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Memo to USDA: Action Steps for Improved Servicing of Farm Service Agency Loan Clients

RAFI-USA staff have served farmers with in-depth financial counseling and assistance with navigation of USDA and other credit programs since our founding in 1990. Through our farmer financial crisis hotline, we annually serve more than 100 farmers, with approximately 1/3 requiring more than 40 hours of dedicated staff time. In 2020, we fielded calls from more than 13 states, from Oklahoma to Florida. We also collaborate with organizations from across the country who provide technical assistance to farmers, or who respond to farmers in financial crisis. In this work, we are seeing a looming farm crisis on the horizon.

The role of loan servicing and the Farm Service Agency (FSA) loan officer is critical in addressing this looming farm crisis. We therefore recommend the following actions for serving farmers in financial crisis. Some of these recommendations can be immediately implemented by the Administration. Others would require Congressional action to make a statutory change, and in those instances we urge the Administration to strongly advocate for those changes with Congress.

1. Take immediate action to address discriminatory practices by increasing loan officer accountability. Loan officers are often stretched too thin and overworked. However, we have witnessed discriminatory practices by some loan officers towards farmers of color and female farmers. To immediately address this issue, and rebuild farmer confidence in the agency, greater accountability must be implemented. Actions to accomplish this goal include:

    - Full employment at the county level to assure that employees have the time and resources to fully serve all clients, and to prevent services from being prioritized by either farm-scale or administrative capacity.
    - Begin timely, federal-level review of denied loan applications, withdrawn loan applications, agency-withdrawn adverse decisions in reconsiderations and agency-withdrawn adverse decisions in NAD appeals.
    - As part of their annual performance review, conduct a discrimination review of the loan officer's portfolio.
    - ○ Farmers should get a receipt of service detailing what information was shared with the farmer for <u>all</u> contacts with an office, whether in person, by email, or by phone.
    - ○ Remove appeals outcomes from the performance evaluation criteria of NAD administrative judges. With Director review reversals weighted heavily in favor of the agency, judges are

disincentived to rule in favor of the farmer when those reversals are a part of their annual evaluation.
- Outcomes on reversals should be gathered and made public.
- Commission a report of the past 5 years of loan applications' time to funding, broken down by race, gender, ethnicity and race/gender intersection.

2. Clearly communicate that agency priority is, to the maximum extent allowable under existing regulations and lending guidelines, to minimize disruption to farm families by keeping them on the land and in their homes. The goals and objectives of FSA should be explicitly re-enforced to include minimizing disruption to farm families by keeping them on the land and in their homes. Actions to accomplish this goal include:

    - Negotiation of debt restructuring and extending of existing debt to a longer period.
    - Writing down of debt to net recovery value, as a part of all restructuring when in the best interest of the farmer and agency.
    - Eliminating the provision that excludes farmers who previously had debt write-downs from future loan eligibility, since eligibility for all debt write downs, past and present were contingent on the borrower acting in good faith and was in the best interest of the farmer and agency.
    - Extending the eligible term of operating loans cross-collateralized by real estate to 40 years, from date of original loan. (Currently, there are two conflicting regulations: one states that operating loans only go up to 15 years; the other says that loans collateralized by real estate can go up to 40 years. FSA should clarify that "up to 40 years, from date of original loan " is the non-discretionary, automatic part of the formula for all loans cross-collateralized by real estate.)
    - Shifting to interest-only payments for a limited amount of time. Make this a tool always available to a loan officer and not just an emergency measure implemented by the national office during the pandemic.

3. Provide guidance and support to ensure all farmers are provided the same rights and access to servicing, including clear guidance and monitoring to eliminate predatory practices, whether based on discrimination, size of farm operation, or crops produced. Actions to accomplish this goal include:

    - Creating an independent borrower rights oversight board tasked with reviewing client case history for instances of discrimination and disparity of servicing.
    - Thorough and more frequent communication with farmers whose case is undergoing a discrimination review. Because discrimination reviews take so long, farmers often do not hear from the agency for a long time, sometimes over a year. Sometimes farmers make mistakes because they are not hearing from FSA and think the problem has been resolved. Letters should go out at the beginning of the process to explain to farmers about the reviews and that it may take a long time. Those letters should be followed by quarterly reports to update farmers on where the process stands.

- Funding to farmers following an adverse decision, entering mediation or facing action by either USDA or a guaranteed lender, for assistance in understanding their borrower rights and servicing options available. Farmers in this situation are already in financial hardship and could make better decisions earlier in the process with the help of an advocate. Equitable relief can be helpful in specific situations but comes too late in the process for many.
- In the loan officer's transition from the farmer's loan application to automated USDA loan documents, if there is a disagreement between the agency and the farmer/rancher's application, two sets of automated USDA documents must be produced and shared with the farmer before the loan decision so that farmers have the ability to compare calculations and address the agency changes specifically, with the farmers' and agency's rationale on record.
- Direction that county-level staff <u>shall convene and participate</u> in good-faith negotiations between farmers and guaranteed lenders for loan servicing. Farmers do not always know they can request this and staff should be at meetings with the creditor to explain farmer eligibility.
- Promulgate rulemaking to amend 7 CFR 762.143 to:
  - amend (b) to include preferred lenders, and
  - eliminate (c) allowing preferred lenders to service loans according to the lender's agreement.
  - Alternatively, eliminating the preferred lender category entirely would eliminate this lender category which puts the farmer at greater risk.

4. Ensure that no farmer loses their farm due to agency error, including instances where these errors delay the funding of feasible loan applications. Actions to accomplish this goal include:

- Fully implementing equitable relief in farm loan programs to compensate farmers for losses resulting from agency errors, as required under the 2018 Farm Bill.
- Require the <u>immediate</u> implementation of NAD appeal decisions based on information found in the farmer's application which is the basis of the review, and/or new information presented during the appeal, without the agency requirement of additional information.
- Eligibility and feasibility determinations SHALL both be considered and included in all adverse agency decision letters. Therefore, in situations where the agency withdraws an adverse decision, application approval must be taken in a timely manner. Agency delays caused by withdrawn adverse decisions should not adversely affect farmers or penalize them in the loan making process.
- If the farmer received a loan in good faith from the agency, later determined agency errors should not disqualify the loan or cause after the fact loan de-obligation.

5. Ensure that farmers' ability to access credit elsewhere is not harmed through excessive or inappropriate agency collateralization (100% is adequate). While agency guidelines specify collateralization up to specific limits, regulations provide that the full limit level (150% if

available, is additional) is not mandatory and that the agency should not require collateralization that prevents access to additional credit (7 CFR 764.106). This excessive collateralization often involves the farmer's home, even when adequate collateral is already available. Actions to accomplish this goal include:

- Issue guidance that 100% collateralization is adequate for loans. Ensure all loan officers are trained with this guidance.
- Issue guidance that the home should not be used as collateral unless necessary to reach 100% collateralization. Ensure all loan officers are trained with this guidance.
- Eliminate the provision in the FSA direct and guaranteed loans lender agreement that delinquency on one loan is considered delinquency on all loans.
    - Establish annual reviews for loans to ensure that only the necessary collateral remains; enable the release of a parcel if no longer needed, to free it up to seek credit from a commercial lender.
        - Whenever feasible, facilitate a partial release of their primary residence and up to 10 acres to a separate mortgage, reducing the risk of home loss. Immediately promulgate guidance that states any borrower shall have the option of preserving their home (even if located on a residential, non-onfarm site) and mortgage, corresponding to the appraised value.

6. Increase priority for lending to higher-value markets and stimulating farm innovation. Actions to address this issue include:

    - Designate some existing training funding to initiate loan officer education programs on emerging markets, methods of establishing price and yield from alternative resources, and make available borrower/lender resources on responsible lending into emerging markets.