

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

**RoseMary Love :**  
**P.O. Box 455 :**  
**Harlem, MT 57526 :**

**and :**

**Lind Marie Bara-Weaver :**  
**4845 Belle Terre Parkway C-8 :**  
**Palm Coast, FL 32164 :**

**and :**

**Margaret Odom :**  
**P.O. Box 143 :**  
**Sardis, GA 30456 :**

**Case Number 1:00CV02502**

**and :**

**Judge: Walton, J.**

**Gail Lennon :**  
**P.O. Box 80 :**  
**Lookout, CA 96054 :**

**FOURTH AMENDED  
AND SUPPLEMENTAL  
COMPLAINT**

**and :**

**Joyce L. Acomb :**  
**8317 State Route 63 N :**  
**Dansville, NY 14437 :**

**and :**

**Edith L. Scruggs :**  
**1106 Brentwood :**  
**Pine Bluff, AR 71601 :**

**and :**

**Maryland B. Wynne :**  
**9209 Dyson Road :**  
**Pine Bluff, AR 71603 :**

**and :**

Joyce A. King :  
211 Dan Gill Road :  
Dumas, AR 71639 :

and :

Phyllis L. Robertson :  
318 S. Persimmon Street :  
Pine Bluff, AR 71601 :

and :

Mary L. Brown :  
1306 6th Street :  
Winter Haven, FL 33880 :

ON BEHALF OF THEMSELVES :  
AND ALL :  
OTHERS SIMILARLY SITUATED, :

Plaintiffs, :

vs. :

TOM VILSACK, Secretary :  
THE UNITED STATES DEPARTMENT :  
OF AGRICULTURE :  
14th and Independence Avenue, S.W. :  
Washington, D.C. 20250, :

Defendant. :

---

**FOURTH AMENDED AND SUPPLEMENTAL COMPLAINT  
(FOR DECLARATORY JUDGMENT, VIOLATIONS OF EQUAL CREDIT  
OPPORTUNITY ACT, ADMINISTRATIVE PROCEDURE ACT,  
FIFTH AMENDMENT OF U.S. CONSTITUTION, AND OTHER RELIEF)**

The representative and individual plaintiffs listed in the caption (“plaintiffs”), on behalf of themselves and all others similarly situated, complain of defendant as follows:<sup>1</sup>

### **NATURE OF THE CASE**

The Department of Agriculture (the “Department” or “USDA”) administers a nationwide program which makes loans to undercapitalized farmers at favorable terms. From 1981 through 1996 and October 19, 1998 to the present, women have been denied the opportunity to apply for these loans because of gender discrimination, were denied loans after having applied because of gender discrimination, and when loans have been granted, experienced delays in receiving the loans, or difficulty in obtaining loan servicing, or received less than the loan amount needed, or less servicing than needed, or were refused other loans, because of gender discrimination. When, in response, plaintiffs complained to USDA, 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. This nationwide pattern of discrimination against women has deprived them of equal and fair access to farm loans and loan servicing, and of consideration of their administrative complaints, resulting in substantial damages to them. Moreover, USDA offered and is implementing voluntary administrative claims programs to adjudicate the claims of members of other minority groups who suffered similar discrimination, and has arbitrarily refused to offer equivalent terms to women, further depriving them of equal protection and due process.

### **JURISDICTION**

1. Jurisdiction is founded upon 5 U.S.C. §§ 702-703, 15 U.S.C. § 1691, 15 U.S.C. § 1691e, 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 2201, and 28 U.S.C. § 2202.

---

<sup>1</sup> While plaintiffs include in this Fourth Amended and Supplemental Complaint allegations concerning class representation, plaintiffs intend to pursue class certification only with respect to Counts III through V herein. Plaintiffs do not intend to pursue class certification to the extent that it has already been rejected in this case.

**VENUE**

2. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e).

**PARTIES**

3. Plaintiff RoseMary Love is a woman and has operated ranches in Blaine and Glacier Counties, Montana. She started raising sheep with her husband in 1975, and at the height of their operation, in 1983, they were raising approximately 3,300 sheep.

4. In 1978, following a devastating flood in the area, the Loves began dealing with the Farm Service Agency, or its predecessor, the Farm and Home Agency (collectively here, “FSA”).

5. Ms. Love applied for a 1982 farm operating loan, and she completed the ranch’s Farm and Home Plan in the Fall of 1981. But by June 1, 1982, the Blaine County FSA office had still not finished processing it, having revised it 4 times in the interim. Then, when the loan was finally approved, it was both late (funds were not received until the end of July) and provided Ms. Love with approximately \$100,000 less than needed to operate the ranch. FSA also imposed unreasonable and unnecessary demands on Ms. Love as conditions of the loan.

6. Then, in May 1983, FSA improperly accelerated all the Loves’ loans, demanding payment in full of the entire principal and interest in 30 days. This forced the Loves into Chapter 11 bankruptcy.

7. On December 16, 1988, Ms. Love applied for loan servicing with the FSA. On March 2, 1989, she was notified that the State FSA office had determined that the Loves were eligible to receive loan servicing, but they did not actually receive any.

8. While all these adverse actions were being conducted against Ms. Love, similarly situated male farmers were receiving substantial loan servicing benefits to allow them to deal



with the stresses caused by natural disasters, low commodity prices, and record high interest rates. A prime example is Neil Johnson (and his family), doing business as the Johnson Cattle company of Glacier County, who received loans in the same time frame as the Loves. In 1981, FSA deemed him eligible for low interest limited resource loans, provided him with an emergency loan in 1985, and forgave \$2 million in debt in 1989.

9. Ms. Love filed a complaint with the Department in May 1993, and a complaint with USDA's Office of Civil Rights ("OCR") on April 10, 1997. The case was investigated in 1998 and the USDA investigator indicated to her that he had found evidence of unfair treatment. However, in June 2000, the Director of OCR denied Ms. Love any administrative relief.

10. To the extent Ms. Love's claims arose during the "Claims Period" covered by the USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

11. Plaintiff Lind Marie Bara-Weaver is a woman and farmed for more than 20 years in Virginia, where she raised Welch ponies, holly trees, and worms.

12. In October 1984, Ms. Bara-Weaver attempted to apply for farm ownership and operating loans at the Loudon County FSA office in Leesburg, Virginia for assistance in purchasing and operating a 16.5 acre farm. At the FSA office, the loan officer, Mr. Faulk, informed Ms. Bara-Weaver that neither funds nor forms were available and would not give her an application. A month or so later, she went back to the Leesburg FSA office, and was told a second time that neither funds nor forms were available. But when Ms. Bara-Weaver's husband then called that FSA office, an application form was mailed to him. Ms. Bara-Weaver filled out

that form as the sole borrower and delivered it to Mr. Faulk at the Leesburg FSA office. Two days later her application was denied without explanation.

13. In the Summer of 1988, Ms. Bara-Weaver again attempted to apply for a farm operating loan through the Loudon County FSA office. Although she was told that an application would be mailed to her, she never received one. She had to go to the FSA office in person to obtain an application, with which the office did not offer any assistance. She submitted her application to Mr. Reid, the loan officer in Loudon County. He, however, told Ms. Bara-Weaver that women could not run farms. He called her patronizing names like “cutie” and “honey,” and made sexual advances toward her. As part of the loan application process, Ms. Bara-Weaver’s property had to be appraised by Mr. Reid. During the appraisal visit, Mr. Reid again made sexual advances toward her, which Ms. Bara-Weaver again rejected. Her loan application was denied.

14. Ms. Bara-Weaver made formal complaints to the FSA state office in Richmond and to the USDA Office of the Inspector General in Washington, D.C., but never got a response to her complaints.

15. In 1992, Ms. Bara-Weaver’s equine breeding stock was poisoned by contaminated feed. Ms. Bara-Weaver applied for an operating loan to help with veterinarian expenses and special feed, but her application was denied. She was told that FSA did not provide loans for such expenses.

16. In January 1998, after her husband’s death, Ms. Bara-Weaver attempted to refinance the farm through a trust for her daughter, and sought FSA financing at the Fredericksburg FSA office. She was told that USDA did not deal with trusts, despite the fact that USDA program regulations specifically refer to trusts.

17. Additionally, in 2000, after Ms. Bara-Weaver relocated to Florida, she visited the Flager County FSA office to request an application for a farm ownership loan to assist in the purchase of a new 70-acre farm there. On her first two visits, she was unable to obtain an application, and when she finally got one on her third visit, she was offered no help in completing the application. When she brought it back to the office, a male loan officer told her that the business plan would not work and that her farm would not be profitable. He asked her how she expected to farm without a man around, and then right in front of Ms. Bara-Weaver, he threw her application into the waste basket.

18. To the extent Ms. Bara-Weaver's claims arose during the "Claims Period" covered by USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

19. Plaintiff Margaret Odom is a woman farmer and resident of Sardis, Georgia. She raised cattle and row crops on a large farm for almost 20 years.

20. In December 1991, Ms. Odom applied for a farm operating loan at the Waynesboro, Georgia FSA office in Burke County and was denied. She was told by FSA loan officer Alphonzo Andrews that she did not qualify as a beginning farmer, and that she would not be able to get a loan from that office until she had been farming for a year, even though she had farmed with her husband for years.

21. As a result, Ms. Odom in 1992 could only farm a small portion of her land. The next year, she again applied for an operating loan at the same FSA office, and was again denied. She then hand-delivered a complaint to the USDA State Director, Gene Carr, at the State Office

in Athens, Georgia. Mr. Carr and three loan servicing specialists met with Ms. Odom that same day to discuss her complaint, and the next day Mr. Andrews called her and informed her that she had been approved for the loan.

22. In the following year, 1994, Ms. Odom applied for farm ownership and operating loans at the Waynesboro FSA office. She was denied for both, but appealed the denials to the USDA National Appeals Division (“NAD”). NAD ruled in her favor.

23. Based on the NAD decision, in 1995, Ms. Odom went back to FSA to reapply for the same loans that had been wrongfully denied to her in 1994. She was told she had to fill out new applications, which she did. This time her applications were denied for farming in an “unworkmanlike manner.” She appealed the 1995 decision as well, and again, NAD ruled in her favor.

24. In 1996, Ms. Odom tried to get loan servicing to try to reduce her loan debt, but she was told she was not eligible for any loan servicing. In 1997, and again in 1998, Ms. Odom reapplied for farm operating and ownership loans, and her applications were likewise denied.

25. Because FSA had discriminatorily denied Ms. Odom’s loans applications for years, despite NAD rulings in her favor, Ms. Odom’s finances were severely strained. In 1998, FSA denied her the debt restructuring for which she had applied.

26. Ms. Odom is aware of male farmers who received loans from FSA at the time she was denied loans.

27. Ms. Odom complained multiple times to USDA about the wrongful denial of her farm loan applications. She filed at least four civil rights complaints with USDA alleging gender discrimination. To date, USDA has not resolved all of these complaints.

28. To the extent Ms. Odom's claims arose during the "Claims Period" covered by USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

29. Plaintiff Gail Lennon is a woman and resident of Lookout, California who operated a ranch in Day, California where she raised crops, pigs, and cows. In July 1983, Ms. Lennon and her husband applied for farm ownership and operating loans at the Modoc County FSA office. She needed the loans to purchase a ranch in neighboring Lassen County, where she planned to expand her cattle and crops base. FSA demanded excessive collateral for the loans (more than twice the amount of the loans). In 1984, the loans were granted, but the funds were placed in a supervised account, which meant that the funds could not be released for any purpose without the consent of FSA. Ms. Lennon is aware of male farmers who received loans without excessive collateral and restricted access to the funds.

30. Pending the processing of these USDA loans, County Supervisor Lloyd Leighton promised Ms. Lennon that (a) if she obtained a short-term loan from the local production credit association that said loan would be paid out of her USDA loan funds, and (b) Ms. Lennon would not be required to make payments on the USDA loans until 1986. USDA did not keep these promises. In 1985, the Modoc County Supervisor Jim Van Ness improperly canceled \$18,240 of Ms. Lennon's operating loan without her consent or knowledge and required that she apply for another operating loan. Though he approved the loan, he subsequently recommended foreclosure and denied Ms. Lennon access to the operating funds.

31. The documents for the 1985 loans listed incorrect interest and payment amounts, which Ms. Lennon has spent years attempting to correct but which instead have just led to more accumulation of debt and foreclosure notices. Forced into extreme financial difficulties due to FSA, on numerous occasions beginning in 1984, Ms. Lennon requested FSA loan servicing, including debt set-aside, deferrals, and interest rate reduction. FSA denied Ms. Lennon servicing on each occasion, even in 1986, when the NAD ordered the Modoc County Office to provide her with maximum servicing. Ms. Lennon is aware of male farmers who also owed large amounts of money to FSA but did receive servicing of their debts, which Ms. Lennon never received.

32. After years of being denied any type of servicing, in 1997 Ms. Lennon filed a civil rights complaint with the Department alleging gender discrimination. The Department finally responded to the complaint years later, but only to say that it was unable to handle the case.

33. To the extent Ms. Lennon's claims arose during the "Claims Period" covered by USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

34. Plaintiff Joyce Acomb is a woman who operated a 190-acre farm in Livingston County, New York, growing corn and raising livestock. Between 1978 and 1984, Ms. Acomb received annual farm operating loans averaging \$100,000 per year, which were held in a supervised account. She made her payments on those loans to FSA without a problem, but in 1981, Mr. William Humphrey, the FSA County Supervisor, refused to allow Ms. Acomb to use any of the proceeds from the sales of her livestock, hogs, or crops to repay another loan she had

received from the Commodity Credit Corporation (“CCC”). Because Ms. Acomb could not repay her CCC loan without those proceeds, CCC sued her, thus creating significant financial hardship for Ms. Acomb and her family. The case was ultimately dismissed when a judge found FSA’s refusal to release her proceeds had relieved Ms. Acomb of her obligation.

35. Thereafter, in 1985, when Ms. Acomb applied for an annual operating loan, it was denied. This denial was followed by a letter from Mr. Humphrey stating that he would not release any sale proceeds to her, and that any money she made by selling her security (the hogs, livestock, and corn) must be applied to her FSA loans. Mr. Humphrey then accused her of illegally selling her hogs, which resulted in the foreclosure of her farm in 1996.

36. Ms. Acomb filed a civil rights complaint with the USDA alleging discrimination. The USDA responded that it found no evidence of discrimination after reviewing only a portion of her file.

37. To the extent Ms. Acomb’s claims arose during the “Claims Period” covered by USDA’s administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

38. Plaintiff Mary L. Brown is a woman who farmed 100 acres of peanuts, cotton, corn, and tobacco in Fitzgerald, Georgia. She had over 15 years of experience when she approached the FSA. In 1985, she applied for an operating loan, to be used for general expenses. She waited for quite a while after submitting her application, but did not hear anything from the FSA office. When she called to check on her application, she was told she was not qualified for a loan. Unsatisfied with that explanation, she went back to the office and spoke with a male loan

officer who expressed surprise that a woman would apply for a farm operating loan for herself. When Ms. Brown pressed him for a more specific reason for the denial of her application, the loan officer offered her none other than she “did not qualify.” Because she did not receive the needed operating loan, Ms. Brown was forced to quit farming. Ms. Brown believes that there were men who were able to apply and be accepted for FSA loans at the time she was seeking to apply for a loan. She called the FSA office multiple times to complain, however, the FSA staff refused to speak with her about her complaint.

39. To the extent Ms. Brown’s claims arose during the “Claims Period” covered by USDA’s administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

40. Plaintiff Joyce A. King is a woman farmer who wished to raise soybeans on the 40 acres she leased in Lincoln County, Arkansas. In January 1983, she went to the FSA office in Star City, Arkansas to obtain a farm loan operating application. She was told it was too early, and she did not receive an application. So she returned to that office shortly thereafter, in February or March of that year, but was then told it was too late to apply for funds. She then complained to the county supervisor, Mr. Ben Reynolds. Mr. Reynolds refused to help and informed her that “women were not cut out for farming” because they were a risk and could not make a profit.

41. To the extent Ms. King’s claims arose during the “Claims Period” covered by USDA’s administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program



discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

42. Plaintiff Phyllis L. Robertson is a woman farmer in Arkansas who sought a farm operating loan to raise soybeans on her leased land. She had many years of experience. On several occasions in 1982 and 1983, she went to the FSA office in Lincoln County, Arkansas and attempted to obtain an application. She was repeatedly told, however, that no applications were available. Determined to obtain an application, she began to visit the office frequently but was told again and again that there were no applications available. Ms. Robertson knew that around this time a male farmer, Lee Owens, had not only received an application, but had also received an operating loan. On at least three occasions she tried to speak to a manager about not being able to obtain an application, but was only able to speak to the area manager once. When she spoke with him, Ms. Robertson complained that as a woman she was refused an application, while men were able to get applications. He insisted that all Ms. Robertson had to do was come to the office and pick up an application. She began visiting the loan office twice a week, but still never received an application. On one occasion, she witnessed a male farmer receive an application, but when she confronted the receptionist about this, the receptionist told her it was the last one.

43. To the extent Ms. Robertson's claims arose during the "Claims Period" covered by USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

44. Plaintiff Edith Scruggs is a woman farmer who has a farm in Lincoln County, Arkansas and has been farming for her entire life. In 1983, she went to her local FSA office to apply for an operating loan. A loan officer gave her an application, but no assistance in completing the application. After she completed the application, a male loan officer interviewed her and made clear he did not think that women could farm. He told her that women cannot be serious about trying to farm, and that it was a joke that she was actually trying to farm for her living. He did not take her seriously when she offered her house and farm equipment as collateral, and he actually laughed at her. Then, after not hearing anything about her application for several months, she received a notice that her application had been rejected. Ms. Scruggs went back to the Lincoln County FSA office to demand an explanation for the rejection and was told there was not enough money. She was aware that male farmers in the area were receiving farm operating loans. During her return visit to the FSA office, she complained about being treated differently than male farmers who had applied for loans from FSA.

45. To the extent Ms. Scruggs's claims arose during the "Claims Period" covered by USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

46. Plaintiff Maryland B. Wynne is a woman farmer in Pine Bluff, Arkansas, who was several times rejected for farm operating loans. She had a great deal of experience when she first approached the FSA office in Star City, Arkansas in the Winter of 1983 about a small operating loan. She was forced to wait an entire day and then return the next day in order to obtain an application, which the receptionist only reluctantly provided. After completing the

application with no assistance from the office, the county supervisor Mr. Floyd Gaylord informed her that she would have to put up her house, car, and several other assets worth \$57,000 as collateral for the \$2,000 loan. Reluctantly, Ms. Wynne complied. But as months passed, she did not receive the loan funds. So she went back to the office to speak to Mr. Gaylord again, and he told her that all the loan funds had been exhausted, that he did not believe women could farm, and that women were wasting their time in farming and applying for farm loans. While waiting for the loan, Ms. Wynne was compelled to plant her seeds late in the season and thus had a low yield. This process was repeated every year for the next six years: she would apply for an operating loan, the FSA Office would drag its feet in processing her loan application, her planting would be delayed, ultimately she would not get the loan and she would have a low crop yield. In 1987, Ms. Wynne tried to obtain a larger (though still modest) operating loan of \$6,000, but Mr. Gaylord laughed in her face. Because of the lack of operating loans and the resulting poor production, Ms. Wynne was forced to stop farming in 1990. Throughout the years she was denied loans, Ms. Wynne was aware that Mr. Gaylord was actually soliciting loan applications from male farmers and helping them complete the complicated applications.

47. Ms. Wynne knew of men who applied for loans from FSA at the same time she did, with similar farming experience and acreage. The men received farms loans but she did not. Ms. Wynne complained to the county supervisor and alleged gender discrimination.

48. To the extent Ms. Wynne's claims arose during the "Claims Period" covered by USDA's administrative claims program offered to women farmers who have been subjected to gender discrimination in the granting of farm loans and loan servicing, that program

discriminatorily and arbitrarily denies her the opportunity to apply for relief under the terms available to similarly situated members of other minority groups.

49. Defendant Tom Vilsack is Secretary of the Department and is the federal official responsible for the administration of the statutes, regulations, and programs which are the focus of this action. On information and belief, Mr. Vilsack has the authority to settle disputes against the Department, and he was involved in the creation and administration of certain administrative claims programs for African-American and Native American farmers, and in the offer of a different, significantly lesser program to female and Hispanic farmers.

#### **THE DEPARTMENT'S FARM LOAN PROGRAMS**

50. FSA provides farm loans and other farm credit benefits, commodity program benefits (such as deficiency payments, price support loans, Conservation Reserve Program ("CRP") benefits), and disaster payments to U.S. farmers. The agency was created in 1994 as a result of a reorganization of USDA, primarily by the merger of the Agricultural Stabilization and Conservation Service ("ASCS"), which previously had handled commodity program benefits, price support loans, CRP payments, disaster payments, and related services, with the Farmers' Home Administration ("FmHA"), which previously had provided farm loans and other farm credit benefits.

51. FmHA had been created to provide loans, credit, and technical assistance for farmers. FmHA made loans directly to farmers or guaranteed the loans made to farmers by private, commercial lenders. These loans included "farm ownership" and "operating" loans, as well as loans that "restructure" existing loans and "emergency disaster" loans. FmHA's key responsibilities were to work with small, minority, and disadvantaged farmers – farmers who

could not get credit elsewhere, and to assist these farmers in developing their financial plans and loan applications.

52. Defendant Vilsack is responsible for the administration of the FSA. FSA, like its predecessors FmHA and ASCS, administers the federal farm programs through a three-tiered system consisting of (1) county offices and committees, (2) state offices and committees, and (3) the NAD, a federal level of review in Washington, D.C. The local county committees consist of producers from counties who have been elected by other producers in those counties; they oversee the county offices. There is also a county supervisor in each office. The state committees consist of producers from each state selected by the Secretary of USDA; they oversee the state offices. At the federal level, the NAD renders final determinations of administrative appeals. (Prior to the 1994 consolidation, FmHA had its own administrative appeal process.)

53. The Minority and Socially Disadvantaged Program Offices within USDA have the primary responsibility for coordinating USDA programs serving minorities and the socially disadvantaged. USDA classifies women as minorities and as socially disadvantaged.

54. When a farmer or prospective farmer applies for any federal farm loan, she goes to her county FSA office (formerly the FmHA office) and fills out a Farm and Home Plan, a financial plan for the farm, along with her loan application. Assistance and guidance are often critical for the success of the application because of the complexity of the programs and forms. Indeed, regulations require that USDA officials assist applicants in preparing the appropriate paperwork to apply for farm loans. The application process is governed by regulations found at 7 C.F.R. § 1910.3, et seq.

55. At all relevant times, the county committee and the county supervisor have exercised broad discretion in connection with the loan. For example, when the federal farm loan

application with its supporting documents is completed, it is presented to the county committee. The committee makes an initial eligibility determination based upon the criteria in 7 C.F.R. § 1941.12(a) (operating loans), § 1943.12(a) (ownership loans), or § 764.4 (emergency loans), many of which are subjective. The application is then reviewed by the county supervisor, who evaluates the feasibility of the applicant's Farm and Home Plan. If the county supervisor approves the applicant for participation, the loan is processed. However, the local FSA county offices have virtually unfettered discretion in reviewing loan applications and granting or denying them because many of the criteria for granting or denying loans are largely subjective and, as a result, susceptible to arbitrary application.

56. If an FSA loan or loan servicing is denied on discriminatory grounds, the applicant can file a complaint of discrimination with the USDA through the FSA Civil Rights Office (for FmHA, 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").

#### **WHAT USDA DID IN RESPONSE TO COMPLAINTS OF DISCRIMINATION**

57. Unbeknownst to plaintiffs, the enforcement capability of EO and OCREA was severely curtailed in 1983, leaving USDA with virtually no ability to investigate discrimination complaints. In a May 25, 1997 Richmond News Dispatch article and interview of Lloyd Wright, Director of USDA's Office of Civil Rights, Mr. Wright stated that no systematic probes or investigations into farmer allegations of discrimination in the administration of USDA loan programs had been conducted since 1983, when the Civil Rights investigative staff was disbanded. In a January 5, 1999 New York Times article, Rosalind Gray, who succeeded Mr. Wright as head of the Office of Civil Rights, stated that USDA "would agree that its procedures

in handling bias claims had been flawed.” Further evidence of USDA’s willful failure to investigate discrimination complaints is evident in the February 27, 1997 Office of Inspector General Report (“OIG Report”) and the February 1997 Civil Rights Action Team Report (“CRAT”), among other documents.

58. On March 10, 2000, USDA’s Office of Inspector General released its seventh audit report, “Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints – Phase VII (“OIG Report VII”). The report acknowledged that the Office of Civil Rights’ processing of civil rights complaints remained flawed: “This is our *seventh* attempt to provide [OCR] 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 in original). “[N]o significant changes in how complaints are processed have been made.” OIG Report VII at i (emphasis omitted).

59. During the relevant time period, OCR or its predecessor offices were legally obligated to investigate complaints of discrimination, make findings and, if appropriate, attempt conciliation with the complainants. In its 1997 OIG Report, the Office of the Inspector General found that FSA and OCREA failed to conduct investigations or otherwise follow proper procedures. *See* OIG Report at 1-2. Since the release of the OIG Report in 1997, upon information and belief, OCR processes and procedures have similarly failed to adequately address complaints of discrimination.

60. In 2003, the U.S. Equal Employment Opportunity Commission (“EEOC”) found that USDA still failed to adequately address complaints of discrimination. In a February 23, 2003 report of its on-site review of USDA’s compliance with equal employment opportunity statutes,

rules, regulations, and directives (“EEOC Report”), the EEOC concluded that “[d]elays of processing EEO complaints, the absence of effective oversight of EEO programs, and the lack of proper separation between the Office of General Counsel and the Office of Civil Rights, has severely impacted the integrity, efficiency, and professionalism of the Office of Civil Rights, the programs it administers, and its staff.” EEOC Report at 21.

61. USDA has codified regulations, 7 C.F.R. Part 15 – “Nondiscrimination,” which state USDA’s 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.

62. The February 27, 1997 OIG Report addressed complaints of discrimination within FSA as well as ten other agencies within USDA. OIG found, *inter alia*, that the discrimination complaint process within FSA lacked integrity and accountability, was without a tracking system, had no process for reconciliation, was in disorder, did not 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.

63. At the same time that OIG released its report in February 1997, USDA also released the CRAT Report condemning USDA’s lack of civil rights enforcement and accountability as a cause of the drastic decline in the number of minority farmers.



64. In the CRAT Report, the USDA admitted to certain disparate treatment of minority and small 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).

65. USDA admitted in the CRAT Report that discrimination complaints at USDA were often ignored, and that farmers reported that even when there was a finding of discrimination, USDA refused to pay damages. CRAT Report at 22-23.

66. USDA admitted in the CRAT Report that USDA’s 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.

67. USDA admitted in the CRAT Report that a lack of diversity in FSA county offices combined with a lack of outreach to small and limited-resource farmers directly affects the participation of minorities in USDA programs. CRAT Report at 26-27. Similarly, USDA admitted that the lack of diversity at USDA adversely affects program delivery to minorities and women. CRAT Report at 45.

68. USDA admitted that cultural insensitivity interferes with female 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.

69. On September 29, 1997, USDA's Office of Inspector General 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.

70. 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:

a. "We found that 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 the 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 noted 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 data base [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 data base. *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 records 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 staffmembers with the Office of General Counsel (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).

71. Upon information and belief, this systemic pattern of ineffectiveness has continued. The 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 in 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 re-engineer 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.

72. 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. Units within USDA’s OCR “do 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

e. “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.*

73. In sum, USDA’s willful disregard of and failure to properly investigate discrimination complaints from women began with the disbanding of civil rights enforcement functions back in 1983, and continues today. Even after February 1997, when the enforcement staff of the OCR was re-established, USDA has failed to afford meaningful investigation and review of complaints of discrimination.

**STATUTE OF LIMITATIONS FOR LENDING DISCRIMINATION  
CLAIMS IS EXTENDED**

74. 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). Said legislation extends the statute of limitations for plaintiffs in this case, and the running of the statute of limitations has been further stayed by order of this Court.

**THE HISTORY OF RELATED DISCRIMINATION CASES**

75. Plaintiffs filed this action in 2000. Lawsuits had been filed in 1997, 1999, and 2000 against USDA on behalf of other minority groups of farmers. The complaint filed in this case, and those filed on behalf of African-American, Native American, and Hispanic farmers and ranchers respectively, included virtually identical allegations that the USDA routinely discriminated in its farm benefit programs on the basis of race, ethnicity, and gender, and failed to investigate the claims of farmers who filed discrimination complaints with the agency.

76. The first of four virtually identical minority farmer cases seeking redress for the USDA's discrimination, *Pigford v. Glickman*, was filed on behalf of African-American farmers in the United States District Court for the District of Columbia on August 28, 1997. The *Pigford* plaintiffs claimed that USDA had discriminated against African-American farmers for decades, denying their applications, delaying the processing of their applications, or approving them for insufficient amounts or with restrictive conditions. On October 9, 1998, the trial court initially certified the case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Thereafter, on April 14, 1999, the trial court again certified the case as a class action for settlement purposes, this time pursuant to Rule 23(b)(3).

77. On November 24, 1999, Native American farmers brought a virtually identical suit against the USDA in the United States District Court for the District of Columbia, styled *Keepseagle v. Glickman*. The complaint in *Keepseagle* echoed the allegations set forth in the *Pigford* complaint. On September 28, 2001, the trial court certified the case as a class action, based upon USDA's well-documented and admitted refusal to investigate discrimination complaints filed with it by Native American farmers. The class was certified under Rule 23(b)(2), for injunctive and declaratory relief only.

78. On October 13, 2000, Hispanic farmers filed a third virtually identical class action suit in the United States District Court for the District of Columbia, styled *Garcia v. Glickman*, alleging that the USDA, just as it did with African-American and Native American farmers, discriminated against Hispanic farmers by also denying them access to USDA's farm credit and non-credit farm benefit programs in violation of the ECOA and the APA, and that USDA refused, and still refuses, to investigate their complaints of discrimination in those programs.

Unlike the judges in the African-American and Native American farmers' cases, the judge in the Hispanic farmers' case refused to certify the case as a class action.

79. On October 19, 2000, plaintiffs brought the instant action, originally styled *Love v. Glickman*. This fourth virtually identical class action suit filed in the United States District Court for the District of Columbia alleged the same substantive claims as did the African-American, Native American, and Hispanic farmers' cases. Plaintiffs brought this case on behalf of women farmers who farmed or attempted to farm and were discriminated against on the basis of gender in obtaining a farm loan, including the servicing and continuation of a loan from USDA, during the period from January 1, 1981 through December 31, 1996, or from the period October 19, 1998 through the present, and timely complained about such treatment. The same judge who presided over the Hispanic farmers' lawsuit refused to certify this case as a class action.

80. USDA has acknowledged that the cases brought by women, Hispanic, Native American and African-American farmers present "virtually identical claims against the USDA on behalf of different minority groups," and in doing so indicated that the conflict among the class certification of the actions may warrant court review "to ensure that similarly-situated minority groups are treated consistently." See USDA's Response to Plaintiffs' Petition for Permission to Take An Interlocutory Appeal, *Garcia v. Vilsack*, D.C. Cir. Dkt. No. 04-8008, at 19-20 (Oct. 2004). Yet now, USDA's sole basis for instituting a less favorable claims program for women (and Hispanic) farmers is the varying class certification decisions.

81. In 1999, two years after the *Pigford* case was filed, USDA and the *Pigford* plaintiffs entered a consent decree. See generally *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (approving consent decree). The consent decree in "*Pigford I*" established a two-track



dispute resolution system. Under Track A, African-American farmers who satisfied a specified burden of proof would be paid what the Court characterized as a “virtually automatic” \$50,000, plus granted certain loan forgiveness, and the government would pay the taxes due on the damage award. Alternatively, African-American farmers could elect a “Track B” process for damage claims greater than \$50,000 and, by satisfying a higher burden of proof, recover unlimited damages. At the end of 2010, over \$1 billion had been disbursed to more than 15,000 African-American farmers. Under the *Pigford I* consent decree, the government forgave all outstanding loans that were determined to be affected by discrimination proven by successful claimants. There was no limit on the total damages or debt relief awarded, and no specific documentary evidence was required. Claimants who chose Track A could be represented by class or lead counsel for free. The government paid damages and debt relief out of the federal Judgment Fund, a pool of money administered by DOJ to cover damage claims against the federal government.

82. On May 22 and June 18, 2008, Congress enacted two statutes, together known as the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 122 Stat. 923; Pub. L. 110-246, 122 Stat. 1651 (“2008 Farm Bill”). Section 14011 of the 2008 Farm Bill urged the USDA to settle pending discrimination lawsuits “in a just and expeditious manner.” Specifically, Section 14011 reads: “It is the sense of Congress that all *pending claims and class actions brought against the Department of Agriculture* by socially disadvantaged farmers or ranchers . . . including Native American, Hispanic, and *female farmers or ranchers* based on racial, ethnic, or gender discrimination in farm program participation *should be resolved in an expeditious and just manner.*” (emphasis added).



83. In addition, Section 14012 of the 2008 Farm Bill provided relief to African-American farmers who unsuccessfully sought entry to the initial *Pigford* settlement under paragraph 5(g) of the *Pigford* Consent Decree, which permitted late filings only in the event of extraordinary circumstances beyond a farmer's control. Specifically, Section 14012(b) of the 2008 Farm Bill provided that "[a]ny *Pigford* claimant who has not previously obtained a determination on the merits of a *Pigford* claim may, in a civil action brought in the United States District Court for the District of Columbia, obtain that determination." Section 14012(a)(4) defined "*Pigford* claimant" to mean "an individual who previously submitted a late-filing request under [paragraph] 5(g) of the [*Pigford* Consent Decree]." Pursuant to Section 14012 of the 2008 Farm Bill, as of January 1, 2010, over 28,000 plaintiffs had filed individual claims in 17 complaints in the United States District Court for the District of Columbia. These cases were consolidated, and they collectively became known as "*Pigford II*." To date, no class has been certified in any of the 17 cases, other than for settlement purposes.

84. After President Obama took office, the federal government chose to re-examine the benefits provided by Section 14012 of the 2008 Farm Bill to the African-American farmers who missed the filing deadline to participate in the original *Pigford* settlement. On May 6, 2009, the Obama Administration and defendant announced that the government would provide an additional \$1.25 billion to cover the claims of "late-filer" African-American farmers for past discriminatory treatment. This funding was a mandatory spending provision included in the 2010 Budget to compensate African-American farmers who missed the filing deadlines of the original *Pigford I* settlement.

85. USDA entered a settlement agreement with the *Pigford II* plaintiffs on February 18, 2010. The settlement defines the "settlement class" as individuals who submitted late-filing

requests under the *Pigford* consent decree between October 12, 1999, and June 19, 2008, and did not obtain a determination on the merits of their discrimination complaints. Because the congressional appropriation to fund the *Pigford II* settlement was capped (at \$1.25 billion), the settlement limits amounts paid out under Track A and Track B to up to \$50,000 and up to \$250,000, respectively. The \$50,000 award under Track A may be reduced pro rata based on the number of prevailing claimants under that Track, and Track B claimants may prove the amount of their actual damages up to \$250,000. Moreover, amounts paid for debt relief reduce the amount available to pay damages to victims in compensation for the discrimination they suffered. If the amount of money allocated to pay debt relief is insufficient to relieve farmers of the total outstanding balance on their affected loans, any unpaid balance remains a debt of the farmer and continues to accrue interest. In addition, the tax payment provided by the government may not be sufficient to cover all taxes due as a result of an award. Other than the differences described in this paragraph, the terms are those that governed under the *Pigford I* consent decree, and the *Pigford II* claimants participate in the same administrative claims process. Claimants need not provide any specific documentary evidence, and Track A claimants may be represented by class or lead counsel for free.

86. As a result of the *Pigford I* consent decree and *Pigford II* settlement, over \$2.25 billion have either been paid or allocated to settle the discrimination claims of African-American farmers.

87. On November 1, 2010, USDA reached a settlement with the Native American farmers. The settlement includes a damage award of approximately \$680 million and \$80 million in debt forgiveness to Native American farmers who also suffered systematic discrimination, although, upon information and belief, discrimination less pervasive and severe than that

experienced by female farmers. The combined amount of \$760 million equals the amount of damages claimed by the Native American farmers in the report submitted by their damages expert. The government, as it had for African-American farmers, agreed to provide Native American farmers with a low-cost, two-track dispute resolution process. Like the *Pigford II* settlement, the \$50,000 award under Track A may be reduced pro rata based on the number of prevailing claimants under that track, and Track B claimants may receive the amount of their actual damages up to \$250,000. If the \$80 million allocated for debt relief is insufficient, despite the estimate of the *Keepseagle* plaintiffs' expert, debt forgiveness will be reduced pro rata. The same tax relief will be awarded to Native American claimants as is awarded to African-American claimants under *Pigford II*. Claimants need not provide any specific documentary evidence, and Track A claimants may be represented by class or lead counsel for free.

#### **USDA'S ADMINISTRATIVE CLAIMS PROGRAM FOR WOMEN**

88. Defendant has announced that it will offer an administrative claims program for women (and Hispanic) farmers who have been the victims of discrimination in the granting of farm loans and loan servicing by USDA. But the program announced by USDA for women (and Hispanic) farmers is significantly inferior to the administrative programs offered to African-American and Native American farmers who suffered similar discrimination and filed virtually identical complaints.

89. On May 25, 2010, again on February 25, 2011, and thereafter, defendant publicly announced its administrative claims program that would be available to female (and Hispanic) farmers who suffered discrimination in connection with USDA's loan programs. USDA has filed with the Court its "Framework" document describing the program (filed on January 20, 2012), and a draft of the "Claim Form" that claimants will fill out to obtain relief through the program

(filed on April 2, 2012). These two documents, which represent the most recent publicly released program documentation, are attached hereto as **Exhibit 1**. USDA has already retained a claims administrator, and has represented repeatedly that the program is final and will commence imminently. The government has represented that the program for female farmers may provide a remedy for successful claimants for discrimination suffered during the period from January 1, 1981 to December 31, 1996 and/or from October 19, 1998 to October 19, 2000.

90. The proposed claims program that is available to women farmers who have suffered discrimination is significantly less favorable and the burdens for recovery are more onerous than the programs available to African-American and Native American farmers who suffered similar discrimination. Defendant proposes that female and Hispanic farmers share a total possible recovery of approximately \$1.33 billion, with the supposed possibility for a greater pool of awards if women (and Hispanics) under a certain aspect of the program can meet the high evidentiary burdens. The potential pool for awards to women and Hispanic farmers is only twice the amount the government has provided for Native American farmers, although female farmers and Hispanic farmers outnumber Native American farmers 19 to 1. The pool of funds available for awards to women and Hispanic farmers is just over half of the amount awarded to African-American farmers, although female and Hispanic farmers outnumber African-American farmers 27 to 1. These figures are based upon the most recent census, the 2007 Census of Agriculture, which lists under the category of "all operators" 985,182 women farmers, 82,462 Hispanic farmers, 55,889 Native American farmers, and 39,697 African-American farmers. The same census lists 306,207 female principal farm operators, 55,570 Hispanic principal farm operators, 30,599 African-American principal farm operators, and 34,706 Native American principal farm operators.

91. Under the program being offered by the government, female (and Hispanic) farmers will have three “Tiers” of recovery: Tier 1(a), which allows for recovery of up to \$50,000 (subject to pro rata reduction); Tier 1(b), which allows for recovery of up to \$250,000 of actual damages shown (subject to pro rata reduction); and Tier 2, which allows for recovery of a flat \$50,000 if the claimant can provide copies of loan documents and complaints to government officials originally submitted up to 30 years ago.

92. All female (and Hispanic) “constructive applicants” (those who attempted to apply for loans but were discouraged or turned away due to discrimination) may only apply under Tier 1(a). These constructive applicants will have to provide: (a) a sworn, written eyewitness statement from a witness to the discriminatory incident many years ago; (b) a copy of a complaint filed within one year of the discriminatory incident; or (c) a letter or other document to or from a non-family member written within one year of the incident detailing what occurred. African-American and Native American constructive applicants do not need to provide these documents in order to receive awards in connection with the USDA-sponsored claims programs created for their benefit. Many female (and Hispanic) claimants will thus be subjected to more onerous evidentiary requirements than similarly situated members of other minority groups. There is no valid or rational basis for this discriminatory and adverse treatment of women (and Hispanic) constructive applicants in the government’s claims programs.

93. Women (and Hispanic) farmers applying under Tier 1(b), which allows for recovery of up to \$250,000 in actual damages, also face higher evidentiary burdens than are faced by similarly situated African-American and Native American farmers applying for similar recoveries. The Claim Form filed with the Court on April 2, 2012 states that female (and Hispanic) farmers applying under Tier 1(b) must provide: (1) a copy of a discrimination

complaint sent to USDA; and (2) a copy of a loan application or document from USDA showing submission. African-American and Native American farmers applying for up to \$250,000 of actual damages did not necessarily have to provide these documents. There is no valid or rational basis for this discriminatory and adverse treatment of women (and Hispanic) Tier 1(b) claimants in the government's claims programs.

94. Under the program being offered by the government, there is a \$160 million cap on the debt relief USDA will provide to successful women farmer claimants. Depending on the number of successful claimants, women farmers may have to share a pro rata portion (along with Hispanic farmers) of the \$160 million in debt relief and USDA will not fully cancel debts that exceed the pro rata amount. The debt relief offered to African-American and Native American farmers was greater, and there is no valid or rational basis for this discriminatory and adverse treatment of women (and Hispanic) farmers.

95. Moreover, unlike the counsel provisions for African-American and Native American farmers, no female (or Hispanic) claimant will have the assistance of counsel built into the administrative claims program. Rather, all female (and Hispanic) applicants will have to pay any attorney hired to assist them in the claims process, and defendant further seeks to limit (to \$1,500 under Tiers 1(a) and 2) each claimant's payment to an attorney. There is no valid or rational basis for this discriminatory treatment of women (and Hispanic) claimants, and the lack of legal counsel will dramatically and adversely impact the ability of claimants to understand their options and the parameters of the government's claims program, and their ability to lodge successful claims.

96. Unlike the programs created for African-American and Native-American claimants, as a condition for the submission of a claim, women claimants will be required to

execute a broad release of *all* credit-related discrimination claims against USDA before a claimant even knows whether her claim has been accepted for consideration on the merits. There is no valid or rational basis for this discriminatory and adverse treatment of women (and Hispanic) claimants in the government's claims programs.

97. Defendants have impermissibly conditioned the potential claim benefits they have offered to women farmers on their waiver of the following constitutionally protected rights: (1) plaintiffs' waiver and release of all of their claims and potential claims, impermissibly including claims that are not addressed in the government's administrative process; (2) plaintiffs not having access to free legal counsel, as is available to African-American and Native American claimants; and (3) plaintiffs limiting the legal fees they can pay to the counsel that they privately select and retain to no more than \$1,500.

98. Despite the like pattern and practice of discrimination against African-American, Native American, female, and Hispanic farmers, defendant has not been fair in settling the claims of minority farmers, all of whom USDA similarly victimized. Defendant has intentionally proceeded unfairly, unequally, and disproportionately, favoring African-American and Native American farmers in the settlement of their claims while disfavoring similarly situated female farmers in the settlement of their virtually identical claims.

99. The government is providing substantial benefits to members of one minority group to redress discrimination, while it knowingly refuses similar benefits to similarly situated members of another minority group who undeniably suffered the same or worse discrimination at the hands of the government. The government's favoritism of certain groups of minority farmers, over other groups who are intentionally disfavored in the administration of justice, denies those

disfavored minority groups equal protection of the laws in violation of the Fifth Amendment of the United States Constitution, and does so without any valid or rational basis.

100. The Constitution further forbids the government from intentionally offering a process for the recovery of settlement benefits that favors members of one minority group, while denying a similar process to members of another minority group, where the government has undeniably discriminated against all members of the differently treated groups in the same manner and to the same extent and inflicted similar injury on the minority farmers in each group. The USDA's substantially less favorable and more onerous program for women farmers, who have been subjected to the same, if not worse, discrimination than other minority groups of farmers, uses gender to deprive women of the due process to which they are entitled under the Fifth Amendment of the United States Constitution.

101. Requiring plaintiffs to sign a broad release of *all* credit-related discrimination claims against the U.S. Government and USDA as a condition of participation deprives plaintiffs of their legal rights to bring discrimination claims (those covered and not covered by the administrative claims program) with no rational basis and without due process.

102. Defendant's refusal to settle fully and comprehensively the women farmers' claims on materially the same terms as those on which defendant has agreed to settle the very same claims of African-American and Native American farmers is intentional and continues USDA's persistent discrimination against women farmers on the basis of gender in violation of plaintiffs' rights to due process and equal treatment under law in the administration of justice.

103. Defendant is obligated to offer a program for the settlement of women farmers' claims on terms similar to those it has provided to African-American and Native American farmers. Defendant has arbitrarily and unlawfully withheld from women (and Hispanic) farmers



the chance to apply for and obtain relief from agency discrimination on an equitable basis with other minority groups.

104. The denial of class certification in this lawsuit does not provide a rational basis for such disparate and unequal treatment of women farmers on the one hand and African-American and Native American farmers on the other hand, as these three groups are similarly situated victims of government discrimination. Defendant voluntarily agreed to settle with African-American farmers in *Pigford II* as a “settlement class.” The *Keepseagle* case was certified as a class only for injunctive and declaratory relief, and the government represented that such certification was vulnerable upon review following the rulings in this case and in the Hispanic farmers’ case, yet the government never challenged the limited certification in *Keepseagle* and in fact voluntarily agreed to provide \$760 million in *monetary* relief to Native American farmers.

105. In addition, the manner in which defendant has sought to settle all of the minority farmers’ cases renders the issue of class certification completely irrelevant and a pretext for discrimination. While there are important, discriminatory differences between the settlements offered to each minority group, at the core of each program offered by defendant is an individualized dispute resolution process. No claimant under any settlement can recover anything without first individually satisfying the requisite burden of proof for the applicable dispute resolution track.

#### **CLASS ACTION ALLEGATIONS**

106. Plaintiffs bring this class action on behalf of women farmers who wish to apply for relief through USDA’s administrative claims program for women farmers, but who, due to USDA’s decisions in offering a different program for women (and Hispanic) farmers, do not

have the opportunity to apply for relief on equally beneficial terms to those offered by USDA to similarly situated African-American and Native American farmers.

107. As it pertains to Counts III through V below, this action is brought and may properly be 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), 23(b)(2) and/or 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, and predominance and superiority requirements of those provisions.

108. The class is so numerous that the individual joinder of all its members is impracticable. Upon information and belief, there are more than 300,000 women principal farm operators in the United States, and nearly one million total women farm operators. USDA's administrative claims program seeks to address discrimination suffered by women who farmed or attempted to farm and were discriminated against on the basis of gender in obtaining a farm loan or loan servicing from USDA between January 1, 1981 and December 31, 1996 and/or between October 19, 1998 and October 19, 2000, and timely complained about such treatment. On information and belief, thousands of women farmers may allege discrimination during these periods and wish to apply for relief through USDA's administrative claims program.

109. Common questions of law and fact exist as to all members of the class and predominate over any questions affecting only individual members of the class. These common legal and factual questions arise from one central issue, which does not vary from class member to class member and which may be determined without reference to the individual circumstances of any particular class member: USDA's decision to deprive women (and Hispanic) farmers of the opportunity to apply for and obtain relief for past agency discrimination on an equitable basis

with similarly situated African-American and Native American farmers. This decision has only perpetuated the discrimination women farmers have suffered at the hands of USDA.

110. Additional common questions include:

(a) whether USDA's decision to offer women farmers a less favorable administrative claims program violates their equal protection rights under the Fifth Amendment of the United States Constitution;

(b) whether USDA's decision to offer women farmers a less favorable administrative claims program and one that requires them to give up a breadth of legal rights in order to participate violates their rights to due process under the Fifth Amendment of the United States Constitution; and

(c) whether USDA's decision to offer women farmers a less favorable administrative claims program is arbitrary, capricious, and an abuse of discretion, in violation of the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*, and whether the Court shall compel the agency to offer an equitable program under that Act.

111. Plaintiffs' claims are typical of the claims of the members of the class, all of whom have been denied equal protection and due process due to USDA's arbitrary and unlawful decision to deprive them of the opportunity to apply for and obtain relief for past agency discrimination on an equitable basis with similarly situated African-American and Native American farmers.

112. 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. Both the named plaintiffs and their counsel have advocated for women farmers who faced discrimination at the hands of USDA for over a decade.

113. 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 administrative claims program as described in this Complaint is impracticable. The class action device presents an efficient, orderly way for one Court to adjudicate plaintiffs' and class members' claims in a single forum. Individual litigation would further present a potential for inconsistent or contradictory judgments in multiple courts and would increase the delay and expense to all parties and the court system in resolving the legal and factual issues of this case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication of a single problem.

114. The claims asserted in Counts III through V of this action are alternatively certifiable under the provisions of Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3) because:

(a) the prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for defendant;

(b) defendant has acted on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole; and

(c) questions of law and fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other methods to fairly and efficiently adjudicate plaintiffs' and class members claims with respect to Counts III through V below.

**COUNT I**  
**(Declaratory Judgment)**

115. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege all paragraphs above as if fully set forth herein.

116. An actual controversy exists between plaintiffs and class members and defendant as to their rights with respect to defendant's farm programs.

**COUNT II**  
**(Violation of Equal Credit Opportunity Act)**

117. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

118. During the period from January 1, 1981 through December 31, 1996 or the period from October 19, 1998 through the present, plaintiffs and class members attempted to apply for loans or loan servicing, or applied for loans or loan servicing from USDA.

119. Plaintiffs and class members were eligible for the loans or loan servicing that they attempted to apply for or applied for, but nonetheless they were denied; and/or plaintiffs and class members experienced overt gender discrimination when they attempted to apply for or applied for loans or loan servicing, and they were denied the loans or loan servicing they sought.

120. USDA discriminatorily denied, based on plaintiffs' and class members' gender, plaintiffs' and class members' loan application requests, loans, and/or loan servicing.

121. Plaintiffs and class members timely complained about USDA's actions.

122. USDA's acts of denying plaintiffs' and class members' loans and loan servicing and systematically failing to properly process their discrimination complaints was gender discrimination and contrary to the requirements of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a).

**COUNT III**

**(Violation of Equal Protection under the Fifth Amendment of the U.S. Constitution;  
Injunctive Relief)**

123. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

124. USDA's claims administration program for women farmers has the discriminatory effect of treating plaintiffs and class members, as women farmers, less favorably than African-American and Native American farmers who suffered similar discrimination by USDA and brought virtually identical discrimination claims against USDA.

125. USDA has a discriminatory purpose in its claims administration program for women farmers: to treat women farmers less favorably than similarly situated African-American and Native American farmers, who suffered similar discrimination.

126. USDA's disparate treatment of plaintiffs and class members, as women farmers, in its claims administration program, in contrast to its treatment of similarly situated African-American and Native American farmers, deprives plaintiffs and class members of equal protection in violation of the Fifth Amendment of the United States Constitution.

**COUNT IV**

**(Violation of Due Process under the Fifth Amendment of the U.S. Constitution;  
Injunctive Relief)**

127. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

128. USDA's claims administration program for women farmers is arbitrary, unreasonable, and contrary to the government's legitimate, and legally-mandated, interest in treating all minorities in a nondiscriminatory manner.

129. USDA lacks legitimate justification for treating similarly situated members of different minority groups differently with regard to the claims programs.

130. USDA's disparate treatment of plaintiffs and class members, as women farmers, in its claims administration program, in contrast to its treatment of similarly situated African-American and Native American farmers who suffered similar discrimination, deprives plaintiffs and class members of due process in violation of the Fifth Amendment of the United States Constitution.

**COUNT V**  
**(Violation of Unconstitutional Conditions Doctrine)**

131. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

132. Defendants may not condition the receipt of a government benefit on the waiver of a constitutionally protected right. The fact that the government is not required to provide the benefit offered does not allow the government to apply a condition upon the receipt of that benefit in an unconstitutional manner.

133. Defendants have offered plaintiffs a potential benefit through the claims process that is conditioned upon: (1) plaintiffs' waiver and release of all of their claims and potential claims, impermissibly including claims that are not addressed in the government's administrative process; (2) plaintiffs not having access to free legal counsel, as is available to African-American and Native American claimants; and (3) plaintiffs limiting the legal fees they can pay to the counsel that they privately select and retain to no more than \$1,500.

134. Such conditions constitute mandatory waivers of constitutionally protected rights.

135. In conditioning the potential benefit on any of these waivers, Defendants impermissibly violate plaintiffs' constitutional rights.

**COUNT VI**  
**(Violation of Administrative Procedure Act; Injunctive Relief)**

136. Plaintiffs, on behalf of themselves and all others similarly situated, reallege all paragraphs above as if fully set forth herein.

137. USDA's claims administration program for women farmers constitutes final agency action, and plaintiffs and class members have no other adequate remedy in court.

138. USDA's disparate treatment of plaintiffs and class members, as women farmers, in its claims administration program, in contrast to its treatment of similarly situated African-American and Native American farmers who suffered similar discrimination, is arbitrary and capricious and violates the constitutional rights of plaintiffs and class members.

139. USDA has unreasonably withheld from plaintiffs and class members, as women farmers, the opportunity to apply for and obtain relief for past agency discrimination on an equitable basis with other minority groups. USDA's conduct related to its claims administration program is in violation 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 described in this Complaint exist at the USDA and that they are unlawful;
2. issue a permanent injunction prohibiting USDA, its officers, agents, employees and successors, from engaging in the discriminatory lending practices alleged herein, including but not limited to: (a) refusing applications to, or otherwise deterring, women farmers from applying for farm loans; (b) applying more stringent underwriting standards or otherwise discriminatorily denying loans to women who are otherwise qualified; (c) providing inadequate or less assistance to women farmers in completing farm loan applications and/or farm and home



plans; (d) granting loans to women on differential and less advantageous terms than similarly situated male farmers; and (e) discriminatorily denying women servicing on their loans, or providing less advantageous servicing to women farmers than that offered to similarly situated male farmers;

3. issue a permanent mandatory injunction requiring that the USDA adopt lending practices in conformity with the requirements of the Equal Credit Opportunity Act;

4. issue an Order mandating that USDA remedy its discriminatory practices, such as: (a) implementation of a procedure whereby denials of female farmer loan applications are subject to secondary review from an independent reviewing body with authority to reverse an initial rejection decision; (b) implementation of a program designed to provide specific assistance to female farm loan applicants in completing loan applications and apprising female farmers of their rights under ECOA and USDA regulations; and (c) implementation of a program designed to review USDA farm loan practices in the aggregate, through sampling or other methods, to assure that women and male farmers are being treated similarly and equally in the entire loan process;

5. issue an Order mandating that USDA institute an effective system for investigating and timely responding to complaints of gender discrimination in connection with the provision of applications for the granting and servicing of farm loans;

6. issue a permanent mandatory injunction requiring that the USDA adopt recordkeeping practices that are in conformity with the requirements of the Equal Credit Opportunity Act and that otherwise permit future monitoring of the USDA's treatment of women farmers;

7. issue an Order mandating that USDA implement a voluntary administrative claims program for women farmers with material terms that are equally beneficial to those offered to African-American and Native American farmers with similar claims of discrimination, including but not limited to: (a) not imposing on women farmers a higher standard than required of other minority farmers in order to be granted an award; (b) not imposing limitations on women farmers' use of legal counsel; (c) providing free legal advice and counsel to claimants as part of the program; and (d) not requiring women farmers to broadly release *all* credit-related discrimination claims against USDA before notice of receipt of their claim and confirmation that their claim will be considered on the merits;

8. for those plaintiffs who do not choose to have their claims adjudicated in the administrative claims program, award compensatory damages appropriate to the proof at trial;

9. award reasonable attorneys' fees and costs, including expert fees, and interest;  
and

10. order such other and further relief as the Court deems just and proper.

Dated: July 13, 2012

Respectfully submitted,

/s/ Barbara S. Wahl

Marc L. Fleischaker #004333  
Barbara S. Wahl #297978  
Kristine J. Dunne #47148  
ARENT FOX LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339  
Telephone: (202) 857-6000  
Facsimile: (202) 857-6395  
fleischaker.marc@arentfox.com,  
wahl.barbara@arentfox.com,  
dunne.kristine@arentfox.com

Roderic V.O. Boggs  
Emily Brittain Read

WASHINGTON LAWYERS  
COMMITTEE FOR CIVIL RIGHTS  
AND URBAN AFFAIRS  
11 Dupont Circle, N.W. - Suite 400  
Washington, D.C. 20036  
Telephone: (202) 319-1000  
Facsimile: (202) 319-1010

Alexander John Pires, Jr. # 185009  
PIRES COOLEY  
4401 Q Street, N.W.  
Washington, D.C. 20007  
Telephone: (202) 333-1134  
Facsimile: (202) 338-3635

Philip Fraas # 211219  
STINSON MORRISON HECKER LLP  
1150 18th Street N.W., Suite 800  
Washington, DC 20036-3845  
Telephone: (202) 572-9904  
Facsimile: (202) 572-9946

***Counsel for Plaintiffs***

# **Exhibit 1**

January 13, 2012

## **FRAMEWORK FOR HISPANIC OR FEMALE FARMERS' CLAIMS PROCESS**

### **I. PURPOSE**

The United States is establishing a voluntary administrative claims process (Claims Process) for farmers who submit timely claims alleging discrimination by USDA, due to their being Hispanic or female, in responding to their applications for farm loans or loan servicing from 1981 to 2000.<sup>1</sup>

#### **A. Cash Payments and Other Relief**

Successful claimants will be eligible for a cash payment and debt relief on eligible farm-loan debt. Some claimants will also be eligible for tax relief as described below. Claimants must elect to proceed under one of the following Tiers, each of which has different requirements and potential awards.

##### **1. Tier 2 Payments**

A Tier 2 payment of \$50,000, plus tax relief on that award and debt relief from USDA on eligible farm loans, is available to those claimants who apply for such a payment, submit certain documentation, and prove the claim by substantial evidence, as provided in Section VIII. There is no limit to the number of claimants who may qualify for Tier 2 payments, and no cap on the aggregate dollar amount of awards that may be paid to prevailing claimants under Tier 2. While there is no cap, if the total amounts paid under Tier 2 are less than \$100 million, the balance will be available for awards under Tier 1(a). There is a cap on the total dollar amount of debt relief for prevailing claimants as specified in paragraph D below. Claimants who fail to prove their Tier 2 claims will automatically be reviewed for a Tier 1(a) payment.

##### **2. Tier 1 Payments – Tier 1(a) and Tier 1(b)**

###### **Tier 1(a)**

A Tier 1(a) payment is available to any claimant who lacks certain documentation regarding his or her claim but can prove the claim by substantial evidence. Each successful Tier 1(a) claimant will receive a cash award of up to \$50,000, as provided in Section VIII, plus tax relief on that award, and debt relief from USDA on eligible farm loans. Total payments of cash awards and tax relief under Tier 1(a) are subject to a cap of \$1.13 billion, plus the balances, if any, from the \$100 million funds described in paragraphs 1 and 3. The cash award for each successful claimant will be the same dollar amount. Due to the total cap, the dollar amount may be reduced pro rata from \$50,000

---

<sup>1</sup> See Section VIII below for the Relevant Period when claimants must have farmed or attempted to farm for this Program to apply.

January 13, 2012

depending on the number of successful claimants. There is a cap on the total dollar amount of debt relief for prevailing claimants as specified in paragraph D below.

Tier 1(b)

A Tier 1(b) payment of up to \$250,000 for proven actual damages, plus debt relief from USDA on eligible farm loans, is available to those claimants who apply for such a payment, submit documentary evidence admissible under the Federal Rules of Evidence, and prove the claim by a preponderance of the evidence. No tax relief will be provided under Tier 1(b). Total payments under Tier 1(b) are subject to a \$100 million cap. If the total amounts paid under Tier 1(b) are less than \$100 million, the balance will be available for awards under Tier 1(a). Because aggregate Tier 1(b) payments are subject to a cap, depending on the total number of successful Tier 1(b) claimants, the actual damage award for each Tier 1(b) successful claimant may be reduced on a pro rata basis (i.e., by a percentage necessary to bring the total amount of Tier 1(b) payments within the \$100 million cap). There is a cap on the total dollar amount of debt relief for prevailing claimants as specified in paragraph D below.

B. Deferring and Withholding of Payments Due to Audits

Payments on individual claims under any Tier may be deferred upon commencement of an audit and withheld as the result of an audit. The pro rata calculation to be made to determine the final amount of each cash payment in Tiers 1(a) and 1(b) will take into account any payments being withheld because of ongoing audits, as discussed in Section X below. If at the conclusion of the audit process, any payments are not owed on claims that were initiated, additional payments will be made to successful claimants on a pro rata basis unless each such payment would be less than \$20, in which case no additional payments will be made. A similar process for determining the amounts to be provided will apply with respect to debt relief, but without an automatic exception for amounts below \$20.

C. Tax Relief

Under Tiers 1(a) and 2, tax relief will be provided on behalf of each successful claimant, paid directly to the Internal Revenue Service, in a lump sum at the fixed rate of 25 % of the cash award, and 25 % of the outstanding principal amount of any debt relief provided by USDA. The amount of tax relief on debt relief will exclude interest accrued on the debt. The amount of tax relief provided to a claimant is not intended to offset completely all taxes that he or she may owe on the cash award or debt relief. No tax relief will be provided to claimants under Tier 1(b).

D. Debt Relief

A total of \$160 million in debt relief will be available from USDA to successful claimants in Tiers 1(a), 1(b), and 2, but only for eligible debt as described in Section IX below. If the total dollar amounts of debt relief sought by successful claimants on

January 13, 2012

eligible debt exceed this cap, USDA will not fully cancel all such debts, and debt relief will be reduced on a pro rata basis, as discussed in Section IX.

**E. Sources of Funding**

Cash awards and tax relief will be paid from the Judgment Fund. USDA will pay all other costs, including debt relief, costs associated with outreach and the provision of notice, and the administration and adjudication of claims. USDA will implement debt relief to successful claimants, and cover any related administrative costs associated with debt cancellation.

**F. Claims Period**

Claimants will have 180 days from the opening date of the Claims Period, to be announced by USDA, within which to file a complete Claims Package with the Claims Administrator. An additional period will be permitted for the completion of Claims Packages determined by the Administrator to be timely but incomplete, as described below.

**G. Timing of Payments**

Payments under Tier 2 will be made as soon as practicable after a final decision is made that the claimant has prevailed on the claim. Due to the caps, payments under Tier 1(a) and Tier 1(b) will not be made until all payments are made under Tier 2, and until final decisions are made on all claims under Tier 1(a) and Tier 1(b). At that time, it will be determined when payments under Tier 1(a) and Tier 1(b) will be paid, and if so, whether they need to be pro rated due to the total caps. That calculation will take account of any payments being withheld because of ongoing audits, as discussed in Section X below.

**II. NOTICE**

**A. Outreach**

USDA and its contractors will design a process to notify female and Hispanic farmers of the availability of this Claims Process. A Claims Package will be provided, in a manner consistent with applicable attorney ethical requirements, to community advocacy groups and to persons who express interest in the Program.

Information about this program will be broadcast via mail and media outreach, and efforts will be made through meetings and direct contacts with community advocacy groups, stakeholders, and potential claimants, to inform potential claimants about the claims process and collect potential claimants' names and contact information.

January 13, 2012

**B. Claims Package and Additional Information**

The Claims Administrator will send a Claims Package to any person who indicates an interest in the Program.

**III. THE CLAIMS ADMINISTRATOR**

The Administrator will:

- Establish and manage all aspects of the claims processing center.
- Distribute the Claims Package forms (including the Claim Form, the Settlement Agreement, and the Stipulation of Dismissal).
- Operate a toll-free helpline that responds to inquiries by claimants or interested parties, or inquiries referred by USDA, and refers relevant questions to the Claims Adjudicator.
- Manage all documents and information to help ensure the privacy of individual claimants.
- Receive claims packages submitted by claimants.
- Manage all communications with claimants (including letters) related to Claims Packages.
- Provide USDA, on a rolling basis, with lists of claimants.
- Determine whether a Claims Package that was submitted is timely and complete and notify claimants of these determinations.
- Forward to the Adjudicator for processing and resolution all timely and complete Claims Packages.
- Manage contacts with claimants after the submission of a Claims Package, and ensure that questions from claimants are addressed by the Administrator or the Adjudicator, as appropriate.
- Construct a comprehensive web-based tracking database to manage Claims Packages through the entire process from initial contact to the Adjudicator's decision.
- Design and maintain the claims process website and implement all necessary updates.
- Coordinate the payment process.

**IV. THE CLAIMS ADJUDICATOR**

The Adjudicator will:

- Review each Claims Package that the Administrator has deemed timely and complete, and require claimants to submit additional documentation and evidence if, in the Adjudicator's judgment, the additional documentation and evidence would be necessary or helpful in deciding the merits of the claim, or if the Adjudicator suspects fraud regarding the claim.



January 13, 2012

- Retain an experienced agricultural economist as a “Tier 1(b) Expert” to assist the Adjudicator in assessing economic damages claims made by claimants under Tier 1(b).
- Issue a final decision granting or denying the claim.
- For any claims that are denied a Tier 2 payment, review such claims under Tier 1(a).
- For each successful claimant, identify all outstanding USDA loans and determine which loans are eligible for debt relief and which are not eligible.
- Notify in writing both successful and unsuccessful claimants of the results of their adjudications.
- At the appropriate time, make a cash award to successful claimants.
- Establish fraud controls and monitor and oversee audits as discussed below to ensure the integrity of the Claims Process.
- Issue periodic reports to USDA on the progress of the Claims Process and the results of adjudications.

## V. REQUIRED PROCEDURES

### A. Claims Package

Any person who wishes to participate in the Claims Process must execute a Settlement Agreement, in the form provided in the Claims Package, waiving all claims of lending discrimination during the relevant period, and must submit an original, completed Claims Package along with the executed Settlement Agreement to the Administrator by priority mail, or by first class mail postage prepaid, post-marked within the allowed time-period, specifying under which Tier (i.e., Tier 2, Tier 1(a), or Tier 1(b)) the claimant is applying.

If a claimant has any claims pending against USDA in any court or administrative proceeding alleging lending discrimination during the relevant period, including without limitation Love v. Vilsack, No. 00-2502 (D.D.C.); and Garcia v. Vilsack, No. 00-2445 (D.D.C.), the claimant must also execute and submit to the Administrator a stipulation of dismissal with prejudice. For Claims Packages that have been forwarded to the Adjudicator, the Administrator will file the stipulation of dismissal in the court or other tribunal within thirty days of forwarding the Claims Package.

### B. Irrevocability

No claimant whose Claims Package is forwarded to the Adjudicator may under any circumstances or for any reason rescind the Settlement Agreement or initiate or pursue a claim against USDA in any court or administrative proceeding arising out of or relating to allegations of lending discrimination during the relevant period.

January 13, 2012

C. Release of Liability

Any individual who executes a Settlement Agreement and whose Claims Package is forwarded to the Adjudicator will be releasing and forever discharging the United States, USDA, and any of their administrators or successors, departments, agencies, or establishments, and any officers, employees, agents, or successors of the United States or any such department, agency, or establishment from any claims of lending discrimination during the Relevant Period that were raised, or could have been raised, in any court or administrative proceeding.

If a Claims Package is rejected by the Administrator as untimely, the claimant's claims against USDA will not be released. If a Claims Package is determined by the Administrator to be timely but incomplete, and the claimant does not submit a complete Claims Package as described in Section VII(B) below within the time allowed, the Settlement Agreement will be rescinded, and the claimant's claims against USDA will not be released.

D. Voluntary Participation

No person is required to participate in the Claims Process, and each person may seek counsel. The United States reserves the right to assert any available defenses in any administrative or court proceeding against any person who does not participate in this Process or whose claim is disallowed because it is untimely or incomplete.

E. Oaths Under Penalty of Perjury

1. Oath by Claimant

A claimant who participates in the Claims Process must swear under oath with respect to the claim submitted as follows: "I swear under penalty of perjury that the information contained in the foregoing Claim Form is true and correct, and that any documents submitted along with the claim form are true and accurate copies." Claimants who knowingly and willfully falsify facts, make materially false statements or representations, or otherwise violate 18 U.S.C. § 1001, are subject to the penalties provided therein, including fines and imprisonment. Claimants who make false, fictitious, or fraudulent claims may also be subject to fines or imprisonment as provided in 18 U.S.C. § 287.

2. Oath by Attorney

An attorney filing a claim on behalf of a claimant shall swear, under penalty of perjury, that: "to the best of the attorney's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, the claim is supported by existing law and the factual contentions have evidentiary support."

January 13, 2012

## **VI. STATUTE OF LIMITATIONS AND MORATORIUM**

### **A. The Statute of Limitations**

The Government intends to file a motion seeking to end the tolling of the statute of limitations presently in effect for potential plaintiffs in the Love and Garcia cases at an appropriate time after the last day of the Claims Period. In order to participate in the Program, claimants must have submitted a completed Claims Package during the Claims Period discussed above, regardless of when the Government's motion is filed and decided. If a Claims Package is rejected by the Administrator as untimely or incomplete, the Government will not agree to further extend the tolling of the statute of limitations.

### **B. Stay of Proceedings**

USDA will request that the stay of proceedings in Love and Garcia remain in effect for each plaintiff and putative plaintiff in these cases who elects to participate in the Claims Process until thirty (30) days after final decisions on claims have been made and the monetary awards have been paid.

### **C. Moratorium on USDA Collection Actions for Claimants**

USDA will refrain from foreclosing on real or chattel property owned by a claimant who submits a claims package to the Administrator or accelerating the claimant's loan account before the claim is dismissed or adjudicated; however, USDA may take any action up to but not including foreclosure or acceleration that is necessary to protect its interests. Subject to statutory and regulatory limitations including the Consolidated Farm and Rural Development Act moratorium authority under Section 331A(b), during the Claims Period, interest will not accrue, and no offsets will be taken, on eligible farm loans held by persons who the Administrator finds submitted a timely and complete Claims Package. Interest accrual and offsets will continue on all other USDA loans. USDA retains the option of liquidating real or chattel property under an order from a court or under operation of applicable law, or, in cases of perishable collateral, when USDA determines that immediate action is necessary.

## **VII. DECISIONMAKING PROCESS**

### **A. Determinations as to Timeliness**

The Administrator will send a letter to each claimant who submitted a Claims Package after the Claims Period expired, indicating that the Claims Package has been rejected as untimely and that this determination is final. No further information will be requested or accepted by the Administrator from a claimant with an untimely claim.

January 13, 2012

**B. Determinations as to Completeness**

For each Claims Package that the Administrator determines is timely filed, the Administrator shall determine whether it is complete. To be complete, a claims package must include the following information:

- Complete responses to all questions on the Claim Form.
- All necessary documentation establishing that the claimant meets the Claims Process criteria as discussed in Section VIII below.
- An executed Settlement Agreement, and if applicable, a signed Stipulation of Dismissal with Prejudice of any and all actions filed in any court or other tribunal based upon the claims asserted in the Claims Process established by this Framework.
- A signed Claim Form, authorizing the release to USDA, the Administrator, and the Adjudicator of all information necessary to verify the allegations contained in the Claim Form, and certifying the truth and accuracy of the information provided under penalty of perjury. The necessary information may include, where the Adjudicator or an authorized auditor under Section X below determines it to be appropriate, Schedule F of the claimant's tax returns, or a reasonable alternative, for purposes of determining whether the claimant has previously identified farming income.

If the Administrator determines that a Claims Package is timely and complete, the Administrator will notify the claimant in writing, and will forward the Claims Package to the Adjudicator for resolution.

If the Administrator determines that a Claims Package is timely but incomplete, the Administrator will notify the claimant or, if represented, his or her counsel, as to what is missing, and provide the claimant an opportunity, until the expiration of the 180-day Claims Period, to submit a complete Claims Package. For Claims Packages that were submitted during the last thirty days of the Claims Period and were determined to be incomplete, the deadline to submit a complete Claims Package will be thirty days after the Administrator issues notice that the Claims Package was incomplete.

If the Administrator determines that a timely Claims Package filed by a claimant who applies for a Tier 2 payment is incomplete under Tier 2 but is complete under Tier 1(a), the Administrator will accept the Claims Package for consideration under Tier 1(a), and will inform the claimant that the package is incomplete under Tier 2, and that unless the additional information is submitted during the Claims Period for the Claim to be considered under Tier 2, it will instead be considered under Tier 1(a). Unsuccessful Tier 1(b) claims will not be considered under any other Tier.

January 13, 2012

### C. Final Decisions

There will be no hearings by the Administrator, the Adjudicator, or USDA. USDA is not required to provide information, documents, or discovery to putative claimants, the Administrator, or the Adjudicator. USDA has the right, but not the obligation, to submit information to the Adjudicator in response to any claim filed.

The Adjudicator's decision on a claim (including a constructive application claim) will be based solely on the materials submitted by the claimant in the Claims Package and any materials that USDA may provide in response.

Once a decision has been issued, the claimant will be informed of the decision in writing within a reasonable time.

There will be no appeals available to claimants or USDA to challenge decisions made by the Administrator or the Adjudicator, including without limitation the Administrator's decision whether a claims package is timely and complete, the Adjudicator's decision on a claim, or the Adjudicator's decision as to the amount of debt eligible for debt relief.

## VIII. CLAIMS DETERMINATIONS

Claimants are limited to female or Hispanic farmers who applied for a farm loan or farm loan servicing and who allegedly experienced discrimination, or their lawfully recognized representatives, or, if deceased, their estates. A claim brought by a person who is otherwise eligible for the Claims Process, who applied for a loan as a sole proprietorship or with his or her spouse as a co-applicant of a qualified joint venture as defined under I.R.S. regulations,<sup>2</sup> is also cognizable. A claim brought by or on behalf of any other legal entity, or by guarantors, is not cognizable.

### A. Tier 2 Payments

For each timely and complete Claims Package that seeks a Tier 2 payment, the Claims Adjudicator will determine whether the claimant meets the following criteria by substantial evidence:<sup>3</sup>

---

<sup>2</sup> A qualified joint venture is eligible where (1) the only members of the joint operation are the claimant and his or her spouse, both of whom who applied jointly for FSA credit; (2) the claimant materially participated in the farm operation, and actively provided both management and labor as well as operating funds; (3) both married persons elected not to be treated as a partnership and assumed unlimited personal liability for all debts; and (4) the claimant allegedly experienced discrimination. A qualified joint venture does not include state law entities such as a limited partnership or a limited liability company.

<sup>3</sup> "Substantial evidence" is defined as such relevant evidence appearing in the record that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence that fairly detracts from that conclusion.

January 13, 2012

- The claimant is a female or Hispanic natural person.
- If Hispanic, the claimant farmed, or attempted to farm, between January 1, 1981, and December 31, 1996, or between October 13, 1998, and October 13, 2000; or if female, the claimant farmed, or attempted to farm, between January 1, 1981, and December 31, 1996, or between October 19, 1998, and October 19, 2000 (collectively, Relevant Period).
- The claimant owned or leased farm land during the Relevant Period or attempted to own or lease farm land during the Relevant Period.
- The claimant submitted an application (and supporting documents) to USDA for one or more farm loans or farm-loan servicing<sup>4</sup> during the Relevant Period. The claimant must (a) provide either a copy of the loan application and supporting documents, or correspondence or other documents from USDA acknowledging receipt of, or otherwise reflecting the submission of, the application, and (b) authenticate such evidence by a sworn statement from the claimant under penalty of perjury. A claim of constructive application (in which the claimant allegedly attempted to apply but was discouraged by the agency) cannot be made under Tier 2.
- At the time the claimant applied for the loan or loan servicing, he or she met all applicable USDA regulatory requirements for the loan or loan servicing.
- The farm loan or farm-loan servicing for which the claimant applied was denied, provided late, approved for a lesser amount than requested, or encumbered by a restrictive condition, or USDA failed to provide an appropriate loan service.
- The USDA action was due to discrimination against the claimant, based on being Hispanic or female. The claimant must set forth specific facts that support the conclusion that the USDA action was due to such discrimination. Conclusory statements, formulaic allegations, and general impressions will not be sufficient. Facts showing only that a Hispanic or female claimant was denied a loan or loan servicing (or received a loan or loan servicing on less favorable terms than requested) will not satisfy this element. Instead, the claimant must present specific facts that show by substantial evidence that the USDA action was due to discrimination based on the claimant being Hispanic or female.
- USDA's treatment of the loan or loan servicing application caused economic damage to the claimant. The claimant need not specify or prove the precise amount of such damage.
- The claimant filed a written complaint with USDA on or before July 1, 1997, either individually or through a representative, alleging discrimination by USDA in response to an application for a loan or loan servicing, based on being Hispanic or female. Alternatively, the written complaint was filed on or before July 1, 1997, with a U.S. Government official. In order to meet the requirement of having filed a timely written complaint, the claimant must provide a copy of a timely written complaint to USDA or a U.S. Government official, or of a

---

<sup>4</sup> The Program is limited to applications for credit from the FSA (or its predecessor agencies) under the Operating Loan (OL) program (excluding Youth Loans), Farm Ownership (FO) loan program, Emergency (EM) loan program, Economic Emergency (EE) loan program, or Soil and Water (SW) loan program.

January 13, 2012

document or correspondence from USDA or the relevant U.S. Government agency acknowledging receipt (or otherwise reflecting the filing) of such complaint, and authenticate such evidence by a sworn statement from the claimant.

#### **B. Tier 1(a) Payments**

For each timely and complete Claims Package that seeks a Tier 1(a) payment or was deemed ineligible for a Tier 2 payment, the Claims Adjudicator will determine whether the claimant meets the following criteria by substantial evidence:

- The claimant is a female or Hispanic natural person.
- If Hispanic, the claimant farmed, or attempted to farm, between January 1, 1981, and December 31, 1996, or between October 13, 1998, and October 13, 2000; or if female, the claimant farmed, or attempted to farm, between January 1, 1981, and December 31, 1996, or between October 19, 1998, and October 19, 2000 (collectively, Relevant Period).
- The claimant owned or leased farm land during the Relevant Period or attempted to own or lease farm land during the Relevant Period.
- The claimant applied for one or more farm loans or farm-loan servicing<sup>5</sup> at a specifically identified USDA office during the Relevant Period.
- At the time the claimant applied for the loan or loan servicing, he or she met all applicable USDA regulatory requirements for the loan or loan servicing.
- The farm loan or farm-loan servicing for which the claimant applied was denied, provided late, approved for a lesser amount than requested, or encumbered by a restrictive condition, or USDA failed to provide an appropriate loan service.
- The USDA action was due to discrimination against the claimant, based on being Hispanic or female.
- USDA's treatment of the loan or loan servicing application caused economic damage to the claimant.
- The claimant filed an administrative discrimination complaint with USDA on or before July 1, 1997, either individually or through a representative, alleging discrimination by USDA in response to an application for a loan or loan servicing, based on being Hispanic or female. In determining whether a complaint was forwarded to USDA by a representative, the Claims Adjudicator shall consider all of the available evidence, including representations made to the claimant and "presumptions of regularity that attach to the conduct of government officials."

For any claimant who did not actually apply for a farm loan and whose claim is based on an allegation of "constructive application," a claimant must establish, by substantial evidence, each of the following criteria:

---

<sup>5</sup> See note 4 for the loan programs involved.

January 13, 2012

- The claimant is a female or Hispanic natural person, and farmed, or attempted to farm, during the Relevant Period.
- The claimant owned or leased specifically identified farm land during the Relevant Period or attempted to own or lease specifically identified farm land during the Relevant Period.
- The claimant made a bona fide effort to apply for one or more farm loans or farm-loan servicing during the relevant period.
- At the time the claimant attempted to apply for the loan or loan servicing, he or she met the eligibility criteria for the loan or loan servicing under the USDA's rules.
- Such attempt to apply must be established by a complaint detailing each of the following elements:
  - Time period of the effort to apply;
  - Type of loan sought;
  - Type of operation planned, and how those plans were consistent with farming operations in that county/area in that year;
  - Physical location of the FSA or FmHA county office where the loan was sought;
  - The names of other commercial or agricultural banks in the area from which the claimant unsuccessfully sought a loan.
- USDA actively discouraged the application. Active discouragement may be established by evidence, already held by the claimant, that a specifically identified USDA official indicated that, at the time the claimant wanted to apply:
  - there were no funds available and therefore no application would be provided;
  - there were no application forms available;
  - USDA was not accepting or processing applications; or
  - the claimant would not qualify for a loan or loan servicing and therefore should not apply.
- The USDA action was due to discrimination against the claimant based on being Hispanic or female.

Claimants seeking relief under the constructive application provisions will be required to submit, in addition to the evidence required above, at a minimum:

- A sworn, verified, or notarized written witness statement from someone who witnessed the alleged incident; or
- A contemporaneous written complaint of that incident filed with USDA, either individually or through a representative, within one (1) year of the alleged discriminatory action. The phrase "filed with USDA" shall encompass complaints lodged with other persons if evidence establishes that the recipient of



January 13, 2012

the complaint forwarded it to USDA. In determining whether a complaint was forwarded to USDA, the Claims Adjudicator shall consider all of the available evidence, including representations made to the claimant and presumptions of regularity that attach to the conduct of government officials; or

- A letter or other document from a non-family member to a claimant, or from a claimant to a non-family member, that was written and dated within one (1) year of the alleged discriminatory action, and that supports the contention that the claimant made a bona fide effort to apply for a farm loan or loan servicing; that he or she had a farm business plan which included specific crops, equipment, and the general location of the acreage; and that the USDA official actively discouraged the application in the manner alleged by the claimant.

### **C. Tier 1(b) Payments**

1. For each timely and complete Claims Package that seeks a Tier 1(b) payment, the Claims Adjudicator will determine whether the claimant has established, by a preponderance of the evidence<sup>6</sup> and through independent documentary evidence admissible under the Federal Rules of Evidence, each of the following elements:
  - a. The claimant is a female or Hispanic natural person.
  - b. If Hispanic, the claimant farmed, or attempted to farm, between January 1, 1981, and December 31, 1996, or between October 13, 1998, and October 13, 2000; or if female, the claimant farmed, or attempted to farm, between January 1, 1981, and December 31, 1996, or between October 19, 1998, and October 19, 2000 (collectively, Relevant Period). The claimant owned or leased farm land during the Relevant Period or attempted to own or lease farm land.
  - c. The claimant submitted an application (and supporting documents) to USDA for one or more farm loans or farm loan servicing during the Relevant Period. A claim of constructive application cannot be made under Tier 1(b).
  - d. The farm loan for which the claimant applied was denied, provided late, approved for a lesser amount than requested, encumbered by a restrictive condition, or USDA failed to provide an appropriate loan service.
  - e. The treatment of the claimant's loan application by USDA was less favorable than that accorded a specifically identified, similarly situated non-Hispanic Caucasian farmer (if the claimant is Hispanic) or male farmer (if the claimant is female).
  - f. USDA's treatment of the loan or loan servicing application caused economic damage to the claimant.
  - g. The claimant complained of discrimination to an official of the United States Government during the period January 1, 1981, through June 30, 1997 or during the periods October 13, 1998 through October 13, 2000 (Hispanic farmers) or

---

<sup>6</sup> A "preponderance of the evidence" is such relevant evidence as is necessary to prove something is more likely true than not true.

January 13, 2012

October 19, 1998 through October 19, 2000 (female farmers) regarding USDA's treatment of him or her in response to the application.

2. Notwithstanding the requirement that each element in Tier 1(b) be established by a preponderance of the evidence and with independent documentary evidence admissible under the Federal Rules of Evidence,
  - a. Subparts (e) and (g) above may be established by a preponderance of the evidence with a sworn statement based on personal knowledge by an individual who is not a member of the claimant's family.
  - b. The claimant's loan application and supporting documents forming the basis of the claimant's claim are deemed admissible under the Federal Rules of Evidence upon a sworn statement by the claimant that the loan application and supporting documents were submitted to FSA contemporaneously with the date of the complete application. FSA documents that were provided to the claimant in response to the claimant's loan application are also deemed admissible under the Federal Rules of Evidence upon a sworn statement by the claimant that he or she received the FSA documents in response to the claimant's loan application contemporaneously with the date of the response; and
  - c. Nothing in this Section precludes a claimant from submitting expert testimony to explain the independent documentary evidence submitted by the claimant with respect to subpart (f) above.
3. Once the Claimant has submitted independent documentary evidence admissible under the Federal Rules of Evidence or evidence as provided for above in paragraph 2, above, on each element, the Claims Adjudicator may consider the materials submitted by the claimant, the opinion and analysis by the Adjudicator's Tier 1(b) Expert, as provided in Section IV, and any other information or material deemed appropriate for consideration by the Claims Adjudicator.
4. If, in the Adjudicator's judgment, additional documentation and evidence would be necessary or helpful in deciding the merits of a particular claim, or if the Adjudicator suspects fraud regarding a particular claim, the Adjudicator may require that the claimant provide additional documentation and evidence. A claimant's inability to provide the requested additional documentation or evidence shall not require a rejection of that claimant's claim.

## **IX. DEBT RELIEF**

### **A. Debt Relief Eligibility Criteria**

No claimant whose Claims Package is rejected by the Administrator or whose claim is denied by the Adjudicator, or who the Adjudicator finds does not have eligible farm-loan debt, will receive any debt relief. USDA will assist the Adjudicator, to the extent USDA

January 13, 2012

deems it necessary, to identify all farm-loan debts accrued by a claimant during the Relevant Period that are subject to relief. Each claimant must also make a good faith attempt to identify on the Claim Form any outstanding FSA farm loans, by year of obligation and by loan number, held by the claimant.

For each successful claimant who seeks debt relief, the Adjudicator will determine whether the claimant has established, by substantial evidence, each of the following:

- Relevant Period: The farm-loan debt at issue must have been obligated, rescheduled, re-amortized, or serviced during the Relevant Period; and
- Nexus Between Successful Claim and the Loan at Issue:
  - The claimant must show unfair treatment in any aspect of a credit transaction concerning the loan application at issue; and
  - There must be a causal connection between the act(s) of discrimination by USDA forming the basis of claimant's successful claim and the adverse credit action(s) on the debt at issue.

#### B. Forward-Sweep Provision

If the Adjudicator determines that a nexus exists between a claimant's successful credit discrimination claim and the adverse credit actions on a debt, as described above, then USDA will, subject to the total cap on debt relief, discharge or reduce the claimant's outstanding debt to USDA that was incurred during the Relevant Period under, or affected by, the program(s) that was/were the subject of the credit claim(s) resolved in the claimant's favor by the Adjudicator, and that was issued after the earliest loan as to which discrimination was found.

This "forward-sweep" approach to debt relief will therefore require the Adjudicator to identify the following with respect to the claimant:

- (1) Each loan or loan application that was under or affected by the act(s) that formed the basis of claimant's successful credit claim, and that is not the subject of an adverse administrative decision that has become final or an adverse federal or state court judgment that has become final; and
- (2) All subsequent loans in the same loan program(s) until the end of the Relevant Period.<sup>7</sup>

---

<sup>7</sup> For example, if the Adjudicator finds in favor of a claimant with respect to a Farm Operating Loan application that USDA denied in 1994, and USDA then made a Farm Operating Loan to the same claimant for the same property in 1995, the 1995 loan will be discharged even though the claimant did not allege discrimination with respect to it.

January 13, 2012

Claimants cannot appeal the Adjudicator's decision as to which debts are eligible for debt relief. USDA will provide debt relief as described in paragraph C below only for those debts identified by the Adjudicator as eligible for debt relief and subject to the forward sweep provisions. Claimants will remain responsible for continuing timely payments on any debts that are not identified as eligible for debt relief by the Adjudicator, and USDA will be permitted to initiate or continue collection actions on such debts.

**C. Debt Relief Procedures**

In providing debt relief to successful claimants, USDA will not make any monetary payments. Rather, to the extent the \$160 million cap on debt relief allows, USDA will provide such relief by administratively cancelling the entire debt or part of the debt for eligible loans obligated within the Relevant Period, including the principal amount, accrued interest, and any cost items associated with the program loan.

Debt relief will be applied to accounts only after all claims have been adjudicated. If USDA determines that it is necessary to reduce the amounts of debt relief on eligible debt due to the \$160 million total cap, USDA will attempt to fully cancel as many eligible debts as possible for claimants who have more than one debt eligible for relief. If USDA is unable to fully cancel all such debts because the debt relief awarded exceeds the cap, USDA may, in its discretion, partially cancel eligible debts, or service and/or restructure such debts. Claimants will remain responsible for continuing timely payments on any remaining debts.

**D. Offsets of Cash Awards**

If debt relief is reduced due to the total cap, cash awards paid to successful claimants under Tier 1(a), Tier 1(b), or Tier 2 will not be offset by any remaining debt on eligible farm loans. Cash awards paid under Tier 1(a), Tier 1(b) or Tier 2 will, however, be subject to offset for other Government debts (such as child support or back taxes) under the Treasury Offset Program.

**E. Future Eligibility**

Any debt relief provided by USDA through this Claims Process will not affect an individual's future eligibility for USDA programs. Such relief will not be treated as prior debt forgiveness to the claimant. USDA will identify all persons who receive such debt relief in the direct loan database, and the debt forgiven.

**X. FRAUD PREVENTION**

**A. Reviews, Audits, and Monitoring**

The claims materials will make clear that USDA will take whatever actions it deems appropriate to review, audit, and monitor the proceedings, including submission of responses to Claims Packages in selected cases, and the Department of Justice may

January 13, 2012

monitor proceedings as it deems appropriate. If the Adjudicator suspects fraud regarding a particular claim, the Adjudicator may require that the claimant provide additional documentation or information.

1. Reviews for Fraud and Unlawful Activity

Reviews will be conducted at USDA's sole discretion to deter and identify fraud, identity theft, and other possible criminal activities. Such reviews may include, without limitation, verifying the identity of the claimant, the truthfulness of allegations contained in the Claims Package, the location of the claimed farm property or farm business, and whether there are unusual concentrations of claims in particular areas. USDA may take any actions it deems appropriate based on its review, including referral to its Inspector General, or to the Department of Justice. In cases of suspected fraud, the Department of Justice may take any action it deems appropriate.

2. Performance Audits

Within 180 days of the adjudication of selected claims, and subsequently as appropriate, the Secretary of Agriculture will request that the Inspector General of the Department of Agriculture conduct a performance audit of adjudicated claims to determine if the claims review process is adequate and functioning as prescribed, and to ensure that funds are distributed only to eligible applicants. Audit reports will be provided as deemed appropriate to the Secretary of Agriculture and the Attorney General.

For the purposes of conducting the performance audit, the Inspector General shall have access, upon request, to the Claims Administrator, the Claims Adjudicator, and related officials, and to any information and records generated, used, or received by them, including but not limited to names and addresses.

3. Monitoring for Efficiency of the Claims Process

USDA will monitor and oversee the efficiency of the Administrator's actions.

4. Timing of Payments

Payments to claimants who are selected for audits will be withheld until the audit is complete and there has been no finding of fraud, identity theft, or other criminal activity. Performance audits or audits for efficiency of the claims process will not affect the timing of payments made to successful claimants.

B. Referrals

Referrals of any claims that appear fraudulent must be made by USDA and/or the Adjudicator to USDA's Inspector General, who will refer claims as appropriate to the Department of Justice, the appropriate US Attorney's Office, or another appropriate law enforcement agency. The Department of Justice and/or an appropriate US Attorney's

January 13, 2012

Office may on their own initiative consider claims that appear fraudulent and/or refer them to an appropriate law enforcement authority.

**C. Transparency**

In order to ensure full transparency of the administration of claims, the Claims Administrator shall provide to the Secretary of Agriculture, the Inspector General of USDA, and the Attorney General, any requested information regarding claims determinations and the distribution of funds.

**D. Government Accountability Office**

Either upon his own initiative or at USDA's request, the Comptroller General of the United States may evaluate the internal controls (including internal controls concerning fraud and abuse) created to carry out the Claims Process, and may report to Congress on the results of this evaluation. Solely for purposes of conducting the evaluation, the Comptroller General shall have access, upon request, to the Claims Administrator, the Claims Adjudicator, and related officials, appointed in connection with the Claims Process, and to any information and records generated, used, or received by them, including names and addresses.

**E. Consent to Disclosure**

Claimants consent to the disclosure of information and documents associated with claims to government agencies and officials and contractors for the purposes described in Section X.

**XI. ATTORNEYS' FEES**

Any attorneys' fees must be paid directly by the claimant. Such fees paid out of the cash award for Tier 2 or Tier 1(a) shall not exceed \$1,500 per claimant. For Tier 1(b), such fees paid out of the cash award shall not exceed 8% of the Tier 1(b) cash award.

No attorneys' fees will be paid to claimants or their counsel by USDA or the Department of Justice, or any other agency or department of the United States. The amount of cash awards will not be increased for those claimants who are represented by an attorney. No claimant is required to retain an attorney, and neither USDA, the Administrator, nor the Adjudicator will recommend that a claimant retain counsel or retain a specific attorney or law firm, or discourage a claimant from obtaining counsel or using a specific attorney or law firm. However, if claimants have legal questions, they are advised to consult with counsel or another legal service provider.

January 13, 2012

## **XII. DUAL MEMBERSHIP ISSUES**

### **A. Single Recovery**

A farmer who is both Hispanic and female is limited to a single claim in this Claims Process. A farmer whose family member or corporation or entity has been compensated for the same underlying claim as alleged in the Claim Form in an administrative or court proceeding or through a settlement may not recover in the Claims Process. If more than one claimant operates a single farm operation, recovery is limited to one claim.

### **B. Other Legal Actions**

Any farmer who would otherwise be eligible to participate in this Claims Process, but who also asserted claims in any other administrative or civil proceeding alleging lending discrimination by USDA during the Relevant Period and who received a final resolution of his or her claim, or who has not complied with the terms of Part V.D, will not be eligible to participate in this Claims Process. The Administrator will obtain the names of all persons who file claims under this Claims Process and who previously received Final Agency Decisions, Court Orders or dismissals, or any other final resolutions of their claims. The Claims Administrator will also be provided with the names of all participants in the ADR processes in the cases in the United States District Court for the District of Columbia entitled Timothy C. Pigford v. Glickman, Nos. 97-1978, 98-1693 (D.D.C.) (Pigford I); In re: Black Farmers Discrimination Litigation, No. 08-0511 (D.D.C.) (Pigford II); and Marilyn Keepseagle v. Thomas Vilsack, No. 99-3119 (D.D.C.) (Keepseagle). Claims Packages submitted for consideration in this claims process by persons who participated in Pigford I or Pigford II will be disallowed by the Claims Administrator. Native American farmers who are also Hispanic or female cannot participate in both this Claims Process and any claims process created in Keepseagle with respect to the same underlying claim of discrimination.

## **XIII. DISCLAIMER**

This document provides general guidance and does not confer any rights upon potential claimants or bind USDA or the United States in any way. Before the Claims Period commences, the United States reserves the right unilaterally to modify the terms of this Program or the contents of this document.

**PART 1: CLAIMANT INFORMATION**

Please provide the following information regarding the person who seeks to participate in this claims process ("claimant").

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Business Name, if applicable		
<input type="text"/>		
Mailing Address, including apartment, unit or box number		
<input type="text"/>		
City	State	Zip
<input type="text"/>	<input type="text"/>	<input type="text"/>
SSN or Taxpayer ID Number	Date of Birth	
<input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Phone Number	Alternate Phone Number	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Email Address (optional)		
<input type="text"/>		

Please attach a photocopy of two (2) forms of identification for the claimant. A list of acceptable forms of identification can be found in your Claims Package.

**CLAIMANTS WHO ARE DECEASED OR UNABLE TO SUBMIT A CLAIM DUE TO A DISABILITY**

If you are submitting a claim on behalf of a claimant who is deceased or unable to submit a claim due to a disability, please provide information regarding the claimant in the section above and also provide the following information regarding yourself.

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Business Name, if applicable		
<input type="text"/>		
Mailing Address, including apartment, unit or box number		
<input type="text"/>		
City	State	Zip
<input type="text"/>	<input type="text"/>	<input type="text"/>
SSN or Taxpayer ID Number	Date of Birth	
<input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Phone Number	Alternate Phone Number	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Email Address (optional)		
<input type="text"/>		



Are you the Claimant's Legal Representative?

Yes

☐

No

☐

If you are the claimant's representative, you must submit the Court Order appointing you as the claimant's legal representative or executor of the will, power of attorney documents, or other proof of guardianship. If not, explain below why you seek to submit this claim on behalf of the claimant.

If you are submitting claim on behalf of a deceased claimant, you must submit a copy of the death certificate and answer the following questions:

Is the Claimant's death certificate included with this Claim Form?

Yes

☐

No

☐

If an estate exists for the Claimant, please provide the Estate Taxpayer ID Number:

---

---

---

---

**PART 2: ACKNOWLEDGEMENTS – INFORMATION YOU MUST UNDERSTAND AND AGREE TO**

<p><b>In order to participate in this claims process, you must agree to the following requirements. After you review each requirement, please indicate whether you agree by checking the box to the right of it.</b></p>	
<p>1. Your claim(s) will be processed by the Administrator and will be decided by the Adjudicator, and their decisions will be binding and final. You waive the right to seek review of these determinations in any court or before any tribunal.</p>	<input type="checkbox"/> Yes, I agree.
<p>2. In order to participate in the claims process, you must waive all claims of lending discrimination against USDA that arose during the time period covered by the claims process. If you are claiming discrimination based on being Hispanic, that time period is between January 1, 1981, and December 31, 1996, or between October 13, 1998, and October 13, 2000. If you are claiming discrimination based on being a woman, that time period is between January 1, 1981, and December 31, 1996, or between October 19, 1998, and October 19, 2000. You must dismiss with prejudice any claims against USDA in any court or administrative proceeding alleging the same discrimination as alleged in this Claim Form. You cannot file another case based on the same claim(s) in any court or before any tribunal.</p>	<input type="checkbox"/> Yes, I agree
<p>3. If your claim is approved, you may receive a cash award of up to \$250,000., depending upon the Tier under which you seek to recover. If you currently have debt with USDA/Farm Service Agency from the time period in question 2 (above), you may also be eligible for debt relief for part or all of that debt. Such relief may not cancel your remaining debts to USDA/FSA in full.</p>	<input type="checkbox"/> Yes, I agree.
<p>4. If your claim is approved, an additional payment may be made on your behalf to the IRS to reduce the taxes you may owe on the cash award and any debt relief you receive, depending upon the Tier under which you seek to recover. This payment is not intended to completely offset all taxes that you may owe as a result of a successful claim. It is your responsibility to pay any taxes that result from a successful claim.</p>	<input type="checkbox"/> Yes, I agree.
<p>5. You must complete the claim form and provide all necessary documentation.</p>	<input type="checkbox"/> Yes, I agree.
<p>6. If you are both Hispanic and female, you can file only one claim in this claims process. If your claim is approved, you can receive only one recovery through the claims process.</p>	<input type="checkbox"/> Yes, I agree.

7. If more than one claimant operates a single farm operation, only one claim can be filed, and only one recovery is available through the claims process.	<input type="checkbox"/> Yes, I agree.
8. No claim will be accepted if you, your spouse, or anyone on your behalf participated in any of the following cases or settlements: <i>Pigford v. Glickman</i> , Nos. 97-1978, 98-1693 (D.D.C.) (" <i>Pigford</i> "); <i>In re Black Farmers Discrimination Litigation</i> , No. 08-0511 (D.D.C.) (" <i>Pigford II</i> "); <i>Keepseagle v. Vilsack</i> , No. 99-3119 (D.D.C.) (" <i>Keepseagle</i> ").	<input type="checkbox"/> Yes, I agree.

### PART 3: DESCRIPTION OF TIERS

**There are three tiers for payments.**

**TIER 1(a).** To be eligible for payment under Tier 1(a), you must establish the elements by substantial evidence. If you establish the elements for Tier 1(a), you will receive:

- A cash award of up to \$50,000, depending on the number of successful claims;
- Debt relief from USDA for some or all of your eligible USDA/FSA Farm Loan Program debt; and
- A tax payment to the IRS of 25% of the total of the cash award and debt relief.

The dollar amount of Tier 1(a) cash awards will be the same for each successful claimant, and will be determined after all Tier 1(a) claims have been adjudicated. The dollar amount for each award is subject to reduction from \$50,000 depending on the total number of successful claims under Tier 1(a). No payments will be made under Tier 1(a) until all Tier 1(a) claims have been decided. Tier 1(a) is the only Tier under which claimants who sought to apply for a USDA loan but were actively discouraged from submitting an application may be eligible for payment.

**TIER 1(b).** To be eligible for payment under Tier 1(b), you must establish the elements by a preponderance of the evidence and (except as provided below) through independent documentary evidence admissible under the Federal Rules of Evidence. You must also: 1) provide a copy of your application for USDA loan assistance, or a document from USDA showing that you submitted an application; 2) provide a copy of a discrimination complaint that was sent to USDA prior to July 1, 1997; and 3) set forth specific facts showing that the USDA action was due to discrimination. Your loan application and supporting documents forming the basis of your claim are deemed admissible under the Federal Rules of Evidence upon a sworn statement by you that these documents were submitted to USDA contemporaneously with the date of the complete application. USDA documents that were provided to you in response to your loan application are also deemed admissible under the federal Rules of Evidence upon a sworn statement by you that you received these USDA documents in response to your loan

application contemporaneously with the date of the response. If you establish the elements for Tier 1(b), you will receive:

- A cash award of up to \$250,000 for proven actual damages; and
- Debt relief from USDA for some or all of your eligible USDA/FSA Farm Loan Program debt.
- No tax payment will be made.

Total payments under Tier 1(b) are subject to a \$100 million cap, and awards may be reduced from \$250,000 on a pro-rata basis depending on the number of successful claimants and the total dollar amounts of their actual damages.

**TIER 2.** To be eligible for payment under Tier 2, you must establish the elements by substantial evidence, and also provide: 1) a copy of your application for USDA loan assistance, or a document from USDA showing that you submitted an application; and 2) a copy of a discrimination complaint that was sent to USDA prior to July 1, 1997. If you meet the elements for Tier 2, you will receive:

- A \$50,000 cash award;
- Debt relief from USDA for some or all of your eligible USDA/FSA Farm Loan Program debt; and
- A tax payment to the IRS of 25% of the total of the cash award and debt relief.

In Part 4 below, you must select one of these Tiers.

### **PART 3 – CLAIM INFORMATION**

#### **A. IDENTITY**

Are you Hispanic/ Latino?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

Are you female?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

#### **B. WHEN DID YOU OPERATE, OR ATTEMPT TO OPEARTE, A FARM?**

If you are Hispanic/ Latino or female, did you farm, or attempt to farm, between January 1, 1981, and December 31, 1996?

YES	NO
-----	----

☐ ☐

If you are Hispanic/Latino, did you farm or attempt to farm between October 13, 1998, and October 13, 2000?

YES NO  
☐ ☐

If you are female, did you farm or attempt to farm between October 19, 1998 and October 19, 2000?

YES NO  
☐ ☐

If you answered "Yes" to any part of question B above, please describe your farming operation or your attempt to farm, including the type and amount of crops and/or livestock. (Attach additional pages if necessary):

---

---

---

---

---

**C. WHEN AND WHERE DID YOU OWN OR LEASE, OR ATTEMPT TO OWN OR LEASE, FARM LAND?**

If you are Hispanic/Latino or female, did you own or lease, or attempt to own or lease, farm or ranch land between January 1, 1981, and December 31, 1996?

YES NO  
☐ ☐

If you are Hispanic/Latino, did you own or lease, or attempt to own or lease, farm or ranch land between October 13, 1998, and October 13, 2000?

YES NO  
☐ ☐

If you are female, did you own or lease, or attempt to own or lease, farm or ranch land between October 19, 1998, and October 19, 2000?

YES NO  
☐ ☐

Please check each box that applies: ☐ Owned ☐ Attempted to Own

☐ Leased ☐ Attempted to Lease

If you answered "Yes" to any part of Question C above, please describe in detail the farm or ranch land that you owned or leased or attempted to own or lease, including the location (the full address, the crossroads, and/or legal the description are acceptable), the type of land, and the acreage. (Attach additional pages if necessary).

If available, please provide any documentation of your ownership interest in agricultural land such as a deed, a leases an easement, a purchase agreement, equipment receipts, or other evidence that you participated in a USDA farm program. (Attach additional pages if necessary).

---

---

---

---

---

**D. DID YOU COMPLETE AND SUBMIT A LOAN APPLICATION TO USDA?**

Did you complete and submit a written application to USDA for one or more specific farm loans or for farm loan servicing during any of the following periods:

If you are Hispanic/Latino or female, between January 1, 1981, and December 31, 1996?

YES NO  
☐ ☐

If you are Hispanic/Latino, between October 13, 1998, and October 13, 2000? OR

YES NO  
☐ ☐

If you are female, between October 19, 1998, and October 19, 2000?

YES NO  
☐ ☐

If you answered "Yes" to any part of Question D, did you withdraw the application before USDA made a decision on the application?

YES NO  
☐ ☐

TIER 1(b) and TIER 2 ONLY: IF YOU SEEK PAYMENT UNDER TIER 1(b) OR TIER 2, AND YOU ANSWERED "YES" TO ANY PART OF QUESTION D, YOU MUST ATTACH A COPY OF THE APPLICATION OR CORRESPONDENCE OR OTHER DOCUMENTS FROM USDA ACKNOWLEDGING RECEIPT OF, OR REFLECTING THE SUBMISSION OF, THE APPLICATION; AND YOU MUST ALSO ATTACH A SWORN STATEMENT, SIGNED UNDER THE PENALTY OF PERJURY, SWEARING THAT THE DOCUMENT IS AUTHENTIC, AND STATING WHEN YOU SUBMITTED TO USDA, OR WHEN YOU RECEIVED IT FROM USDA.

**ATTEMPTED APPLICATION - TIER 1(a) ONLY**

IF YOU SEEK PAYMENT UNDER TIER 1(a) AND YOU ANSWERED NO TO ALL PARTS OF QUESTION D, did you attempt to submit a written application to USDA for one or more specific farm loan or for farm loan servicing during any of the following periods:

If you are Hispanic/Latino or female, between January 1, 1981, and December 31, 1996?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

If you are Hispanic/Latino, between October 13, 1998, and October 13, 2000? OR

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

If you are female, between October 19, 1998, and October 19, 2000?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

For each attempt to apply, please provide the following information:

The year(s) and month(s) you attempted to apply;

---

---

---

How you planned to use the funds (*i.e.*, identify crops, livestock, equipment, acreage, etc.);

---

---

---

The location of the FSA or FmHA county office where you sought the loan(s);

---

---

---

The name of any commercial or agricultural banks in the area where you unsuccessfully sought a loan(s).

---

---

---

When you attempted to apply, did a USDA official state that:

(a) there were no funds available and therefore no application would be provided;

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

(b) there were no application forms available;

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

(c) USDA was not accepting or processing applications; OR

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

(d) you would not qualify for a loan or loan servicing and therefore should not apply?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

If you answered "Yes" to any of the subparts (a) through (d) above, please describe in detail each incident. (Attach additional pages if necessary):

---

---

---



If you answered "Yes" to any of the subparts (a) through (d) above, you must attach one of the following documents:

a sworn, verified, or notarized written witness statement from someone who witnessed the alleged incident;

OR

a contemporaneous written complaint of that incident filed with the USDA, either individually or through a representative, within one (1) year of the alleged discriminatory action;

OR

a letter or other document from a non-family member to you, or from you to a non-family member, that was written and dated within one year of the alleged discriminatory action, and that supports your contention that you made a bona fide effort to apply for a farm loan or loan servicing; that you had a farm business plan which included specific crops, equipment, and the general location of the acreage; and that the USDA official actively discouraged the application in the manner you allege.

A complaint "filed with the USDA" includes a complaint lodged with another person if evidence establishes that the recipient of the complaint forwarded it to USDA. The Claims Adjudicator will consider all available evidence, including representations made to you and presumptions of regularity that attach to the conduct of government officials.

**E. IN WHAT CAPACITY DID YOU APPLY?**

If you applied or attempted to apply for USDA farm credit, did you do so:

For yourself (individually)?

YES

NO

☐☐

As a sole proprietor?

YES

NO

☐☐

On behalf of a corporation, business partnership, or other business entity?

YES

NO

☐☐

If so, please specify the entity \_\_\_\_\_ -

With a spouse or other co-applicant?

YES

NO

☐
☐

If you applied with a spouse or any other co-applicant, please provide the following information:

CO-APPLICANT INFORMATION – FOR CLAIMANTS WHO APPLIED FOR USDA LOANS WITH ANY OTHER PERSON(S)		
<i>If applicable, list each individual who was, or would have been, a co-applicant to the loan application that is the subject of this claim of unfavorable treatment.</i>		
First Co-Applicant's Name (First, Middle, Last)		Co-Applicant's Social Security/Taxpayer I.D. Number
First Co-Applicant's Mailing Address/City/State/Zip		
First Co-Applicant's Phone Number	Relationship to Claimant (if any)	Co-Applicant's Date of Birth
Second Co-Applicant's Name (First, Middle, Last) Number Co-Applicant's Social Security/Taxpayer I.D.		
Second Co-Applicant's Mailing Address/City/State/Zip		
Co-Applicant's Phone Number	Relationship to Claimant (if any)	Co-Applicant's Date of Birth
<i>If you had more than two co-applicants, please provide the same categories of information for all other co-applicants on extra pages.</i>		

If you applied with a spouse, you must also answer the following questions:

Were you and your spouse the only operators of the farm business?

YES NO  
☐ ☐

Did you yourself materially participate in the farm operation and actively provide both labor and management as well as operating funds?

YES NO  
☐ ☐

Were you yourself the primary applicant for the farm loan or loan servicing?

YES NO  
☐ ☐

Did you list your spouse as a co-borrower on the application for a USDA farm loan or loan servicing?

YES NO  
☐ ☐

Did both you and your spouse elect not to be treated as a partnership under State law?

YES NO  
☐ ☐

**F. WHAT TYPE OF LOAN(S) DID YOU SEEK FROM USDA?**

Identify the type of farm loan(s) and the approximate loan amounts for which you applied or sought to apply to USDA:

☐ Operating Loan (OL) \_\_\_\_\_ ☐ Farm Ownership Loan (FO) \_\_\_\_\_  
☐ Soil and Water (SW) \_\_\_\_\_  
☐ Emergency Loan (EM) \_\_\_\_\_ ☐ Economic Emergency (EE) \_\_\_\_\_

When did you apply for the loan, and where was the USDA office located? (Attach additional pages if necessary).

---

---

---

---

---

---

**G. DID YOU MEET THE BASIC USDA LOAN ELIGIBILITY REQUIREMENTS?**

At the time you applied or attempted to apply for a USDA farm loan:

Did you have prior experience owning a farm, running a farm, working on a farm, or managing a farm business?

YES      NO  
☐      ☐

If you answered "YES" above, please describe the prior farm experience(s). (Attach additional pages if necessary).

---

---

---

---

Were you: a citizen of the United States? or

YES      NO  
☐      ☐

a legal resident alien?

YES      NO  
☐      ☐

If you were not a U.S. citizen or a legal resident alien, please explain your status when you applied.

---

---

---

---

Were you over 18 years old and capable of making legal decisions?

YES NO  
☐ ☐

Were you delinquent on any Federal debt?

YES NO  
☐ ☐

Had you ever received debt forgiveness from USDA?

YES NO  
☐ ☐

If you received debt forgiveness, please list all instances when USDA provided loan forgiveness or writedowns of the loans other than as a result of a resolution of a discrimination claim. (Attach additional pages if necessary).

---

---

---

---

Had you ever been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under federal or state law?

YES NO  
☐ ☐

If you had been convicted of any such offense, please provide a brief narrative that explains the circumstances. (Attach additional pages if necessary).

---

---

---

#### H. WHAT WAS THE RESULT OF THE LOAN APPLICATION?

If you completed and submitted a farm loan application to USDA, do any of the following apply?

You were denied for the farm loan(s) you applied for or attempted to apply for.

YES NO

☐ ☐

You were approved for a loan amount that was less than you requested.

YES NO  
☐ ☐

The loans you were approved for had restrictive conditions

YES NO  
☐ ☐

USDA failed to provide appropriate loan servicing on your existing USDA loans.

YES NO  
☐ ☐

If you answered "YES" to any subpart of Question H, please provide specific facts concerning USDA's response to the loan or loan servicing application. (Attach additional sheets if necessary.)

---

---

---

**I. DO YOU BELIEVE THAT USDA DISCRIMINATED AGAINST YOU?**

Do you believe that USDA discriminated against you because you are Hispanic or Latino?

YES NO  
☐ ☐

Do you believe that USDA discriminated against you because you are female?

YES NO  
☐ ☐

If you seek payment under Tier 2, you must set forth specific facts showing that USDA's action was due to discrimination. Conclusory statements, formulaic allegations, and general impressions will not suffice. (Attach additional pages if necessary).

---

---

---

---

For Tier 1(b) claimants only. If you seek payment under Tier 1(b), do you believe that USDA's treatment of the loan application was less favorable than that accorded a similarly situated non-Hispanic Caucasian farmer (if Hispanic), or a similarly situated male farmer (if female)?

YES      NO  
☐      ☐

If you seek payment under Tier 1(b), please (1) identify the similarly situated farmer(s); (2) explain in detail how you were similarly situated with respect to your farm operation; and (3) describe how USDA's treatment of your loan application was less favorable than that accorded to the farmer. You may establish this element with a sworn statement based on personal knowledge by an individual who is not a member of your family. (Attach additional pages if necessary.)

---



---



---

**J. DID YOU SUFFER ECONOMIC DAMAGE?**

Did USDA's treatment of the loan or loan servicing application(s) or of the attempt to apply, cause economic damage to you?

---

YES      NO  
☐      ☐

If you answered "YES" to Question J, please explain the type of economic damages that you suffered. (Attach additional sheets if necessary.)

---



---



---

If you seek payment under Tier 1(b), please specify the amount of damages you suffered and the facts involved. Please also provide below any documentary evidence supporting the amount of economic damages being claimed. To satisfy the documentation requirement for Tier 1(b), you are permitted to provide the written testimony of an expert witness that you hire to help support their damages claim.

---



---



---

**K. DID YOU FILE A DISCRIMINATION COMPLAINT WITH USDA?**

Did you file a written complaint of discrimination with USDA or with a U.S. Government official on or before July 1, 1997, either individually or through a representative, regarding USDA's treatment of the loan application(s)?

YES NO  
☐ ☐

If you answered "YES," state when you filed the complaint, which Government official or agency you filed it with, and the outcome (if any).

---

---

---

---

IF YOU SEEK PAYMENT UNDER TIER 1(b) OR TIER 2 AND YOU ANSWERED "YES" TO QUESTION K, YOU MUST ATTACH A COPY OF THE COMPLAINT.

If you seek payment under Tier 1(b), you may attach a sworn statement based on personal knowledge by an individual who is not a member of your family.

**L. HAVE YOU FILED A COMPLAINT IN COURT REGARDING USDA LENDING DISCRIMINATION?**

Have you filed a complaint of discrimination against USDA in any court or tribunal regarding a loan application?

YES NO  
☐ ☐

If you answered "YES," please provide the following information:

- i. Date of your court complaint \_\_\_\_\_
- ii. Name of court or tribunal, and Docket Number \_\_\_\_\_
- iii. Has your complaint been adjudicated, resolved or dismissed?

YES NO  
☐ ☐

If available, please attach copies of your court complaint, any dismissal of that complaint, and/or any final decision regarding your complaint.



**M. HAS YOUR SPOUSE, OTHER FAMILY MEMBER, OR OTHER PERSON ON YOUR BEHALF PARTICIPATED IN ANOTHER USDA SETTLEMENT PROGRAM?**

Has your spouse or any other family member, or any other person acting on your behalf filed a claim with USDA or in a court or tribunal, or participated in a settlement seeking relief for discrimination, concerning the loan or loan service at issue in this claim?

YES NO  
☐ ☐

If you answered "YES," please provide the case number, a copy of the claim if available, or any other information regarding that claim and any final decision on it. (Attach additional pages if necessary).

---



---



---

**N. DO YOU HAVE OUTSTANDING USDA FARM LOAN PROGRAM DEBT?**

Are you seeking relief of outstanding USDA/FSA farm loan program debt?

YES NO  
☐ ☐

If so, please provide as much of the following information as possible regarding your outstanding USDA/FSA Farm Loan Program debt: (Attach additional pages if necessary)

USDA/FSA Case Number	Loan Program or Loan Type (OL, FO, EM, EE, SW)	Loan Number	Year Loan Obtained	USDA/FSA County Office Where Loan Obtained	Outstanding Balance on Loan

If you have outstanding debt, you must complete the Authorization to Disclose Debt Information Form included in the Claims Package.

**PART 4: TIER SELECTION**

YOU MUST SELECT ONE OF THE FOLLOWING TIERS: 1(a), 1(b), or 2. After reviewing the descriptions of the Tiers in Part 5 and the claim requirements in Part 6 above, please check one box to select the Tier under which you seek to recover. ONCE YOU SUBMIT THE CLAIM FORM, YOUR SELECTION IS FINAL AND CANNOT BE CHANGED. However, persons who select Tier 2 and are not eligible for an award under that Tier will automatically be considered for an award under Tier 1(a).

**I SELECT:**

- ☐ TIER 1(a).
- ☐ TIER 1(b). OR
- ☐ TIER 2.

**ADDITIONAL INFORMATION**

Please provide any additional information or documentation that you believe is relevant to your claims (attach additional sheets if necessary):

---

---

---

---

---

---

---

**DECLARATION**

**CLAIMANT'S DECLARATION**

Pursuant to 28 U.S.C. § 1746, I swear under penalty of perjury that the information contained in the foregoing claim form is true and correct, and that any documents submitted along with the claim form are true and accurate copies of such documents.

\_\_\_\_\_  
Signature of Claimant/Submitter

\_\_\_\_\_  
Date

If the claim is filed by an attorney on behalf of a claimant:

To the best of the attorney's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, the claim is supported by existing law, and the factual contentions have evidentiary support.

Signed under penalty of perjury.

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Firm Name (if applicable)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

## APPLICATION CHECKLIST

### Proof of Identity

- ☐ Photocopies of Two forms of Identification

### For Persons Submitting A Claim On Behalf Of Another Person

- ☐ Proof of Legal Representation  
☐ Death Certificate, if applicable

### Settlement Agreement

- ☐ Settlement Agreement and Waiver  
☐ Stipulation of Dismissal with Prejudice

### Tier Election:

- ☐ I selected either Tier 1(a), Tier 1(b), or Tier 2  
☐ I did not select more than one

### Claim Information

- ☐ Documentation of farm land ownership interest, if available  
☐ Copy of the Loan Application or a USDA document reflecting submission of application, if available, and a sworn statement authenticating such document (required for Tier 1(b) and Tier 2 only)  
☐ Copy of the discrimination complaint or a USDA document reflecting the filing of such complaint, if available, and a sworn statement authenticating such document (required for Tier 1(b) and Tier 2 only)  
☐ Copies of the Court Complaint, Dismissal, and/or Decision, if available  
☐ Documentation of prior claims against USDA, if applicable  
☐ Authorization to Disclose Debt Form, if Debt Relief is requested

### Attempted Application (Tier 1(a) Only)

- ☐ A Sworn, Verified, or notarized witness statement, **OR**  
☐ A Contemporaneous Written Discrimination Complaint to USDA, **OR**  
☐ A document from a non-family member to you, or from you to a non-family member that supports your contentions.