



## **Brief Farmers' Guide to USDA Discrimination Financial Assistance Program—Third Edition**

**Farmers' Legal Action Group, Inc. (FLAG) – September 29, 2023**

Written by Stephen Carpenter and Lindsay Kuehn<sup>1</sup> and Copyedited by Wendy Reid

### **I. Introduction**

On July 7, 2023, the United States Department of Agriculture (USDA) announced that the USDA Discrimination Financial Assistance Program was open. The Program was authorized by the Inflation Reduction Act of 2022 (IRA). The IRA called for USDA to create a program that makes 2.2 billion dollars available for “discrimination financial assistance” that is available for farmers that can show that they “experienced discrimination” in USDA Farm Loan Programs.

#### **A. Farmers Need to Apply: Deadline Extended to January 13, 2024**

Farmers, ranchers, and landowners can be eligible for the Program. Everyone who plans to take part in the Program must apply. On the application, farmers will be asked to describe discrimination by USDA in Farm Loan Programs that occurred before January 1, 2021. The deadline to apply for this Program was originally October 31, 2023. On September 22, 2023, USDA extended the deadline to January 13, 2024. Because the Application is long, and requires work and documents, farmers should start working on the application right away.

#### **B. Congress Created Program, Vendors Administer, USDA Provides Standards and Oversight**

Congress created the Discrimination Financial Assistance Program. USDA hired non-government vendors to administer the Program. USDA sets standards for the Program and provides oversight.

#### **C. No Cost to Apply: Beware of Scams**

There is no cost to apply for this Program. Beware of anyone who says there is a cost to apply or anyone that says they can guarantee a farmer will be paid.

#### **D. Payments of 2.2 Billion Dollars Available**

Congress made 2.2 billion dollars available for the Discrimination Financial Assistance Program. That money will be divided between all farmers who apply and are determined to have experienced discrimination. This is NOT a first-come, first-serve Program.

#### **E. This Updated Brief Farmers' Guide, and a Longer Guide Available**

This Updated Brief Farmers' Guide is a very short discussion. The brief version updates the deadline for seeking documents from USDA, which is discussed below. A more comprehensive Farmers' Guide looks at the details of the Program and is on the FLAG website.

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<sup>1</sup> Stephen Carpenter is at [scarpenter@flaginc.org](mailto:scarpenter@flaginc.org). Lindsay Kuehn is at [lkuehn@flaginc.org](mailto:lkuehn@flaginc.org).

## **F. Guide is a Group Effort**

This Brief Farmers' Guide, and the longer Guide is a collaborative effort between Farmers' Legal Action Group, Inc. (FLAG), the Rural Coalition, Land Loss Prevention Project, the Intertribal Agriculture Council (IAC), and others, with support from the W.K. Kellogg Foundation.<sup>2</sup>

## **II. Program – Not a Lawsuit**

The Discrimination Financial Assistance Program is not a part of a lawsuit. The payments are not, therefore, damages or compensation for past discrimination. They are instead, as USDA explains, payments that are part of a program created by Congress.

## **III. Eligibility: Farmers, and Assigned or Assumed Debt**

As noted above, farmers, ranchers, and landowners can be eligible for this Program. To keep things short, this Guide refers to farmers. In general, eligibility for a farmer can be either of two types: (1) a farmer who has experienced discrimination; and (2) a farmer who has an assigned or assumed USDA farm loan and the original borrower experienced discrimination on that same debt.

### **A. Experienced Discrimination in Farm Loan Programs**

For farmers who experienced discrimination, the discrimination must have taken place before January 1, 2021. The discrimination must have been by USDA. So, that means direct loan or guaranteed loans where the discrimination was by USDA, not the lender. The loans must be a part of USDA Farm Loan Programs.

### **B. Assigned or Assumed Debt**

For farmers who have assigned or assumed loans, the same loan must have been the subject of discrimination.

### **C. No Other Estate Claims**

No estate claims are allowed. In other words, if a farmer experienced USDA discrimination on a loan in 2015, and that farmer passed away in 2020, that farmer's estate or the farmer's heirs may not file a claim on the farmer's behalf. The sole exception to this rule concerns loans that were assigned or assumed, as explained above.

## **IV. Experienced Discrimination in USDA Farm Loan Programs**

Farmers must be determined to have experienced discrimination. Discrimination occurs when a person has been treated differently from others for a covered, illegitimate reason.

### **A. Protected Classes and Bases of Discrimination**

It is discrimination if people have been treated differently based on: race, color, national origin or ethnicity, sex, sexual orientation, gender identity, religion, age, marital status, disability, and reprisal or retaliation for prior civil rights activity. USDA says tribal membership is also an accepted discrimination basis for this Program.

### **B. Meaning of Discrimination**

In credit discrimination law, "smoking gun" proof of intentional discrimination – in the form of an insult or a statement that certain people will not get loans – is not required.

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<sup>2</sup> FLAG is at <http://www.flaginc.org/>. Rural Coalition is at <https://www.ruralco.org/>. Land Loss Prevention Project is at <https://www.landloss.org/>. Intertribal Agriculture Council is at <https://www.indianag.org/>. The W. K. Kellogg Foundation is at <https://www.wkkf.org/>.

Discrimination can be shown if an eligible person is treated differently than someone else based on race, national origin, sex, and so forth. For our purposes, on an application it is helpful to note that the treatment violated USDA's rules. This helps to show that others received different treatment. It also can help if the farmer knows that other people received different, more favorable, treatment. This sort of comparison is not required, but it can be helpful.

### **C. Burden of Proof**

This program is not litigation, but it resembles legal-like proceedings in the sense that an Applicant is trying to convince someone that discrimination took place and that it harmed the farmer. As a result, inevitably there is a burden of proof. As we know, burdens of proof can vary greatly. In this Program, the burden of proof "substantial evidence." It is less demanding than "preponderance of the evidence." Substantial evidence is defined as providing enough "relevant evidence that a reasonable person could accept as adequate to support the conclusion that discrimination occurred." It should mean that an applicant can be denied only if a reasonable person could not conclude that discrimination occurred.

## **V. Application Generally: Provide Details**

In a paper-only process in which there are no appeals it is crucial for the farmer to include significant details of the farming operation and of the discrimination. In addition, documents that are not officially required are likely to be nearly essential for many applicants.

Those evaluating applications and making determinations will be relying almost solely on the Application. These decision-makers will also be concerned to identify claims that might be fraudulently mass produced or simply made up on a case-by-case basis. Details of the operation help fill in the story of the farmer, the discrimination, and the harm done by the discrimination.

## **VI. Application Generally: Documents**

A number of documents will be required for each farmer. Obviously, for certain purposes these documents are essential. Nearly as important, however, are documents that are not absolutely required. As the Application points out, a number of important aspects of the farmer's story can be supported by documents.

### **A. A Range of Possibilities**

The farmer may not have precise legal documents or other records that support, for example, farming activities. Seemingly innocuous or forgotten records, however, can serve a similar purpose. Old checkbook records can show farm expenses, for example. Property tax records might be online and go back several years.

### **B. USDA Documents: Deadline for Request to USDA is November 3, 2023**

Important farmer records may be USDA documents. If the farmer does not have them, the farmer can request them from USDA. One example of such a document that could help is a Receipt for Service. There is a process for requesting documents from USDA. It can be found in the FAQ for this Program and will be discussed in detail in the longer Farmers' Guide. Farmers must request records in writing by sending an email to [info@22007apply.gov](mailto:info@22007apply.gov). The deadline for a request to USDA is November 3, 2023. This is an extension from earlier deadlines.<sup>3</sup>

### **C. Sworn Statements**

The Application allows sworn statements to be a part of the Application. Neighbors, bankers, people at the mill or cooperative, and many other people may have specific recollections that they would be

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<sup>3</sup> Originally, this deadline was September 6, 2023. USDA then first extended the deadline to September 29, 2023.

willing to share. There is a form for sworn statements at <https://22007apply.gov/resources.html#supporting-docs>.

## VII. How Other Processes Matter

The earlier discrimination cases, as well as other litigation and appeals and discrimination complaints, matter in this case in two ways. First, any documents or conclusions from those cases can help show whether discrimination took place. Second, to the extent a person succeeded in a case or other process, the money received will be taken into account when money is provided in this Program.

## VIII. Payment Amounts

Payment amounts may be up to 500,000 dollars. For most people who receive a payment, it will be far less. Those who farmed are likely to receive more than those who sought to farm.

## IX. No Appeals

There are no appeals from a decision in the program. It is important to get all of the details into an application the first time.

## X. Taxable

Payments are considered by the IRS to be taxable. USDA has said it is working to find a way to address taxes owed as a result of Discrimination Financial Assistance payments.

## XI. Signature: Penalty of Perjury; and USDA Access to Documents

Farmers must sign the Application under penalty of perjury. Signatures required also allow USDA to use information they have when it comes to processing an application.

## XII. Filing Applications: Assistance Available

Applications can be filed online, in person, and by mail. The application will feel long. It requires a number of documents – important information about the farmer, the farm, and other things.

There is help available for farmers.

First, assistance can come from vendors hired by USDA to help farmers with applications.

Second, help can also come from organizations who are cooperators with USDA and helping farmers with applications. These groups include AgrAbility, the Farmer Veteran Coalition, Farmers' Legal Action Group, Federation of Southern Cooperatives, Intertribal Agriculture Council, Land Loss Prevention Project, National Young Farmers Coalition, and Rural Coalition.

Third, the main Discrimination Financial Assistance Program website includes much information and the full application. It is here: <https://22007apply.gov/>.

Finally, a toll-free number with information and someone to answer questions is **1-800-721-0970**.

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