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August 14, 2021

Elizabeth Archuleta
Director, Office of Intergovernmental & External Affairs
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250-0201

Re: Docket: USDA-2021-0006 Identifying Barriers in USDA Programs and Services; Advancing Racial Justice and Equity and Support for Underserved Communities at USDA

Dear Ms. Archuleta,

The Rural Advancement Foundation International - USA (RAFI-USA) is a nonprofit organization based in Pittsboro, NC that works with farmers, farmers markets, faith communities, and other rural stakeholders. Through a variety of programs we work to:

- help farmers access and develop new markets
- advocate for and with farmers who are experiencing financial crisis
- convene a Farmers of Color Network
- collaborate with farmers markets and rural faith communities to increase food access
- provide infrastructure and emergency grants to farmers
- coordinate an organic grains seed cooperative, and more

Our mission is to challenge the root causes of unjust food systems, supporting and advocating for economically, racially, and ecologically just farm communities. We envision a thriving, sustainable, and equitable food system: where farmers and farmworkers have dignity and agency; where they are supported by just agricultural policies; and where corporations and institutions are accountable to their community.

We work to advance our mission not only through on-the-ground programs working directly with farmers but also through federal policy work. We work with many types of farmers at varying points in the development and operation of their businesses. In the course of that work we learn about what factors in the current system are either contributing to the success of their business, or making it harder for them to make a living. When we see similar conditions impacting multiple farmers, challenges can usually be traced back to policies or agency practices that create or intensify those conditions. Our recommendations for racial justice at USDA come directly from this work.

We appreciate this administration's wish to incorporate the knowledge and experiences of stakeholders, and most particularly farmers of color, in its decision-making. At the same time, we note that many reports and studies have been conducted on civil rights and racial equity at USDA, with little discernible change. For things to be different this time, the process will require real accountability, reliable data and transparency that will make such accountability possible, follow-through by agency, and both listening and taking actions. USDA will need to trust and support organizations that have been filling in the gaps where USDA has failed, for their assistance providing technical assistance and outreach where there is already trust with farmers.

Avoiding engagement with USDA is still a survival strategy for many of the farmers of color we work with. When we ask these farmers to share their thoughts on how USDA can improve, the most common reaction is skepticism as to whether it is worth their time, and about what good it will do. So while we applaud the wish to pursue stakeholder-led change, we also believe that those requests for input will need to be accompanied by a comprehensive and sustained push for accountability and reform within USDA. Trust will need to be earned.

Successful farm operations depend on access to credit and helping farmers navigate the credit system is the topic that comes up most often within our farm crisis/farmer advocacy program. In engaging with the USDA direct or guaranteed credit system, farmers expose themselves to risk — a risk which historically has caused disproportionate farm loss for farmers of color. Caution on their part is reasonable and based on years of evidence; predatory lending (both private and by USDA) has been a major driver of Black land loss.

Our work walking alongside farmers of color in this system has demonstrated several broader lessons:

- The places in the process where agency staff have discretion are the places we see discrimination.
- Building USDA staff capacity and programs to better serve smaller farms and farms with more diverse production and marketing practices is a racial equity issue.
- Justice is hard to find and takes a LONG time to arrive, if ever.

Below we have answered the questions and provided recommended administrative actions by which USDA could put into action its stated commitment to racial equity. Our recommendations are based solely on our direct experience working with and for farmers for more than two decades.

Customer Experience Questions:

Customer Experience Questions #4. Describe your experience(s) interacting with USDA staff when trying to access USDA programs and services. How were they helpful? Are local USDA offices staffed sufficiently and do they provide good customer service? What are areas for improvement?

Our recommendations are based on our direct experience working one-on-one with farmers who frequently interact with agency staff.

Improve staffing levels at county level
We have heard many instances of FSA staff being stretched too thin and overworked. We recognize that good customer service is harder when the agency is understaffed. As long as they happen in conjunction with strong accountability structures, we support appropriations towards **full employment at the county level** to assure that agency 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.

Staff Accountability
Windows for discrimination and differential servicing are wide. USDA must establish accountability frameworks that will ensure programs and agency staff are accountable to communities. To increase accountability at UDSA we recommend the following actions:

- Taking immediate action to address discriminatory practices and poor service by increasing loan officer accountability. We have witnessed discriminatory treatment towards farmers of color and female farmers by loan officers and agency staff. This is not a thing of the past. It still happens and needs to be addressed.
- Conducting a review of FSA loan officers' portfolios as part of annual performance reviews to identify any possible patterns of discrimination or poor service.
- USDA agencies must do a better job, and a coordinated job, collecting demographic data from farmers. Without accurate demographic data about who is being provided with USDA services and funds, accountability is impossible.
- Beginning 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. Information derived from the review should be made available to stakeholders.
- Commissioning a report of the past five years of loan applications' time to funding, broken down by race, gender, ethnicity, and race/gender intersection.
- All reports and reviews must be made fully accessible to the public.

Improve agency communication with farmers during discrimination review

Implement 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. Farmers can make mistakes because when they don't hear from FSA, they may think the problem has been resolved. Letters should go out at the beginning of the process to explain the process to farmers, alerting them that the review may take a long time. Those letters should be followed by quarterly reports to update farmers on where the process stands.

General Questions:

General Question # 3. Did you experience problems with required USDA paperwork, the USDA internet sites, the attitudes of USDA workers, or the locations of USDA offices?

Our recommendations are based on our direct experience working one-on-one with farmers who frequently interact with agency staff.

Discriminatory treatment by USDA workers

A Black female farmer shared with us an experience in which an FSA Agent who was processing her application said that she should put her husband's name on her application documents and not hers. We have heard multiple incidents of this happening to women applying to USDA programs. Another Black female farmer told us that when she checked what the agency had recorded for her gender and race/ethnicity, she had been listed as a white male. This would have made her ineligible for the proposed BIPOC farmer debt relief.

Receipt of service

Farmers should get a receipt of service detailing what information was shared with the farmer for all contacts with an office, whether in person, by email, or by phone.

Access to farmer records and transition to automated loan documents

Farmers should have access to a current version of their own records with the agency.

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's documents and the farmer/rancher's application, two sets of automated USDA documents must be produced and shared with the farmer. This should happen before the loan decision so that farmers have the ability to compare calculations and specifically address any agency changes, with the farmer's and agency's rationale on record.

General Question # 4. Are there USDA policies, practices, or programs that perpetuate systemic barriers to opportunities and benefits for people of color or other underserved groups? How can those programs be modified, expanded, or made less complicated or streamlined, to deliver resources and benefits more equitably?

Building USDA staff capacity and programs to better serve smaller farms and farms with more diverse production and marketing practices is a racial equity issue. Although federal resources are an important part of the farm safety net, and have also been crucial for farm expansion, producers of color have not historically (or currently) benefitted from USDA programs to the same extent as other farmers. USDA's decades-long "get big or get out" policy of pushing farmers into high-volume commodity production has resulted in a long list of farm casualties.

<u>Prioritize small farms</u>
The systematic denial of the opportunity to "get big" to farmers of color means that on average, farms operated by BIPOC farmers are a quarter the size of those operated by white farmers, and they often adapt by pursuing agricultural production or markets outside the commodity system. Continuing to focus on large commodity farms by default (as manifested by available risk management options, price/yield data, subsidy structure, etc.) will continue this dynamic and widen the gap. **Building staff capacity and programs to better serve smaller farms and farms with more diverse production and marketing practices is a racial equity issue.**

<u>Receipt of service</u>
Failing to provide farmers with 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 exposes the farmer to the risk of data tampering. Farmers need assurance that their information is intact and accurate in order to ensure equitable access to programs and services.

<u>Limited windows of time to submit program applications or feedback during comment periods</u>
Providing limited windows of time, whether for feedback or program applications, is one kind of barrier to participation with USDA. Most recently, we note the example of the 2501 program announcing its RFA with only a one-month window for applications.

<u>Improvements to FSA loan origination and servicing</u>
- Farmers of color and female farmers are less likely to be treated as serious farmers by FSA staff, as demonstrated by the story above under question 3.
- **Over-collateralization is a major issue for farmers of color** and one of the primary tools of predatory lending.
    - 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.

    - 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.
- Establish better yield and price data for direct, specialty, and informal markets — a farmer's application may be denied based on feasibility when an agent changes the farmer's price data to the lowest possible price or value, even if the farmer has marketing agreements or records documenting higher prices.
- Preferred lenders are evaluated based on the loss to the agency, not whether they have helped or hurt farmers or whether they are making and servicing loans in a racially equitable manner. "Preferred lender" makes them sound like a safer option for farmers seeking guaranteed loans, when in fact they are one of the riskiest places for a farmer to get credit, and one of the least accountable. Promulgate rulemaking to amend 7 CFR 762.143 to:
    - amend (b) to include preferred lenders,
    - eliminate (c) allowing preferred lenders to service loans according to the lender's agreement.
    - alternatively, eliminate the preferred lender category entirely because it puts the farmer at greater risk.

<u>Justice after agency error or misconduct</u>

When the agency makes a mistake or discrimination occurs, **justice is hard to find and takes a LONG time to arrive, if ever.** In general, staff take a posture of protecting the agency and their previous decisions, rather than seeking a solution that is best for the farmer. Often by this time the farmer has lost their land, and once the title transfers, they will never get it back. In this case, **justice delayed is literally justice denied**.

- **Ensure that no farmer loses their farm due to agency error.**
- Fully implement 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. Agency staff are currently instructed to require additional information in implementing NAD decisions. This commonly takes a farmer beyond their planting date, even when NAD has determined that their original application should have been approved.
- 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.

Packers and Stockyards enforcement: provide protection based on protected class

In the upcoming rulemaking to strengthen enforcement of the Packers and Stockyards Act, USDA should ensure that the “undue preference” section **provides protection based on protected class.** The rule should clearly prohibit meatpacker or poultry company actions that discriminate against farmers on the basis of race, color, religion, sex, or national origin. These are all constitutionally protected classes, which means discriminatory behavior towards an individual or group of individuals based on those characteristics is inherently unlawful. This clarification is necessary because, despite these protections, there are several documented cases of discrimination based on race in the poultry industry.

FSA County Committees

- “Minority advisors” should be full voting members.
- Investigate claims of discrimination and abuse within FSA County Committees and make this information publicly available.
- Until FSA County Committees are equitable spaces, committees should not be responsible for directing outreach activities to reach and inform socially disadvantaged farmers and ranchers of all programs and County Committee election processes. This is counterintuitive.
- Ensure full transparency in how elections are conducted.
- Digitize maps for County Committee jurisdictions and make them available to the public online.
- Standardize and further centralize the process by which FSA County Committees hold elections. The timing of FSA county elections is chaotic and difficult to track. It would be simpler for farmers and organizations that support farmers to engage in FSA County Committee election outreach if the timing of elections were standardized across the country.
- Put measures in place to address conflicts of interests, particularly with agency staff. Agency staff must be held to the highest ethical standards and expected to abide by conflict of interest policies. Agency staff should not be able to profit based on information obtained or possible influence exerted through committees.
- Limit the possible influence of agency staff over FSA County Committee's decision- making processes. Agency staff should not take part in decision-making, particularly when reconsiderations are put before a committee. Agency staff should not be able to dictate decisions or have the influence to vacate a decision.

General Question # 5. How can USDA establish and maintain connections to a wider and more diverse set of stakeholders representing underserved communities?

We applaud the agency's interest in pursuing stakeholder input and feedback. It is critically important for the agency to thoroughly consider the input and feedback submitted to the agency. We believe these requests for input will need to be followed by a comprehensive and sustained push for real accountability and reform within USDA.

We support dedicating agency staff for outreach and technical assistance to socially disadvantaged farmers to increase the diversity of program applications and better address the needs of these populations. At the same time, given the current widespread distrust of USDA on the part of farmers of color, the agency's dependence on locally trusted community-based organizations and nonprofits is sensible and will continue to be so as it works to implement racially equitable policies, practices, and culture. **Lightening the burden of matching requirements** for such organizations — and in particular those working in low-income areas or specifically with socially disadvantaged farmers — will help those organizations do their work better. Additionally, USDA should provide at least 90 days between Requests for Applications and application deadlines.

Longer Comment Periods

We recommend longer comment periods that will provide stakeholders adequate time to prepare and submit valuable feedback.

General Question # 6. What are the barriers to applying for loan and grant programs? How can USDA make loan and grant processes easier to understand and more accessible to underserved groups?

Assistance with accessing programs and applying for grants

A sentiment we often hear expressed by farmers we work with in our farm advocacy program: "*It felt like they were looking for reasons to deny my application, not reasons to approve it*." Small or direct-marketing farmers need to work much harder to justify the feasibility of their applications. Farmers of color are often left on their own when it comes to navigating application processes. One of the functions of our Farmers of Color Network program is to connect farmers with peers who have experience applying to the same programs, because they are not getting that support from the agency. Outreach about USDA programs is absolutely an issue, but not the whole issue. USDA should **prioritize funding for one-on-one technical assistance for farmers of color** and not solely broad outreach efforts telling farmers about programs.

General Question # 14. Have you made recommendations for improvement in the past to USDA? If so, please list or attach those recommendations.

In June of 2021, RAFI-USA submitted a memo to FSA with recommendations to improve equitable service delivery at USDA for all farmers. The memo is included in Appendix A of this comment.

Thank you for the opportunity to comment on how USDA can more equitably serve the needs of farmers of color. We look forward to working with USDA to better serve all farmers.

Sincerely,
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Appendix A

***Re:** Docket: USDA-2021-0006 Identifying Barriers in USDA Programs and Services; Advancing Racial Justice and Equity and Support for Underserved Communities at USDA.*

6-15-2021

Memo to USDA: Action Steps for Improved Servicing of Farm Service Agency Loan Clients
From: Rural Advancement Foundation International-USA (RAFI-USA)

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 a 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 review of the loan officer's portfolio to identify patterns of discrimination or poor service.
- 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 immediate 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.