021 and set about conducting the outreach and seeking partnerships with organizations serving underserved communities. This concerted effort has shown results—the previous Administration's sign-up only included 4% socially disadvantaged producers (based on race and ethnicity), the new signup from April–July saw this percentage increase to 11%, which further increased to 21% by September.

USDA has been working to conduct broader outreach and establish a technical assistance network from the start. It is important to understand and acknowledge the additional hurdles faced by underserved producers and also to ensure existing targeted programs reach those they are intended to reach, whether they are limited resource, beginning, veteran, or socially disadvantaged. We need to streamline processes, build partnerships to help us examine how to make programs work better for underserved producers, and ensure we reach all of our eligible customers. It will also be critical to engage Congress and this Committee on how to address barriers that exist in statute. I look forward to working with you on this.

Questions Submitted by Hon. Bobby L. Rush, a Representative in Congress from Illinois

Question 1. Would you expand upon the concrete steps you are taking to foster trust and ensure the timely access to capital for Black farmers? What is the timeline for implementing any new policies?

Question 2. Do you need any additional authorities from Congress to enact policies to directly help struggling Black farmers and to reverse the impact of decades of discriminatory practices at the USDA?

Answer 1–2. USDA is committed to the values of equity and inclusion rooted in justice and equal opportunity for those we serve. We will seek out opportunities within the Department that help ensure historically underserved groups can more fully access and participate in programs and services and build a workforce that is more representative of America. USDA was provided over $1 billion from the American Rescue Plan, which provides funds and direction for USDA to take forward looking action to ensure historically underserved communities have the tools, programs and support they need to succeed. With these transformative funds, USDA will focus on creating opportunity for historically underserved producers through technical assistance and capacity building, access to land and credit, and access to markets and market development. I look very forward to working with you as we move forward in this important work.

Question 3. Secretary Vilsack, it is my understanding that there is currently insufficient transparency regarding assistance to farmers based on race. To that end, I would like to know:

Can you tell me the number of Black farmers who bought crop insurance policies in 2019 compared to the number of white farmers?

Answer. USDA estimates that in 2019, 1,278 policyholders identified as Black, whereas 415,944 policyholders identified as White.

Question 3a. Can you tell me how much Black farmers received in premium or income support compared to white farmers?

Answer. USDA estimates that in 2019, $14.24 million in crop insurance premium subsidy was provided to policyholders identifying as Black, whereas $5.66 billion in premium subsidy was provided to policyholders who identified as White.

USDA estimates that in 2019, farmers who identified as Black received:

- $15,142,361 in ARC–PLC payments.
- $30,937 in Livestock Indemnity Program (LIP) payments.
- $668,420 in Livestock Forage Program (LFP) payments.
- $27,753,850 in Market Facilitation Program (MFP) payments.
- $55,228,215 in CFAP payments (CFAP 1 and 2).

USDA estimates that in 2019, farmers who identified as White received:

- $5,716,721,856 in ARC–PLC payments.
- $70,704,259 in Livestock Indemnity Program (LIP) payments.
- $105,818,499 in Livestock Forage Program (LFP) payments.
- $13,219,646,664 in Market Facilitation Program (MFP) payments.
- $26,486,468,319 in CFAP payments (CFAP 1 and 2).

Question 3b. Can you tell me how many Black farmers received farm ownership or operating loans in 2019 compared to white farmers and how much they each received?

Answer. USDA estimates that in 2019, farmers identifying as Black received:

- 51 Direct Farm Ownership loans with a value of $9,564,170.
- 418 Direct Operating loans with a value of $19,796,537.
- 8 Guaranteed Farm Ownership loans with a value of $3,603,590.
- 19 Guaranteed Operating loans with a value of $3,758,350.

USDA estimates that in 2019, farmers identifying as White received:

- 5,883 Direct Farm Ownership loans with a value of $1,305,925,190.
- 15,971 Direct Operating loans with a value of $953,093,109.
- 3,599 Guaranteed Farm Ownership loans with a value of $1,788,201,264.
- 3,426 Guaranteed Operating loans with a value of $1,010,660,556.

Question 4. Given the decades of discrimination of Black farmers that has led the vast majority to have to sell their farms, would you support making data on subsidies and loans available to the public?

Answer. It is important that we identify ways to quantify the impact of our efforts to root out systemic discrimination. With appropriate protections of personal information and confidential business information, sharing statistics may be appropriate. I would be happy to discuss this further with you.

Question Submitted by Hon. Gregorio Kilili Camacho Sablan, a Delegate in Congress from Northern Mariana Islands

Question 1. Pacific Islander farmers, like Black farmers, are included in the definition of Socially Disadvantaged, but do not seem to benefit from USDA funding streams like the Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers group (2501 Program), why is that?

Answer. The Section 2501 program provides grants to nonprofit and community-based organizations, universities, and tribal governments that in turn provide outreach and technical assistance to socially disadvantaged farmers and ranchers and veteran farmers and ranchers. As you point out, Pacific Islanders and Black farmers and ranchers are eligible beneficiaries of the program opposed to recipients of grant funds. Individual farmers and ranchers are not eligible to compete for this grant program but benefit from the expertise of the organizations and higher education institutions in providing needed outreach and technical assistance to the communities in need of such services. There are other programs to directly assist individual farmers and ranchers across the Department. Please visit: *www.farmers.gov* or *www.usda.gov/newfarmers*.

As USDA commits to taking full stock of how socially disadvantaged farmers and ranchers access our programs, we will be sure to evaluate outreach to these communities and the groups that serve them to ensure full understanding of eligibility, and how USDA can best help in creating access. I would welcome working with your office to address these challenges.

Question 2. The National Agriculture Statistics service recently released the 2018 Census of Agriculture for the Northern Mariana Islands.

How can that data be used to improve grant opportunities for the Rural Development Service, the Natural Resource Conservation Service, and the Farm Service Agency?

Answer. The Census of Agriculture is an important tool for USDA to understand agricultural products throughout the United States and its territories. USDA uses census data to understand agricultural production and to provide a baseline for comparisons to identify trends over the years. Having high quality data allows us to be able to identify needs and gaps in services. It also allows for a baseline understanding of potential damages from typhoons and other natural disasters, helping farmers and ranchers justify loss claims. Having uniform data also allows us to compare benefits and services we are providing across territories and States, and as we continue to evaluate how we can more equitably distribute USDA's grant resources.

Question 2a. Second, is the USDA willing to work with me and other Congressional Delegates from the territories to clarify how money is allocated and dispersed in the territories?

Answer. Yes, we are interested in learning more about the needs of the citizens of the territories and how we can ensure they have access to USDA's important services.

Question 2b. Third, while an Advisory Committee on Minority Farmers exists under Section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990 and has goals to ensure socially disadvantaged farmers have equal access to USDA program—no Pacific island states or territories are represented on the Advisory Committee. Will the USDA work towards creating parity for farmers in the Pacific to also serve on the advisory committee on minority farmers?

Answer. The Section 2501 program requires stakeholder input, including the Secretary's advisory committee on minority farmers. The nomination process is currently in progress. We are working to identify appropriate individuals for consideration on these important committees to serve from each region of the United States.

Question 3. USDA Farm Service Agency (FSA) is considered a "lender of last resort." In FY 2017 'Native Hawaiian or other Pacific Island' represented 0.2% of Direct Loans, and 0.1% of Guaranteed Loans. These numbers represent the lowest percentages of use for USDA FSA loans, what is the USDA doing to expand access to farmers in the Pacific, specifically in the Northern Mariana Islands?

Answer. We want all farmers to have equitable access to USDA's important services. As we evaluate how and where we can do better, we will examine these issues

and make specific recommendations to address how to improve access to farmers in the Pacific.

Question 4. Relating to USDA COVID–19 Relief, the Coronavirus Food Assistance Program (CFAP) was designed to bolster the farm economy, but Pacific Islanders present 0.01% of MFP payments, compared to 26.53% among white farmers, and 0.08% among Black Farmers. Sections 1005 and 1006 of the American Rescue Plan provide targeted and tailored support during the pandemic for socially disadvantaged farmers, including pacific islander farmers, what is the USDA doing to increase awareness of this funding stream for farmers in the pacific and in the Northern Mariana Islands?

Answer. A key part of our efforts at ensuring equity in everything USDA does is ensuring that we improve outreach to disadvantaged producers so that they understand the range of services we provide. We are committed to working with you and community organizations who understand the unique needs of disadvantaged producers to ensure that farmers in the Pacific are aware of and can access USDA services.

Question 5. Under the recently enacted American Rescue Plan Act of 2021 there is funding available to create "equity commissions that will address racial equity issues within the Department of Agriculture and its program," what will the USDA do to involve pacific island/indigenous farmers in these efforts?

Answer. The equity commission will be an important part of our efforts to ensure that all have access to USDA's programs and services, particularly by dismantling barriers historically underserved communities have faced, including pacific island/indigenous farmers. The commission will reflect a wide range of perspectives through its diverse membership from those whose mission is to serve or advocate for underserved communities, minorities, women, individuals with disabilities, individuals with limited English proficiency, rural communities, and LGBTQI+ communities. I will ensure that its efforts take the needs and perspectives of Pacific Island and indigenous farmers into account.

Question Submitted by Hon. Michelle Fischbach, a Representative in Congress from Minnesota

Question. Secretary Vilsack, your testimony in the hearing touched on the availability of land and credit to start a new operation or to continue a family tradition in farming. This is an important part of larger critical issue, where our next generation of farmers are going to come from. In terms of continuing the family tradition, I'm hearing consistently from constituents in my district about the Biden Administration's proposals to change the calculation of basis for the purpose of capital gains tax. Known as "stepped-up basis", a capital gains tax is currently assessed on the present value of an asset less the value at the time of death or at the transfer to the farmer that is being taxed, as opposed to when the property was acquired or inherited. This is important for lessening the burden of a the passing down of multigenerational farms as otherwise, that transfer takes on a dramatic tax liability through capital gains, even in cases with no intention of realizing the gain from when the asset was originally acquired. My constituents are concerned that the Biden Administration will eliminate this stepped-up basis, along with an increase in the capital gains tax rate in an upcoming tax proposal.

Can you confirm whether this proposal is being considered and, if so, how this change would affect the ability for farms to be passed down to future generations including in socially disadvantaged communities?

Answer. The President's American Families plan includes critical tax reform to ensure that the wealthy pay their fair share of taxes to finance essential investments in workers and families, including childcare, nutrition, higher education and more. One of those reforms includes a proposal to close the "stepped-up basis" loophole for wealthy estates so that large fortunes do not escape taxation. The proposal protects family farms, exempting farms that stay in the family.

Response from John W. Boyd, Jr., Founder and President, National Black Farmers Association*

Question Submitted by Hon. Jim Costa, a Representative in Congress from California

Question. As of 2017, 48 percent of farms operated by Black producers specialized in cattle production. Mr. Boyd, you mentioned that you raise beef cattle, alongside growing soybeans, wheat, and corn. How has been your experience been in the marketplace as a Black livestock producer and has that experience been similar or dif-

*There was no response from the witness by the time this hearing was published.

ferent to the other commodities you grow? How can USDA better support livestock producers color?

Answer.

Question Submitted by Hon. Alma S. Adams, a Representative in Congress from North Carolina

Question. In the American Rescue Plan, Congress provided for new equity commissions to address racial discrimination at the USDA.

We need individuals on that commission who bring fresh eyes to the problems at USDA and can speak to the barriers faced on small and beginning farms.

Mr. Boyd, what are your thoughts on how to best set up the commission to be effective?

Answer.

Response from Sedrick Rowe, Owner/Operator, Rowe Organic Farms LLC*

Question Submitted by Hon. Jim Costa, a Representative in Congress from California

Question. Mr. Rowe, earlier in this hearing I shared with Secretary Vilsack how Black farmers in California don't trust USDA for loans and other services. You mentioned how community organizations helped you mitigate the lack of trust between USDA and Black farmers.

How did these organizations help mitigate the trust gap and advocate for you at USDA?

Answer.

Question Submitted by Hon. Ann Kirkpatrick, a Representative in Congress from Arizona

Question. Ms. KIRKPATRICK. . . .

My second question is for Mr. Rowe. I am inspired by your testimony today and by your decision to become a first-generation farmer. Further, I can only imagine the difficulty in not only starting a farm completely from scratch, but going through the process to ensure you are producing organic crops.

From my conversations with farmers back home, I know that going through the organic certification process is something that scares a lot of farmers off, or they don't know where to start, even if they are already operating under USDA organic practices. Can you describe for us some of the reasons you chose to produce organically, and if you see an opportunity to help more Black farms through the USDA organic certification?

The CHAIRMAN. I am going to have to ask if you might be kind enough to reply in writing. We are way past the time. I deeply appreciate your consideration. We want to get every Member in this important hearing.

Answer.

Response from Shirley Sherrod, Executive Director, Southwest Georgia Project for Community Education, Inc.

Question Submitted by Hon. Jim Costa, a Representative in Congress from California

Question. Ms. Sherrod, your testimony reflected many of the same things the Black farmers in my district shared.

You mentioned that Black farmers need to be able to market their products and not be limited to any one market and that they have to be able to diversify their markets. As Chairman of the Subcommittee on Livestock and Foreign Agriculture, I'm especially interested in making sure we are expanding international markets for producers of color, in addition to domestic markets.

What are 2–3 things that USDA can do to help producers to diversify their markets?

Answer. When Black farmers are assured access to capital as well as technical assistance—for the most part, they are able to produce a quality product. The issue then becomes marketing. Most Black farmers depend on one or more of the following: (1) local markets, (2) farmers['] markets, (3) commercial markets through a middle person. These markets tend not to be stable and the volume is limited. What Black farmers need is a marketing system that they can control—a system that enables them to participate in local, regional, national and international markets. A system that also allows them to develop long-term mutually beneficial relationships within the global marketing arena.

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*There was no response from the witness by the time this hearing was published.

The key to this participation is a farmer owned and operated infrastructure that will include:

- Strategically placed processing/valued facilities.
- Refrigerated trucks.
- Strategically placed aggregation centers.

This cannot be a short-term commitment by the USDA nor Black farmers and the institutions that support. I think it will require several meetings between USDA and key partners to develop a comprehensive strategy and timeline.

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