

## **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 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 one of two levels of cash payments, plus tax relief and debt relief on eligible farm-loan debt.

##### **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. 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 funds that may be paid to prevailing claimants under Tier 2. There is a cap on the total dollar amount of debt relief for prevailing claimants. Claimants who fail to prove their Tier 2 claims will automatically be reviewed for a Tier 1 payment. A Tier 2 payment may be made as soon as practicable after a final decision prevailing on the claim.

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

A Tier 1 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 claimant will receive a cash award of up to \$50,000, plus tax relief on that award, and debt relief from USDA on eligible farm loans subject to the total cap on debt relief. Unlike Tier 2 payments, total payments under Tier 1 are subject to a cap. Depending on the aggregate amount of funds paid out to Tier 2 claimants, a total of at least \$1.23 billion will be available for the cash awards and tax relief under Tier 1. The 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 depending on the number of successful claimants.

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<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.

The Tier 1 cap will be at least \$1.23 billion. If total Tier 2 payouts are less than \$100 million, then the Tier 1 cap will increase by the balance of the \$100 million. For example, if \$60 million is paid out under Tier 2, the Tier I cap will increase by \$40 million to \$1.27 billion.

Due to the total cap on Tier 1 payments, such payments will not be made until final decisions are made on all claims in Tiers 1 and 2. At that time, it will be determined whether cash payments on Tier 1 claims need to be pro-rated due to the total cap. That calculation will take account of 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.

#### B. Tax Relief

Under Tiers 2 and 1, 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. 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.

#### C. Debt Relief

A total of \$160 million in debt relief will be available from USDA to successful claimants in Tiers 1 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 eligible debt exceed this cap, USDA will not fully cancel all such debts, as discussed in Section IX.

#### D. Sources of Funding

Cash awards and tax relief will be paid from the Judgment Fund. USDA will pay all other costs, including 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 any related administrative costs.

#### E. 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.

## **II. NOTICE**

### **A. Summary Notice and Fact Sheet**

USDA and its contractors will design a process to notify female and Hispanic farmers of the availability of this Claims Process. A Summary Notice and a Fact Sheet will be widely disseminated, and 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.

The Summary Notice and the Fact Sheet 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 collect potential claimants' names and contact information.

### **B. Claims Package and Additional Information**

The Claims Administrator will send a Claims Package to any person who indicates an interest in the Program. The Administrator will include any additional instructions and information that he or she deems appropriate to facilitate the Claims Process, consistent with applicable ethical requirements.

## **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.
- Issue a final decision granting or denying the claim and making a cash award to each successful claimant.
- For any claims that are denied a Tier 2 payment, review such claims for Tier 1 eligibility.
- 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.
- 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, first class mail postage prepaid, post-marked within the allowed time-period, or by hand-delivery, specifying whether the claimant applies for a Tier 2 payment and/or a Tier 1 payment.

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 court 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.

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 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 incomplete, and the claimant does not submit a complete Claims Package 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 or whose claim is disallowed because of untimeliness or incompleteness.

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.”

**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 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

For Claims Packages submitted to the Claims Administrator, USDA will refrain from foreclosing on real or chattel property owned by the claimant 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.

### **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:

- Responses to questions on the Claim Form establishing basic eligibility for FSA farm loan programs.
- 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.
- 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, 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 with respect to a Tier 1 payment, the Administrator will accept the Claims Package for consideration under Tier 1, and will inform the claimant that additional information may be submitted during the Claims Period for the Claim to be considered under Tier 2 instead.

There will be no exceptions to or extensions of the time frames set forth in this Section, and if the Administrator determines that the claimant has not timely provided all requested documents and information by the Deadline, the Administrator will deny the claim and notify the claimant of that determination.

### 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. 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 Claim 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 REVIEW CRITERIA FOR APPROVAL OF CLAIMS**

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.

## **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>

- 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 a farm loan 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 result in a Tier 2 payment.
- 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(s) 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(s), or USDA failed to provide an appropriate loan service(s).

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<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 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.

<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.

- 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 applicant 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 this requirement, the claimant must provide a copy of a timely written complaint to a U.S. Government official, or of a document or correspondence from 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.

## **TIER 1 PAYMENTS**

For each timely and complete Claims Package that seeks a Tier 1 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 a farm loan 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.

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

- The farm loan(s) 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(s), or USDA failed to provide an appropriate loan service(s).
- 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:

- The claimant is a female or Hispanic person, except as provided above, 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 a farm loan 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 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.

## **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 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, 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 were 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 affected by the act(s) that formed the basis of claimant’s successful credit claim; and
- (2) All subsequent loans in the same loan program(s) until the end of the Relevant Period.<sup>6</sup>

Claimants cannot appeal the Adjudicator’s decision as to which debts are eligible for debt relief. USDA will provide debt relief as described in Part 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.

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<sup>6</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.

### 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 Tiers 2 or 1 will not be offset by any remaining debt on eligible farm loans. Cash awards paid under Tiers 2 or 1 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 so that those individuals face no additional barriers when they apply for USDA programs in the future.

## **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 monitor proceedings as it deems appropriate.

The Summary Notice and the Fact Sheet will highlight the fraud-protection measures to which claims will be subjected.

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 the Inspector General or the Department of Justice. The Department of Justice may on its own initiative refer claims or processes for review.

2. Performance Audits

The Secretary of Agriculture will request that the Inspector General of the Department of Agriculture, within 180 days of the adjudication of selected claims, and subsequently as appropriate, conduct a performance audit based on a statistically significant estimate obtained through a randomized sample of adjudicated claims to determine if the claims review process is adequate and functioning as prescribed so that funds are distributed only to eligible applicants. Audits 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 an appropriate law enforcement agency. The Department of Justice and/or the appropriate US Attorney's Office on their own initiative may 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 fees paid to any attorney representing a claimant in this process from the award issued by the Adjudicator must be paid directly by the claimant. Such fees paid out of the cash award shall not exceed \$1,000 per claimant.

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, nor 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.

**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 or be provided with the names of all persons 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 resolution 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. The United States reserves the right unilaterally to modify the terms of this Program or the contents of this document at any time.