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Testimony of  
**Willard Tillman, Board Member  
Rural Coalition.**  
To the  
**Committee on Agriculture  
U.S. House of Representatives  
Hearing on "A 2022 Review of the Farm  
Bill: The State of Credit for Young,  
Beginning and Underserved Producers**

July 14, 2022

Good morning my name is Willard Tillman. I am here as a Board Member of the Rural Coalition. Chairman Scott, Ranking Member Thompson, and members of this committee, I want to thank you for your invitation to the Rural Coalition to be here today to share our thoughts about access to credit for historically underserved, limited resource and new and beginning farmers and ranchers.

For 44 years, the Rural Coalition has effectively worked with the U.S. House and the U.S. Senate on legislative proposals involving farm programs, equity, and agriculture credit, which is the topic of today's hearing. The historically underserved farmers and ranchers that we represent play a critical role in the helping our nation maintain and expand its role of as the world's paramount leader in the production and marketing of an abundant, safe, and affordable supply of food and fiber.

I was born and raised Wewoka, Oklahoma, where my family has for decades and continuing until to today, run cow and calf operations. I have myself and farmers. In my role as Executive Director of the Oklahoma Black Historical Research Project (OBHRPI), I've worked for over two decades with hundreds of cow-calf and other producers throughout the state of Oklahoma. At present, I am also working closely with the mayors of the historic black towns of Eastern Oklahoma, to rebuild and strengthen their economic bases. This includes seeking investments for local meat processing facilities.

A strong agriculture sector is critical to economic progress in these communities. This progress will require investment in the continuing and expansion of agriculture in this region. And it will also require an investment in protecting land tenure for current farmers and growing a new generation of producers to carry on the deep knowledge of the generations who have held and worked this land.

At present, land values in Oklahoma and beyond are highly volatile with outside investors driving up land prices in many areas. Anticipation of the expansion of carbon markets and authorizing payments for ecosystem services also appears to be driving investment both in farm and forest land. This trend should be monitored closely as move into the 2023 Farm Bill especially with changes in investment related to climate.

We are working hard to help the next generation understand the value of the land to the family and community. A family can only sell their land once. Sometimes heirs can only see immediate money from a sale without understanding that they are giving up their family's lifetime legacy of a lot of hard work and how their elders in the face of all kinds of discriminatory practices were able to sustain and still hold onto that land.

Protecting and expanding multi-generational land tenure for this nation's moderate and small-scale farmers and ranchers, with special focus on beginning and historically underserved producers should be a key goal of the next farm bill. Fair, sufficient, and affordable agriculture credit is essential underpinning to the continuity of these farming operations and to the stable and sustainable economy of these communities.

In our testimony for the record, we will address our recommendations for credit in more detail. This morning I will concentrate on critical issues for livestock producers and how to build on the progress in the 2018 Farm Bill and your previous efforts to assure service to all producers.

### **2018 Farm Bill**

The Agriculture Improvement Act of 2018 ("2018 Farm Act") increased support for farmers with limited access to traditional lending markets placing "special emphasis on making loans to the next generation of farmers, including beginning farmers, farmers with limited means, and military veterans."

The adjustment in the maximum levels for direct farm ownership and operating levels is helpful as producers here contend with rising land and operating costs. Expanding the loan authorization level especially for direct loans is important. In 2023, we urge the committee to consider what additional adjustments with special emphasis on building land tenure for beginning and historically underserved producers.

The expansion of funding for direct operating microloans was helpful; we urge the committee to consider further expansion. We strongly support the 50% loan funds set aside for beginning farmers and ranchers; we urge the committee to consider a set aside for historically underserved producers. Farm loans are one of the farm programs most important for this group of producers who lack real access to the more richly supported commodity and market facilitation programs due to their smaller scale, livestock, or other diverse operations

We support the 2018 authority provided to the Secretary to reduce or waive the eligibility requirement that an applicant have participated in the business operations of a farm or ranch for 3 years for farm ownership loans based on certain experience, training, or education – in our full testimony, we will explain why this waiver should be expanded or the requirement adjusted because in our experience it is often not fairly applied and contributes to the active discouragement many historically underserved producers receive.

While we support the increases in the loan guarantees from 90 to 95 percent for socially disadvantaged and beginning farmers, we are still not seeing how guaranteed lending is truly accessible to the producers we serve.

We strongly supported the new Equitable Relief provision which authorizes the Secretary of Agriculture to provide equitable relief to farm loan program borrowers who were who acted in good faith but who have problems in their loans due to mistakes or inaccurate guidance from FSA. Relief measures, including a borrower's right to retain the loan or other benefits

associated with the loan, or other means as the Secretary deems to be appropriate, still need to be implemented, refined, and applied to assure truth and fairness in lending.

We further express our thanks to this committee for their work to pass and include the historic "Fair Access for Farmers and Ranchers" heirs property provisions in the 2018 bill. Sections 12615 (7 U.S. Code § 2266b. Eligibility for operators on heirs' property land to obtain a farm number), 5104 (7 U.S. Code § 1936c. Relending program to resolve ownership and succession on farmland) and 12607 (7 U.S. Code § 1936c. Relending program to resolve ownership and succession on farmland) are intended to assure USDA affords fair access to its programs for farmers and ranchers who operate farms on "heirs' property." The final language ensures that more farmers — especially African- American farmers and farmers of color operating on land with undivided interests — can finally access critical USDA programs that enable and find new support to work out complex heirship issues to obtain clear titles to their land.

### **Continuing Issues for Livestock Producers**

Farming is not an easy job. In Oklahoma, in addition to volatile land prices, producers face all the different weather conditions a person can stand including flood, drought, and wildfires. To face all these obstacles, it is essential that farmers are committed to the land. A farmer who was asked recently "why do you keep doing it?" "Because I love it," he responded.

However, farmers from our communities remain legitimately distrustful of USDA and the Farm Service Agency in particular. In this section, I'll address some realities and some opportunities. For example, we have observed many times when local FSA loan officer could have done something to help producers navigate loans and losses, but they did not.

Several producers I work with reported extreme pressure tactics on loan payments that made them feel like their land was being threatened. For example, a producer in Okmulgee County said the local office make them feel like they are going to foreclose. So, the producer paid the debt off before the time it was due. Only later did they learn that when they pay it off early, they were deemed no longer eligible for another direct loan. They were forced to graduate, and then sent to the bank where interest rates were 6-8% - unaffordable for these producers.

In 2021, a Black farmer employed in another state sought the loan he needed to operate the family farm in Oklahoma where he grew up and farmed throughout his life. After his father passed, he filed all necessary documentation of ownership with Farm Service Agency. He contacted us because when he applied for a loan, the local office told him that he had to demonstrate three years of experience before he would be eligible for a loan. Before the office would provide him further assistance, they further directed him in a letter to provide a certified copy of a lease to his neighbor so the neighbor could collect benefits from the crops he was growing on this farmer's land.

The farmer provided the office with a copy of the "cease and desist" letter he had sent to his neighbor to stop using his land and complained to the office about their role in enabling this

incursion on his land. The local official then asked him "do you want to sell your land?" He was further instructed not bring this complaint to a higher level because he would "get the previous staff of the office in trouble." He was unable to secure the loan in 2020, which would have left him unable to benefit from the ARP program. He filed a complaint with the inspector general which remains unanswered and has filed a civil rights complaint that is pending.

Another producer had was unable in 2019 to get a bank loan because he could not get FSA to release a lien on his property. He was trying to replace a 100-year-old decrepit barn with a new barn that would include a small meat processing facility. The office suddenly discovered the old barn had a \$30,000 even though it was not included in a previous appraisal nor was it required to be insured. He was unable to secure the bank loan and is still working to secure resources to construct a processing facility he hopes would serve neighboring producers in his community.

Rural communities are often small and insular. County office staff may have social or relational connections to third parties such as appraisers, or to other parties who may have an interest in a farmer's land that could be advanced by a low appraisal, for example. FSA lacks strong and clear standards and practices designed to prevent and require disclosure of conflicts of interest that can affect land transactions and ownership to the detriment of certain groups of producers.

Appraisals are another area of concern, as are shared appreciation agreements. There are no quick ways to appeal and get a fair review of decisions, or even the ability to submit another appraisal and get a fairer decision in a reasonable length of time. In farming, delay can spell disaster or the loss of market opportunity.

Within the Rural Coalition, we have seen many other examples of discouragement of services, denial of services, and situations where the use of discretion provided to county office staff has convinced black and other historically underserved producers that there are different standards for them than for other farmers.

The authority provided in the 2018 Farm Bill that provides the Secretary discretion to waive the three-year requirement of experience for beginning farmers and ranchers could be viewed as a step forward. However, is this waiver fairly applied, and how would this committee know? Will children of the established producers well known to county office staff received the same scrutiny of skills as historically underserved and young farmers who walk in the door?

How does this apply to the Black military veteran who grew up on a farm in southeast Alabama and after completing his tour of duty went into a local office to seek a loan to start farming again. The local office staff member replied by throwing the folder he brought in at his head and telling him not to come back until he could demonstrate 3 years of experience. There need to be the same rules for all producers including in demonstrating experience.

During the pandemic, many of the historically underserved producers who applied for the Coronavirus Food Assistance Program, were required to provide documentation for their

claim, while the word of other farmers that their claim was correct was accepted in many offices. In another case, in southeast Alabama, producers were told that the type of specialty goat they produced were not eligible for CFAP. We worked with our members there and raised the issue to FSA headquarters, and some producers were able to secure some assistance. But many others were unwilling to go back into the office due to the treatment they received.

Access to other programs besides loans is critical to being able to cash flow loans. We work with producers to get them to understand the content of the program – this is the part that often does not happen without CBO's. We must break it down for them and show how it works. If farmers don't understand – they won't mess with it. However, programs like EQIP to control invasive species and provide solar water wells for cattle, are very beneficial.

The Livestock Indemnity program is also essential for producers to cover losses of cows, which are also collateral on their loan. However, in this state, producers we serve often farm on more fragile land. There are gullies at the edges of their property. When we have floods, which are frequent, the cows wash away, and you won't find them – you have the picture. The farmers can show in their records that they had this many cows but now only have this many. But FSA requires pictures and documentation that the farmer cannot produce. There needs to be some other way to ID loss.

Producers are very aware that FSA offices took the word of other farmers in certifying production and losses in the livestock indemnity program and in CFAP, but not from them. They want FSA and other USDA agencies to apply the same rules for everyone.

The long history of practices such as these had led farmers not to trust with these agencies. For example, when FSA contacts a farmer to tell them "We need your AGI" the older guys don't know what AGI is or why it is being requested.

We have learned over the years that support for technical assistance by community-based organizations who are trusted to work in the interest of these farmers can help producers understand program requirements and their purposes is essential. Qualified TA is essential to rebuild trust. Our organizations and our partners across the country then use TA to help the farmer learn enough about the program to understand its benefits and learn how to access it. TA investments also help us develop proactive working relationships with FSA and NRCS county offices that help producers.

Even as we work with producers to meet all their responsibilities to programs, we need the help of this committee to set in place standards for service, and accountability for fair service, and protection from conflicts of interest. This is especially important in a time when there are growing outside investments in farm and forest land that have implications for this nation's small farmers, rural communities, and to the stability of agriculture lending system itself.

## Heirs Property and Dormant Land

Oklahoma Black Historical Research Project worked over the past decade to engage Black farmers in NRCS programs. With Rural Coalition and the Scholars of the America University Farm Bill practicum, the researched the data and experiences of Black farmers in access USDA programs. Their findings are summarized and published in the research paper on the [Ecological Costs of Discrimination](#)<sup>1</sup> This research formed the basis for our push to include the Heirs Property provisions in the 2018 Farm Bill.

Invasive species thrive in places facing climatic changes and put farmers at further risk. In Oklahoma, *eastern redcedar* is spreading at the rate of 800 acres a day. Without help for mitigation from USDA especially for historically underserved farmers who farm on heirs' property, small cow and calf operations have seen their grazing land taken over by redcedar, which competes with pastureland by consuming up to 55,000 gallons of water per acre per year and puts the viability of their operations at further risk. Other risks they have faced over the past decade include severe cycles of floods, droughts, fires, freezes and tornados. Farmers who produce on land held in undivided interests were being deemed ineligible for critical NRCS programs, because they lacked the documentation to secure farm and tract numbers to demonstrate their control of the land on which they sought benefits.

The problem of eastern redcedar incursion is compounded by that fact that in Oklahoma, we have had large amounts of dormant land for years. Families may have kept land while they leave to seek jobs in other areas. Or, after the passing of elder landowner the family has been unable to resolve heirship issues, or secure legal assistance to help them. In rural areas, there are very few attorneys to help them and many of them may be conflicted-representing others who have an interest in acquiring that land.

We are working now as hard as we can to connect young farmers to families with dormant land. It takes time to work out long term lease agreements and point out the benefits of leasing the land to these young farmers that are out there looking for land. Work to protect land tenure and move dormant land back into production is urgently needed at this time because with rising prices of land in some areas due to the influx of outside investors- from \$200-300 an acre to \$600-800- we are working against the clock to assure that young farmers have a chance.

Rural Coalition is just beginning a new Technical Assistance Project under the National Institute of Food and Agriculture in cooperation with OBHRPI and 9 more RC members, to provide technical assistance to both farmers and landowners in assembling the paperwork they need to complete wills and succession plans so they are prepared to work with attorneys to complete these essential documents. We are also continuing our work to help farm operators, be they owners or renters, to secure farm and tract numbers and access to USDA programs. This work includes a special focus on helping producers farming on land held in heirs' property status to use the 2018 Farm Bill alternate documentation authorities to secure a farm and tract number and access NRCS programs

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<sup>1</sup> Fagundes, Tillman, et al. **Ecological costs of discrimination: racism, red cedar and resilience in farm bill conservation policy in Oklahoma**, October 2019, *Renewable Agriculture and Food Systems* 35(4):1-15, DOI: [10.1017/S1742170519000322](https://doi.org/10.1017/S1742170519000322)

## Heirs Property and Forest Land

Securing and building land tenure is also critical to protecting the intergenerational transfer of land and wealth and building a community with a healthy ecosystem and a tax base to sufficient to support quality education, employment opportunities, and a strong infrastructure. The following abstract of the paper "Taking Goldschmidt to the Woods: Timberland Ownership and Quality of Life in Alabama" <sup>2</sup> summarizes the impact of the degree of highly concentrated land ownership on children, families, and the communities:

*We use a database of property tax records for 13.6 million acres representing every parcel of privately owned timberland in 48 rural Alabama counties to test two hypotheses inspired by Walter Goldschmidt relating land ownership and quality of life. Our data show private ownership is highly concentrated, and 62 percent is absentee owned. We employed Pearson correlations alongside Poisson and negative binomial regression models to estimate influence of both concentrated private ownership and absentee ownership of timberland. Our findings support Goldschmidt-inspired hypotheses that concentrated and absentee ownership of timberland exhibit a significant adverse relationship with quality of life as measured by educational attainment, poverty, unemployment, food insecurity, eligibility for free or reduced-price lunch at public schools, Supplemental Nutritional Assistance Program participation, and population density. Low property taxes in Alabama limit the ability of local governments to generate revenue to support public education or meet other infrastructural or service needs in rural areas. We call on rural sociologists and kindred spirits to pay more attention to the fundamental importance of land ownership which shapes the foundations of power and inequality affecting rural life in America and beyond. <sup>3</sup>*

The policies this Committee will enact in the 2023 Farm Bill will impact producers, forest and farmland owners and rural communities in a profound way. There are stark implications for communities and the rural economy in the burgeoning investments in both farm and forest land especially in the southeast. Investments in forests related to energy production and climate credits can be expected to increase volatility in land prices.

At the same time, disasters are increasing, including both hurricanes and fires that affect forest in the southeast more than before.

## Heirs Property, Housing and Rural Communities

We look forward to other opportunities sharing our proposals to more fully address the set of issues we have raised, including with respect to climate. We further point to a critical need to assure farmers have access to the qualified and trusted legal and technical assistance necessary to protect their land.

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<sup>2</sup> September 2020 *Rural Sociology* 86(1) DOI: [10.1111/ruso.12344](https://doi.org/10.1111/ruso.12344) Authors: [Conner Bailey](#), [Abhimanyu Gopaul](#), [Ryan Thomson](#), [Auburn University](#); [Andrew Gunnoe](#), [Maryville College](#)

<sup>3</sup>[https://www.researchgate.net/publication/344021201\\_Taking\\_Goldschmidt\\_to\\_the\\_Woods\\_Timberland\\_Ownership\\_and\\_Quality\\_of\\_Life\\_in\\_Alabama](https://www.researchgate.net/publication/344021201_Taking_Goldschmidt_to_the_Woods_Timberland_Ownership_and_Quality_of_Life_in_Alabama)



In October 2019, the North Carolina Association of Black Lawyers Land Loss Prevention Project authored a Continuing Legal Education (CLE) manuscript "Assisting Heir Property Owners Facing Natural Disasters: History and Overview of Heirs Property Issues." We participated in person as a panelist in the collaborative CLE webinar to train NC Legal Aid volunteer attorneys on service to impacted heirs' property owners. The webinar took place on October 23. According to Legal Aid's coordinator, there were approximately 124 webinar participants on that date and the course will continue to be available for training purposes.

Through individual direct legal intervention, technical assistance, outreach and policy innovation and implementation, the overall outlook for North Carolina's disaster-affected families has been substantially improved. The benefits include increased property retention, removal of barriers to assistance programs, enhanced food access, heightened farm business risk management, and family engagement in multi-generational planning as a safeguard against inherent co-ownership vulnerabilities.

We project that the pandemic will continue to emphasize the need for education on what defines sustainability and how environmental, economic, health stressors are intertwined and cumulative.

This highlights the importance of collaborative work we have all done to expand the framework of justice and increase the tools and resources available to communities to take direct action to promote community health. We see our engagement with Black and Brown-led coalitions and initiatives advancing sustainable environments and community-controlled food only deepening and expanding.

### **MODERNIZE FARM LOAN PROGRAMS**

We urge this Committee to continue its work modernize farm loan programs. Congress should recognize agricultural lending as a good investment in farmers and the farming and rural sector. These farmers who typically have smaller scale operations, do not need large operating loans. However, these loans are crucial to their operations. And they need access credit at the time they really need it.

We recommend that:

- The 2023 Farm Bill emphasize the importance of investments to build land tenure and sustainable and resilient operations for the next generation of young, historically underserved, and mid-scale farmers and ranchers as the basis of strong farm and rural economies.
- Microloans from FSA are beneficial to many producers including in urban areas. Funding for microloans should be expanded.
- Producers who are starting or transitioning farms need an equitable chance to build sustainability. Our producers responded strongly to proposals to provide 7-year operating loans with no payments for 3 years. If a farmer who builds 3 years of

equity, should be able to make payments on land, operate the farm and gain the ability to become sustainable. We urge that the 2023 Farm Bill authorize such a loan structure to afford producers a chance to build equity, while assuring they can cash flow their operation, and cover loan payments for farm ownership.

- Smaller scale operating loans are not as attractive to other lenders, nor are real estate loans that keep funds tied up for long periods of time. However, because USDA holds the land as collateral for real estate loans, these loans result in a positive funds balance for the federal government. We strongly recommend that FSA expand lending and allow more flexible terms, including authorizing real estate loan terms for up to 40 years.
- Family scale producers, including young and historically underserved producers should not be forced to graduate from FSA agriculture credit. Within certain limits, Congress should provide clear authority for these producers access affordable credit from FSA they are not getting from other lenders and to stay with FSA as their lender if they so choose.
- Land is in short supply, and it is rapidly sold often before a new farmers can navigate the lending process. We strongly support the recommendation of National Young Farmers Association that FSA be authorized to pre-qualify them for loans. –TA from trusted CBO's is incredibly important.
- Congress should review and adjust or eliminate the requirement for three years of experience requirement to protect from abuses, but also to open new opportunities for producers. Farmers should be able to qualify with mentorship from a working farmer.
- At present, the nation's farmworkers form a large pool of farmers with a deep interest in accessing land and entering farming as a profession. The next farm bill should recognize their skills, experience, and importance to expanding the next generation of producers and adopt policies that incentive and support their goal to enter agriculture.
- Congress should continue funding and expand support for the heirs' property relending fund and examine proposals to strengthen it.
- Congress should expand authority for FSA to accept alternate forms of documentation to enable operators farming on land lacking a clear legal title due to heirs' property issues to receive farm numbers from USDA Farm Service Agency (FSA) and thereby qualify to participate in additional USDA farm and credit program beyond conservation programs and including microloans for farm operating.

- The next Farm Bill should strengthen checks and balances, including civil penalties to root out conflicts of interest, unfair appraisals and other practices that serve to weaken the ability of producers to retain their land, run a successful and resilient farm operations, and contribute to the local economy.
- At a time when over a million families have lost members in the pandemic, Congress should seek a report on how these losses have affect farm ownership and operators. The next Farm Bill should include incentives for borrowers and all farmers to adopt wills and succession plans for their farms.

### **Additional Recommendations**

**Credit Issues and Protecting Distressed Farmers who are Still Operational** – USDA should develop a plan for standing disaster program that automatically goes into effect in the face of emergencies. USDA should have authority to extend as far as possible a moratorium on acceleration, graduation, and foreclosure for duration of the pandemic and economic recovery.

We also further endorse the proposals in the [Top Priorities for COVID-19 C4 Response Legislation](#) from the Native Farm Bill Coalition, and recommend the committee provide statutory authority for use in future disasters that would allow FSA to

- Immediately and automatically defer of all FSA loan principal due for the current production years and extend all loans for 2 years.
- Offer payments to any lenders if they reduce the interest rate of current loans by 2% and offer the same reduced loan payments and extensions to their borrowers; and
- Allows the use of FSA Farm Ownership loans to refinance real estate and other debt to aid in recovery from this crisis.

**Additional credit assistance** – We further urge that the committee provide authority that

- Permanently waives the prohibition on refinancing of other debt with FSA Direct Loans and FSA Farm Ownership Loans.
- Removes the eligibility restriction for new FSA loans based on past debt write-down or other loss to the agency.

**Equitable Relief Provision** – We have called on USDA to assure the Equitable Relief provision of the 2018 Farm Bill are immediately and fully implemented with clear directives in handbooks to field offices. The intent of this provision is to protect farmers from adverse action in cases where errors were made on the part of FSA offices. In the time of extreme stress on both producers and FSA and other USDA field office staff, this protection is critical. Every effort should be made to help farmers and ranchers hold onto their land and have the economic base they need to build back better both their farms and the economic underpinnings of their communities.

**Emergency Loans: Modernizations and Enhancements to Farmer Eligibility-** The 2018 Farm Bill language allows emergency loans to farmers even if a farmer has been previously granted debt write down. Prior to the passage of the 2018 farm bill, a farmer cannot receive a USDA “Emergency Loan” if at any time after 1996 the farmer participated in a USDA Farm Service Agency primary loan servicing agreement that included debt write down or debt forgiveness.

The frequent implementation of the debt “write-down” rule has an undue negative impact on socially disadvantaged in dire need of emergency loan. The 2018 natural disasters in North Carolina and California demanded modernization and enhancements in emergency loan programs. Indeed, farmers encounter multiple disasters that coincide with crop losses caused by environmental degradation, or low farm gate income caused by a global trade disruption.

The 2018 language amends section 373(b)(2)(B) to exempt write-downs and restructurings under section 353 from what is considered “debt forgiveness” for the purposes of applying the debt forgiveness loan eligibility limitations. **(Section 5307).**

We have recommended that the Secretary take a dual approach to speedily implement emergency loan eligibility. First, the Secretary should immediately issue a proposed rule to amend 7 CFR 764.352(b) which governs emergency loan eligibility requirements. Secondly, we have recommended that the FSA handbook identified as 3 -FLP (Rev.2) be amended at Page 10.1 to 10.2 to inform field staff and farmers and ranchers that a previous direct or guarantee loan write down is no longer a bar that prohibits a future application for an emergency loan.

The Secretary should further make clear that emergency loan funds can be used to pay off or replace automobiles or higher interest credit cards that were frequently used prior to the disaster designation to finance farm operations. So long as otherwise permissible, the Secretary should further remove prohibitions for direct emergency loans in scenarios where farm loan borrowers have graduated from direct farm loan program with a history of a guaranteed loan loss claim paid by FSA to a guaranteed lender.

This Committee should assure full implementation of this and all other authorities in the 2018 Farm Bill, and to find areas where gaps in authority still require additional statutory authority.

## Addressing Known Discrimination in the Farm Loan System

Congress has recognized some of the challenges SDFR face with respect to fairness in loan making and loan servicing. In response, certain statutes require the USDA to collect data on how loans made by race, gender and ethnic, and to establish target participation rates as goals in each county for making loans to socially disadvantaged farmers and ranchers in programs that make direct loans or that guarantee loans made by private lenders. However, USDA has not made this limited data which includes only numbers of loan applied for, made and denied to the county level easily available to the public. The data collected is much less comprehensive than proposed in this rule.

The data collection and targeting of agricultural loans to SDFRs is a method of collecting data on loan making but does nothing to collect data on loan servicing, an action covered by the ECOA. In our long experience in working with producers on securing thousands of loans and submitting thousands of discriminations claims on their behalf, we have found that loan servicing is where most of the discrimination occurs with respect to farm loans. **See GAO Report July 2019 at page 1 to 2. See ECOA Regulation B, 12 C.F.R. 1002.2(n)** (*Discrimination against an applicant means to treat an applicant less favorable than other applicants*).

The follow section is an excerpt from the comments of the Rural Coalition to the Consumer Financial Protection Bureau on data in lending. The Committee should consider how authorities for accountability by CFPB, and USDA can be best connected and used by this committee to assure Fair Lending.

Under regulation B, rules designed to implement the Equal Credit Opportunity U.S.D.A., FSA like all lenders, is prohibited from discrimination in loan servicing. **See 12 C.F.R. 1002.2(n)**. Nevertheless, some farmers face serious discriminatory loan transactions designed to end in foreclosure and business operations. The known discrimination takes on many different forms. Producers may face additional collateral requirements and the need to demonstrate their value. Appraisers in a small rural community may be more generous or less stringent with some farmers than with others and may also have inside information or close relationships with FSA or bank staff that could influence appraisals in a way that benefits some producers over others. In many instances, the agricultural lender does not realize that certain transactions are discriminatory by nature and design. The problem is that minority farmers most often carry the burdens of discriminatory farm loan transactions. Farmer related small business data will serve as an educational tool for agricultural lenders who knowingly and unknowingly carry on patterns and practices of farm loan discrimination that have disparate impacts or disparate treatments on the operations of minority farmers. There discriminatory actions violate the following provisions of Regulation B of the Equal Credit Opportunity Act. **Farm Loan Data Collection - Prohibited Basis - 12 C.F.R. 1002.2(z)**.: "Prohibited basis means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's

income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Bureau." **12 C.F.R. 1002.2(z).**

**Farm Loan Data Collection - Prohibited Basis. 12 C.F.R. 1002.4(a). *Discrimination.***

"A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction." **12 C.F.R. 1002.4(a).** The phrase "any aspect of a credit transaction" includes farm loan servicing and should be understood as such. As mentioned earlier, farm loan servicing is the state of the loan transaction where minority farmers endure the most discriminatory terms and conditions. Particularly, loan servicing during a disaster related request places the farmer in a position that requires the farmer to accept the burdensome terms and conditions or face foreclosure. Some renegade farm lenders push farmers into unlawful farm foreclosure after the farmer complains verbally or in writing about consumer rights violations. This practice must be recorded on a consistent bases to increase Department of Justice investigations and civil actions against wrongdoers. According to **15 U.S.C. 1691 (a)(3) and Regulation B, 12 CFR 1002.2(z)** a farm loan lender may not discriminate against an applicant because the applicant has in good faith exercised his or her rights under various federal consumer protection laws. **See 15 U.S.C. 1691 (a)(3) and Regulation B, 12 CFR 1002.2(z).** The final language of the proposed CFPB rule must include data collection consumer whistleblower complaints so that retaliation against farmers can be eliminated through strong enforcement actions.

**Farm Loan Data Collection - Prohibited Basis. 12 C.F.R. 1002.4(b). *Discouragement.***

"A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application." **12 C.F.R. 1002.4(b).** The undersigned organization are aware of discriminatory terms and conditions that relate to oral and written statements that discourage minority farmers from making loan applications or requesting loan servicing. For example, young minority farmers are told to accept the same discriminatory terms and conditions: **(a)** loan approval based on mandatory acceptance of same harsh terms placed on farm loans of parents more than 20 years in the past; **(b)** loan approval based on buying farm equipment from the lenders family member; and **(c)** loan servicing based on farmer making a private, personal loan to the loan officer, **(d)** completion of a loan application of beginning farmer returning to take up the operation of the farm he grew up on when ownership was transferred to him is made contingent on him providing a certified lease to allow a neighboring farmer to collect farm benefits on a crop grown on the beginning farmer's land, despite the fact the younger farmer had sent a cease and desist order to his neighbor-and he is also told not to report this situation to superiors as it might "get the previous CED in trouble", **(e)** a SDFR farmer seeks an operating loan to cover costs of spring planting with a plan that includes specific application of treatments to improve his land, but the loan is delayed until it is too late for these treatments to be effective but he is required by the loan agreement to incur these costs, **(f)** a farmer seeks the release of lien on his farm in

order to secure a loan from a private lender, but FSA suddenly discovers a \$30,000 value to the 100 year old barn he is seeking to remove and replace with a facility to process meat at the beginning of the pandemic, despite the fact that no value for the old barn had been reflected in the appraisal for the original loan, (g) a military veteran who grew up on a farm and participated in the operation returns from a deployment and seeks a loan to start farming again. The local office staff member looks at his application in his folder, then throws the folder at his head and tells him not to return “until he can demonstrate three years of experience.” Such practices must end. Data collection is a proven way to document and address such discouragement in loan making, discouragement that often is at the core of disparate treatment based on race and ethnicity.

What remains unclear is what tools USDA has, needs, and will use to hold this and other offices accountable for such inequitable and patently fraudulent practices. ***The failure to do so in any tangible way is in our view the single biggest impediment to ever achieving equity and accountability in service to all producers.***

Our members have experienced many such problems on a routine basis. At present farmers have options to file an appeal of a decision to the National Appeals Division, to file a complaint to the office of Civil Rights and report of fraud to the Inspector General. There is a lack of clear guidance to help producers know which system to use to resolve issues that they are facing.

We believe Congress should consider establishment of a process with specific contact information designed to immediately address and correct problems with program requirements, and internet access, but also related to service delivery, problems in program access, appraisals, especially on the attitudes of USDA workers, and not only the location of USDA offices but of the failure of USDA field staff to let farmers know how and when they can be reached.

USDA needs to routinely measure outcomes in program participation as part of a proactive assessment of the operation of its county offices. But it should move beyond data on the application and participation in programs by race, gender, and ethnicity to the county level. It should also measure additional metrics related to its lending programs – specifically the month in which the farmer first contacts the office about a loan, and the month the loan is disbursed. The delays in loan making and slow walking the provision of benefits contributes is a continual factor in the precarious financial position of many producers whose cases we have reviewed.

USDA should also routinely measure the highest and medium number of programs

USDA should use comparative data from NASS and from the US Census to assess land tenure, land concentration, broadband access, and factors including poverty and health disparities.

**Receipt for Service.** The USDA National Appeals Division recognizes that FSA's employees have a greater understanding of program requirements. Administrative Law Judges recognize and understand that "while a program participant is responsible for exercising due diligence in understanding the requirements of a program, NAD case decisions recognized that it is not reasonable to expect a program participant to have greater understanding of program requirements than FSA's own employees. This is why receipt for service is so critical to understand what farmers are told by FSA staff. It is also important to note that the receipt for service reveals what the farmer was not told in terms of program benefits and services.

This committee should review the use of the Receipt for Service and adopt new measure to assure compliance by all local offices that serve farmers.

**ENSURE FAIR ACCESS TO USDA FOR PRODUCERS FARMING ON HEIRS PROPERTY (FSA, NRCS, NASS)**

Sections 12615, 5104 and 12607 of the 2018 Farm Bill Conference Report are intended to assure USDA affords fair access to its programs for farmers and ranchers who operate farms on "heirs' property."

**Tenure, Ownership, and Transition of Agricultural Land (TOTAL) Survey – \$15 million**

Land access continues to be the biggest challenge facing beginning, current, and aspiring young farmers. Without secure land tenure, farmers are unable to invest in on-farm infrastructure or conservation practices critical to building soil quality, financial equity, and successful businesses. Land loss is also a major challenge for Black, Indigenous, and people of color (BIPOC) farmers who do not have clear titles to their land because it was passed down without a formal will; the land is then subject to fractured ownership among many relatives, becoming what is known as heirs' property.

In the 2018 Farm Bill, Congress tasked USDA with completing an updated TOTAL Survey, the results of which will provide comprehensive data on farmland ownership, tenure, transition, and entry of beginning and underserved farmers and ranchers as a follow-on to the Census of Agriculture (Sec. 12607). Further, the 2018 Farm Bill required that this survey include data collection on the extent of heirs' property so that the full extent of this land tenure challenge can be understood. Access to this information is crucial to better understanding the policies and trends that lead to secure land tenure and thriving farm businesses.



Unfortunately, this vital data gathering has not been funded since the 2018 Farm Bill was passed. Given that it requires surveying landowners who are not as well connected to the USDA—including non-farming landowners and heirs' property owners—it requires dedicated funding this year to make up for the lapses over the last two funding cycles.

To ensure that the USDA can produce a robust analysis leading to better access and more secure land tenure for young and historically underserved farmers alike, we urge this committee to assure that Congress fund the survey for FY 2023 at the level of \$15 million (the total authorized amount), and that you increase the investment for this important study in the 2023 farm bill.

Current and comprehensive data is critically important to understanding the challenges farmers face related to land access and transition. We urge policymakers to ensure the data collection components of the 2018 Farm Bill are fully implemented and to continue to invest in recurring data collection, reporting, and research on farmland tenure, ownership, and transition to better understand the large-scale trends and challenges related to land access for beginning and historically underserved producers.

We also urge this committee to assure this Land Tenure is expeditiously conducted because of the growing volatility in land ownership and operations, and the potential impacts to farmers and ranchers, rural communities and the entire farm and food sector. We have seen volatility in land values impact the entire agriculture lending system in the past in years past, including 1987, and we believe it is of critical importance now to understand and mitigate these impacts as we enter the 2023 Farm Bill debate.

We will be providing additional recommendations on the issues covered in the testimony. We pledge to work with you in any way we can to support the adoption of landmark 2023 Farm Bill.