

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

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**RoseMary Love** :  
**P.O. Box 1399** :  
**Great Falls, MT 59403** :

**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** :  
**295 County Road 149** :  
**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.** :

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**FOURTH AMENDED AND SUPPLEMENTAL COMPLAINT**  
**(FOR DECLARATORY JUDGMENT, VIOLATIONS OF**  
**EQUAL CREDIT OPPORTUNITY ACT, 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>

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

### **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 refused to offer equivalent terms to women, further depriving them of equal protection and due process.

### **JURISDICTION**

1. Jurisdiction is founded upon 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.

### **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 they 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 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 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 3 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 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 instead has 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 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 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 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 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 3 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 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 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 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 6 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 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 has 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 10 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 WAIVED**

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 waives the statute of limitations for plaintiffs in this case.

**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 Court 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 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 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) 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-filed 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 to USDA 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 claims of African-American farmers.

87. On November 1, 2010, USDA reached a settlement with the Native American farmers. The settlement includes approximately \$680 million in damages and \$80 million in debt forgiveness to Native American farmers who sustained the same systematic discrimination as did the female, African-American, and Hispanic 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 enabling claimants to recover up to \$250,000 on their claims. 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 farmers is significantly inferior to the administrative programs offered to African-American and Native American farmers who suffered identical discrimination and filed virtually identical complaints.

89. On May 25, 2010, and again on February 25, 2011, 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 announced that all of the provisions and components for the program are final, subject only to the retention of a claims administrator, and that the program is expected to commence in December 2011 or January 2012. The "Claims Period" covered by the program will be from January 1, 1981 to December 31, 1996 and 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 under the programs available to African-American and Native American farmers who suffered the same discrimination. The most recent publicly released program documentation is attached hereto as **Exhibit 1**. Defendant proposes that female and Hispanic farmers share a total possible recovery of approximately \$1.33 billion. This is twice the amount awarded to Native American farmers, although female farmers outnumber Native American farmers 18 to 1. This is just over half of the amount awarded to African-American farmers, although female farmers outnumber African-American farmers 25 to 1. These figures are based upon the most

recent census, the 2007 Census of Agriculture, which lists 306,207 female principal operators, 30,599 African-American principal farm operators, and 34,706 Native-American principal farm operators. The same census lists under the category of “all operators” 39,697 African-Americans, 55,889 Native-Americans, and 985,182 women.

91. Female (and Hispanic) farmers will have two “Tiers” of recovery: Tier 1, which allows for recovery of up to \$50,000 (subject to pro rata reduction) and Tier 2, which allows for recovery of a flat \$50,000. Unlike the programs offered to African-American and Native American farmers, female (and Hispanic) farmers will have no low-cost dispute resolution alternative for claims greater than \$50,000.

92. While “Track B” in the *Pigford (I and II)* and *Keepseagle* settlements simply requires the submission of any “documentary evidence admissible under the Federal Rules of Evidence,” Tier 2 under the claims program for female (and Hispanic) farmers will require the submission of copies of loan documents and complaints to government officials that were originally submitted up to 30 years ago. Female (and Hispanic) claimants will thus be subjected to more onerous evidentiary requirements in exchange for the opportunity to recover less in compensation. Additionally, all female (and Hispanic) “constructive claimants” (those who attempted to apply for loans but were discouraged due to discrimination) will have to provide copies of eyewitness statements or complaints filed within one year of the discriminatory incident. African-American and Native American constructive applicants did not need to provide these documents in order to receive awards in connection with the USDA-sponsored claims programs created for their benefit.

93. 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. 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 \$1,000) each claimant's payment to an attorney.

94. 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 claims against USDA before a claimant even knows whether her claim has been accepted for consideration on the merits.

95. 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 identical claims.

96. 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 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.

97. 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 far 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.

98. Requiring plaintiffs to sign a broad release of *all* credit-related discrimination claims against the U.S. Government and USDA 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.

99. 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.

100. On information and belief, defendant has authority to approve the settlement of women farmers' claims, and had a hand in developing the terms of the announced claims program for women (and Hispanic) farmers in lieu of adopting similar terms to the settlements fashioned for the African-American and Native American farmers.

101. 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.

102. 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, at the core of each proposal 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.

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

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

104. 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)**

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

106. 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.

107. 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.

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

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

110. 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)**

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

112. 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 nearly identical discrimination by USDA and brought virtually identical discrimination claims against USDA.

113. 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 nearly identical discrimination.

114. 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)**

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

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

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

118. 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 identical discrimination, deprives plaintiffs and class members of due process in violation of the Fifth Amendment of the United States Constitution.

**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 women loans who otherwise are 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 with terms that are substantially identical to those offered to African-American and Native American farmers with similar claims of discrimination, including not imposing on plaintiffs a higher standard than required of other minority farmers in order to be granted an award; providing free legal advice and counsel to claimants as part of the program; and not requiring Plaintiffs to broadly release all of their 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.

Respectfully submitted,

/s/ Barbara S. Wahl

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# **Exhibit 1**

## **HISPANIC/WOMEN FARMERS CLAIMS PROCESS FRAMEWORK**

### **I. PURPOSE**

This document (Framework) describes a program (Program) for the United States to establish a voluntary administrative claims resolution process (Claims Process) for female and Hispanic farmers who allege discrimination by USDA in responding to applications for farm loans or loan servicing from 1981 to 2000,<sup>1</sup> and who timely submit claims alleging discrimination by USDA in processing applications for farm loans or loan servicing on the basis of being female or Hispanic.

#### **A. Payments**

Successful claimants will be eligible for one of two levels of payments.

##### **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 any claimant who substantiates his or her claim with certain documentation and who proves the claim by substantial evidence. There is no cap on the number of claimants who may qualify for Tier 2 payments and no cap on the aggregate amount of money that may be paid to prevailing claimants under Tier 2 of the Program. The claims of claimants who do not apply for a Tier 2 payment or who fail to prove their claims by substantial evidence will automatically be reviewed for a Tier 1 payment. A Tier 2 payment may be made as soon as practicable after a final decision on the claim.

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

A Tier 1 payment is available to claimants who may lack certain documentation regarding their claim but can prove their claims 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. Unlike Tier 2 payments, payments under Tier 1 are subject to a cap. Depending on the aggregate amount of funds paid out to Tier 2 claimants, between \$1.23 and \$1.33 billion will be available for the cash awards and tax relief under Tier 1. Each successful Tier 1 claimant will receive the same dollar amount, and therefore, the cash awards may be reduced pro rata depending on the number of successful claimants so as not to exceed the overall Tier 1 cap.

The base Tier 1 cap is \$1.23 billion. If total Tier 2 payouts are \$100 million or greater, the Tier 1 cap will remain at the base amount of \$1.23 billion. On the other hand, if total Tier 2 payouts are less than \$100 million, then the Tier 1 cap will increase by whatever

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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.

portion of the \$100 million is not paid out under Tier 2. For example, if \$60 million is paid out under Tier II, the Tier I cap will increase by \$40 million, raising the base Tier I cap to \$1.27 billion.

Tier 1 payments will not be made until final decisions are reached on all Tier 1 and Tier 2 claims. Once final decisions are reached, a calculation will be made as to whether prorating is necessary for Tier 1 payments. That calculation will include payments being held because of ongoing audits as if those payments are being made. If at the conclusion of the audit process, pro rata payments owed to successful claimants would increase because payments are not owed on audited claims, additional payments will be made to successful claimants on a pro rata basis unless each such payment is 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. Amount of Tax Relief**

Under both tiers, tax relief will be provided on behalf of each successful claimant, directly to the Internal Revenue Service, in a lump sum at the fixed rate of 25 % of the cash award issued by the Adjudicator, and 25 % of the outstanding principal amount of any debt relief provided by USDA. Tax relief on debt relief will not be paid on interest. This amount is not intended to offset completely all taxes that any specific claimant may owe.

**C. Amount of Debt Relief**

Whether a claimant receives payment under Tier 1 or Tier 2, up to a total of \$160 million in debt relief will be available from USDA to successful claimants, but only for eligible debt as described below. The amount of debt relief provided by USDA may be reduced pro rata to the extent USDA determines that the number of eligible claimants would cause the total cap on debt relief to be exceeded.

**D. Sources of Funding**

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

**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. An additional period will be permitted for the completion of certain incomplete Claims Packages, as described further below.

## **II. NOTICE**

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

USDA and its contractors will design a process to contact as many potentially eligible female and Hispanic farmers as practicable. A Summary Notice and Fact Sheet will be widely disseminated to solicit participation in the Claims Process, and a Claims Package will be provided, in a manner consistent with applicable attorney ethical requirements, to community advocacy groups and all persons who indicate 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 (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 privacy of individual 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 of 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 the USDA on the progress of the Claims Process and the results of adjudications.

#### **V. PROCEDURAL PREREQUISITES**

##### **A. Signed Settlement Agreement**

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 credit-related discrimination claims that arose during the relevant time period, and must submit the executed Settlement Agreement to the Administrator by priority mail, first class mail postage prepaid, or overnight carrier, by fax, or by e-mail. If a claimant has any claims pending against USDA in any court or administrative proceeding alleging the same underlying discrimination as alleged in the Claim Form, including without limitation Love v. Vilsack and Garcia v. Vilsack, the claimant must also submit documents establishing the dismissal of such claims with prejudice.

B. Irrevocability

The Administrator's acceptance of a timely and complete Claims Package is irrevocable. No claimant whose Claims Package is accepted by the Administrator may under any circumstances or for any reason rescind the Settlement Agreement or initiate a claim arising out of the same underlying claims of discrimination against USDA in any court or administrative proceeding.

C. Release of Liability

Any individual who executes a Settlement Agreement and whose Claims Package is accepted as timely and complete 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 that were raised, or could have been raised in Love v. Vilsack or Garcia v. Vilsack, had the claimant been a party to either of those lawsuits. If a claimant's Claims Package is accepted by the Administrator as timely and complete, the release will become effective at the time the Claims Package is accepted. If a claimant's Claims Package is rejected by the Administrator as untimely or incomplete, the release will become effective 45 days after the Administrator first issues notice that the Claims Package is defective. Before the expiration of the 45-day period, the claimant may withdraw from the Claims Process and file a complaint in federal court. A release pursuant to this provision does not affect the claimant's right to cure a deficiency and participate in the Claims Process as provided herein.

D. Voluntary Participation

No person is required to participate in the Claims Process and each putative claimant has a right to seek counsel. The United States reserves the right to assert any available defenses in any administrative or court proceeding against any person covered by this process who chooses not to participate.

Any plaintiffs in Love v. Vilsack and Garcia v. Vilsack who elect to participate must execute the Settlement Agreement, in the form developed by the United States, waiving their court claims as provided herein in exchange for participation in the administrative claims process. They must submit the executed Settlement Agreement to the Administrator.

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. Lifting of the Stay

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 180-day Claims Period. In order to participate in the Program, claimants must have submitted a Claims Package during the 180-day Claims Period discussed above, regardless of when the Government’s motion is filed and decided.

B. Moratorium on USDA Collection Actions for Claimants

USDA will cease all efforts to dispose of any foreclosed real property held in inventory that was formerly owned by persons who the Administrator finds timely submitted to the Administrator a complete Claims Package, a signed Settlement Agreement, and for Love and Garcia plaintiffs, a signed, file-stamped Stipulation of Dismissal with Prejudice. USDA retains the option of liquidating real or chattel property under an order from a court or under the operation of applicable State law.

USDA also 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. Interest will not accrue and no offsets will be taken on farm loan program loans held by persons whom the Administrator finds timely submitted a complete Claims Package and a signed Settlement Agreement during the Claims Period. Interest accrual and offsets will continue on all other loans, including, but not limited to, non-program loans. USDA may resume its efforts to dispose of any such property after a final decision denying the claim.

## VII. DECISIONMAKING PROCESS

### A. Determinations as to Timeliness

The Administrator will send a letter to all claimants whose claims are submitted following the expiration of the 180-day Claims Period (or for Claims submitted during the last thirty days of the Claims Period, more than thirty days after the Administrator issues notice that the Claims Package was incomplete), indicating that their 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 claimants with untimely claims.

### 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, submitted by priority mail, first-class mail postage prepaid, or overnight carrier, by fax, or by email, must include the following information:

- Responses to questions establishing basic eligibility for FSA programs.
- All necessary documentation establishing that the claimant meets the Claims Process criteria, including, for claimants seeking a Tier 2 payment, a copy of the farm loan application or other documents required.
- An executed Settlement Agreement, and if applicable, copies of the Stipulation of Dismissal with Prejudice, date-stamped by the court.
- 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 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 complete, the Administrator will notify the claimant in writing and forward the Claims Package to the Adjudicator for processing and resolution. If the Administrator determines that a Claims Package is 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 (or for Claims first submitted during the last thirty days of the Claims Period, until thirty days after the Administrator issues notice that the Claims Package was incomplete), to submit a complete Claims Package to the Administrator. The notification will also provide information regarding the point at which the claimant's release becomes effective. If the Administrator determines that a

Claims Package that seeks a Tier 2 payment is incomplete with respect to the Tier 2 information but is complete with respect to a Tier 1 payment, the Administrator will accept the Claims Package for consideration for a Tier 1 payment and inform the claimant that additional information may be submitted, consistent with the deadlines otherwise applicable, for the Claim to first be considered for a Tier 2 payment instead. There will be no exceptions to or extensions of the time frames set forth in this paragraph, 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 or the Adjudicator in reviewing claims. This process imposes no obligation on USDA 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 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 suffered 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, and who allegedly suffered discrimination is also cognizable, and the term "claimant" throughout the program includes both individuals in their personal capacity and in their capacity as sole proprietors. A claim brought by or on behalf of any other legal entity is not cognizable.

## **TIER 2 PAYMENTS**

For each Claims Package that seeks a Tier 2 payment, the Claims Adjudicator will determine whether the claimant has established the following criteria by substantial evidence<sup>2</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>3</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, 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. 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.

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<sup>2</sup> “Substantial evidence” is defined as 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>3</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.

- 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 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 has established 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 specific farm loan or farm-loan servicing<sup>4</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(s) or farm-loan servicing for which the claimant applied was denied, provided late, approved for a lesser amount than requested, 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, either individually or through a representative, during the Relevant Period. In

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<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.

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 eligibility 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 PROCEDURE**

### **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 debt, is eligible to receive debt relief. USDA will assist the Adjudicator, to the extent necessary, to identify all debts accrued by a claimant during the Relevant Period that are subject to forgiveness. Each claimant must also make a good faith attempt to identify any outstanding 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 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 claim and the adverse credit actions on a debt, as described above, then USDA will, subject to the total cap on debt relief, discharge 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>5</sup>

The Adjudicator’s decision as to which debts are eligible for debt relief will be final and binding. USDA will cancel only those debts identified for cancellation by the Adjudicator and subject to the forward sweep provisions. Claimants will remain responsible for continuing timely payments on any debts that are not identified for cancellation by the Adjudicator. USDA will be able to initiate or continue collection actions on any delinquent debts that are not identified by the Adjudicator as eligible for debt relief.

### C. Debt Cancellation Procedures

In providing debt relief to successful claimants, USDA will not make any monetary payments. Rather, USDA will provide such relief by administratively cancelling debts for eligible loans obligated within the Relevant Period. For loans deemed eligible by the Claims Adjudicator for debt relief, USDA will cancel the principal amount, accrued interest, and any cost items associated with the program loan, to the extent the cap on debt relief allows.

Debt relief will be applied to accounts only after all claims have been adjudicated. Awards of debt relief may be reduced on a pro rata basis if the total amount of outstanding debt to be forgiven exceeds the \$160 million cap on debt relief. If USDA determines that it is necessary to reduce the amount of debt relief on a pro rata basis, 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, USDA may, in its discretion, partially cancel eligible debts, or service and/or restructure such debts.

Any debt relief provided through this settlement 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 debt relief in the direct loan database pursuant to the Claims Process so that those individuals face no additional barriers when they apply for USDA programs at a future date.

## X. FRAUD PREVENTION

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<sup>5</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 Operating Loan will be discharged even though the claimant did not allege discrimination with respect to the 1995 Operating Loan.

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

Random reviews will be conducted at a reasonable rate to deter and identify fraud, identity theft, and other possible criminal activities. Such reviews will 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 will establish a point person for communications to the Adjudicator regarding the review process. USDA and the Adjudicator will determine the proper entity or entities to conduct these reviews. The Department of Justice may refer claims or processes for review.

2. Performance Audits

The Secretary of Agriculture will request the Inspector General of the Department of Agriculture to, 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 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 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 to his or her attorney. Such fees paid out of the cash award shall not exceed \$1,000 per claimant.

No attorneys' fees will be paid by USDA or the Department of Justice or any other agency or department of the United States. The amount of 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 will be 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. Multiple claimants operating a single farm operation are limited to one claim per farm operation.

### **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 any lending discrimination on any prohibited basis by USDA during the Relevant Period and who received 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. Thomas Vilsack (Pigford I), In re: Black Farmers Discrimination Litigation (Pigford II), and, if applicable, Marilyn Keepseagle v. Thomas Vilsack (Keepseagle). Claims Packages submitted for consideration in this claims process by persons who participated in Pigford I or Pigford II will be denied 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 to modify the terms of this Program or the contents of this document at any time.