

**CONSULTATION / LISTENING SESSION
FRAMING PAPER**

on

Providing Financial Assistance for Producers and Landowners Determined to Have Experienced Discrimination

Tuesday, December 6, 2022

Tribal Consultation

5:00p.m. PT – 6:30p.m. PT

Tribal Listening Session

6:30p.m. PT – 8:00p.m. PT

I. General Background

- On August 16, 2022, President Biden signed the Inflation Reduction Act (IRA, P.L. 117-169) into law.
- The IRA is a historic, once-in-a-generation investment and opportunity for the agricultural communities that the U.S. Department of Agriculture (USDA) serves to help producers stay on the farm, prevent producers from becoming ineligible for future assistance, and promote climate-smart agriculture by increasing access to conservation assistance.
- While the IRA repealed Section 1005 of the American Rescue Plan Act for farm debt payments, it provides \$3.1 billion to provide relief to Farm Service Agency (FSA) direct and guaranteed loan distressed borrowers. On October 18, 2022, USDA announced initial payments of nearly [\\$800 million in assistance to distressed borrowers to help keep farmers farming, and FSA continues to provide relief to borrowers with more complicated cases](#). The IRA also provides \$2.2 billion to compensate borrowers who were victims of discrimination in farm lending programs. As USDA nears the end of a 30-day Request for Information on recommendations to pay for prior discrimination, we are engaging in this consultation to gather tribal input on this process.

II. USDA Seeks Tribal Input

- USDA requests tribal input to inform administration of Section 22007 of the IRA.
- This section appropriates \$2.2 billion for USDA to provide financial assistance for producers and landowners determined to have experienced discrimination in the Department of Agriculture's farm lending programs. USDA seeks input to ensure that relevant information is considered.
- This program provides USDA the ability to provide financial assistance for those who have been discriminated against in USDA's farm lending programs. USDA recognizes the importance of acknowledging and compensating previous wrongs in order to rebuild trust and provide better services going forward.
- A trusting and mutually supportive relationship between agricultural producers and USDA is essential to a safe and secure food supply chain and our nation's ability to produce food, feed, and fiber that is key to our daily lives and the U.S. economy.

III. Topics for Discussion

1. How to Determine Whether Producers and Landowners Experienced Discrimination

By the terms of the statute, relief under this provision is for “farmers, ranchers, or forest landowners determined to have experienced discrimination prior to January 1, 2021, in Department of Agriculture farm lending programs.”

Questions for Discussion:

- How should USDA identify those who have experienced discrimination under the USDA farm loan programs?
- What kind of documentation or evidence should be submitted in support of a determination of discrimination?

2. How to Determine Amount and Type of Assistance Provided

Under section 22007, “the amount of financial assistance provided to a recipient may be not more than \$500,000, as determined to be appropriate based on any consequences experienced from the discrimination.”

Questions for Discussion

- Should USDA attempt to estimate only economic losses or also non-economic losses of those who have suffered discrimination in USDA farm loan programs when calculating the amount of financial assistance provided?
- Alternatively, should USDA apply a fixed, uniform formula for calculating the amount of financial assistance provided? In any case, how should that calculation be done?
- Should previous payments received for past claims of discrimination be considered in determining financial assistance available under section 22007?
- Are there forms of non-monetary equitable relief that can be used in conjunction with the financial assistance provided under section 22007 for those who have experienced discrimination and who continue to farm or continue to participate in USDA farm loan programs?
- How, if at all, should USDA consider the recency of the discrimination as determined by the Secretary when determining appropriate level of financial assistance?

3. Role & Selection of Third-Party Entities in relation to USDA in Delivering Assistance

Section 22007 provides that the “program shall be administered through one (1) or more qualified nongovernmental entities selected by the Secretary subject to standards set and enforced by the Secretary.”

Questions for Discussion

- What specific functions should the third-party entity (or entities) perform in assisting USDA in delivering financial assistance provided for under section 22007 to those who suffered discrimination under the USDA farm loan programs?
- What criteria should USDA use in the selection of the third-party entity (or entities)?
- What guidance should USDA provide to the selected entity (or entities)?

4. Linkage or Leverage Between This New Program and Other USDA Programs
Questions for Discussion

- How should USDA use programs, funding, financial support, and other authorities, in conjunction with section 22007 financial assistance, to provide support for those who have experienced discrimination under the USDA farm loan programs?