

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MATTHEW A. MORTON and
JOSHUA A. MORTON,

Case No. 3:21-cv-00540-NJR

Plaintiffs,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture; ZACH
DUCHENEAUX, in his official capacity as
Administrator, Farm Service Agency,

Defendants.

**DECLARATION OF GLENN E. ROPER IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

I, GLENN E. ROPER, declare the following:

1. I am an attorney with Pacific Legal Foundation, and I represent the Plaintiffs in the above-captioned matter.
2. Attached to this Declaration as Exhibit 1 is a true and accurate copy of Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories, dated October 8, 2021.¹
3. Attached to this Declaration as Exhibit 2 is a true and accurate copy of Defendants' Objections and Responses to Plaintiff's Second Set of Interrogatories, dated December 3, 2021.

¹ In the Joint Proposed Scheduling and Discovery Order approved by the Court, ECF No. 43, the parties stipulated to using written discovery responses that were produced in the separate case of *Wynn v. Vilsack*, Case No. 3:21-cv-514-MMH-LLL (M.D. Fla.). See ECF No. 43-1 ¶ 1. The discovery responses attached as Exhibits 1–6 and the documents attached as Exhibits 8–11 to this Declaration were originally produced in that case.

4. Attached to this Declaration as Exhibit 3 is a true and accurate copy of Defendants' Objections and Responses to Plaintiff's Requests for Admissions, Set One, dated October 6, 2021.

5. Attached to this Declaration as Exhibit 4 is a true and accurate copy of Defendants' Objections and Responses to Plaintiff's Requests for Admissions, Set Two, dated December 3, 2021.

6. Attached to this Declaration as Exhibit 5 is a true and accurate copy of Defendants' Objections and Responses to Plaintiff's First Set of Requests for Production of Documents, dated September 10, 2021.

7. Attached to this Declaration as Exhibit 6 is a true and accurate copy of Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Production of Documents, dated December 3, 2021.

8. Attached to this Declaration as Exhibit 7 is a true and accurate copy of Defendants' Expert Report (the Expert Report of Alicia M. Robb), dated January 7, 2022.

9. Attached to this Declaration as Exhibit 8 is a true and correct copy of excerpts of a document produced by Defendants and Bates stamped ARPA_WYNN00000268, ARPA_WYNN00000369, ARPA_WYNN00000378, ARPA_WYNN00000393, ARPA_WYNN00000394, and ARPA_WYNN00000407 (D.J. Miller Disparity Study, March 1996).

10. Attached to this Declaration as Exhibit 9 is a true and correct copy of excerpts of a document produced by Defendants and Bates stamped ARPA_WYNN00002465, ARPA_WYNN00002468, ARPA_WYNN00002469, and ARPA_WYNN00002479–82 (Laura-Anne Minkoff-Zerne, *A new era of civil rights? Latino immigrant farmers and exclusion at the United States Department of Agriculture*, 34 Agric. Hum. Values 631 (2017)).

11. Attached to this Declaration as Exhibit 10 is a true and correct copy of excerpts of a document produced by Defendants and Bates stamped ARPA_WYNN00002490 and ARPA_WYNN00002494 (Annual Report 2020, Fed. of S. Coop./Land Assistance Fund).

12. Attached to this Declaration as Exhibit 11 is a true and correct copy of a document produced by Defendants and Bates stamped ARPA_WYNN00003675, ARPA_WYNN00003721, and ARPA_WYNN00003722 (Civil Rights Assessment Final Report, Jackson Lewis LLP, 2011).

Signed under penalty of perjury this day at Highlands Ranch, Colorado.

DATED: February 1, 2022.

s/ Glenn E. Roper
GLENN E. ROPER
Colo. Bar No. 38723
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2022, I caused the foregoing to be filed with the Court's CM/ECF system, which will send notification of said filing to all counsel of record.

s/ Glenn E. Roper
Glenn E. Roper

Exhibit 1

P. Mot. for Summ. J./D. Resp. to Rogs Set 1

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
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Sacramento CA 95814 – 916.419.7111

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 3:21-cv-00514-MMH-JRK

**DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES (as supplemented October 8, 2021)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Thomas J. Vilsack, *et al.*, by and through their undersigned counsel, hereby respond to Plaintiff's First Set of Interrogatories:

Defendants' objections and responses are based on information known to Defendants at this time, and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit the discovery of matters not privileged that are relevant to the claims or defenses in this civil action, and that is proportional to the reasonable needs of the case. Fed. R. Civ. P. 26(b)(1). Accordingly, Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or any other appropriate ground. Defendants reserve the right to amend these responses until the close of discovery in this case.

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S INSTRUCTIONS AND
DEFINITIONS**

1. Defendants object to Instruction 1 insofar as it seeks information from Defendants' "attorneys" that may be protected by the attorney-client privilege, the attorney work product doctrine, the deliberative process privilege, or any other applicable legal protection from disclosure.

2. Defendants object to Definition 2 to the extent "identify" includes providing a government employee's "present or last known address." Any employees identified in response to Plaintiff's interrogatories may be contacted through Defense counsel. When identifying a person in response to any interrogatory, Defendants will state the person's name and title.

3. Defendants object to Definition 4 because requiring Defendants to "identify all oral communications which were made at the act or event identified" and "all documents concerning the act or event identified" is unduly burdensome. Defendants will identify oral communications and documents to the extent necessary to comply with their obligations under the Federal Rules to provide information responsive and relevant to Plaintiff's interrogatories.

RESPONSES

Interrogatory No. 1: Identify all persons who contributed to or consulted in the preparation of answers to these Interrogatories and indicate each Interrogatory for which they contributed or were consulted.

Response: Defendants object to this interrogatory because the terms "contributed to or consulted" are ambiguous. Defendants will construe this interrogatory as asking for the identification only of persons who provided substantive information used in these responses, and not persons such as counsel who provided advice concerning these responses. Defendants further object to the extent this interrogatory calls for information protected by the attorney-client privilege, deliberative process privilege, and/or other governmental privileges.

Without waiver of the foregoing objection, Defendants respond as follows: Dana Richey, Assistant to the Deputy Administrator, Farm Loan Programs, was consulted in responding to Interrogatory Nos. 8, 9, 13, and 17. Sheila Oellrich, Assistant to the Director, Loan Servicing and Property Management Division, was also consulted in responding to Interrogatory No. 13. William Cobb, Deputy Administrator, Farm Loan Programs was consulted in responding to Interrogatory Nos. 4, 8, and 9.

Toni Williams, Agricultural Program Manager, Farm Storage Facility Loan Program, Sugar Storage Facility Loan Program, and Sugar Loan Program; Laura Schlote, Branch Chief, Contracts and Applications, Program Delivery Division; and Cloretta Lewis, Financial Specialist, Price Support Division were also consulted in responding to Interrogatory No. 17.

Zach Ducheneaux, Administrator, Farm Service Agency, was consulted in responding to all interrogatories contained herein.

All of the above individuals were consulted in responding to Interrogatory 2.

Interrogatory No. 2: Identify all documents referred to or examined in the preparation of the answers to these Interrogatories and indicate each Interrogatory for which each document was referred to or examined.

Response: Defendants object to this interrogatory as overly burdensome insofar as it calls for identification of documents “referred to or examined” in preparation of these interrogatory responses that did not contain information responsive to the interrogatories and were not relied upon in their preparation.

Without waiver of the foregoing objection, Defendants respond as follows: For Interrogatory No. 13, Defendants pulled loan information from the USDA IT system Program Loan Accounting System (PLAS) and then cross-referenced that information with spreadsheets

of class-members in the *Pigford* cases and the *Keepseagle* case to determine relevant class members.

For Interrogatory No. 17, Defendants obtained loan information from the Program Loan Accounting System (PLAS) and Guaranteed Loan System (GLS). Defendants also relied on spreadsheets derived from data obtained from the Financial Management Division, from the Enterprise Data Warehouse, and from Business Partner.

For Interrogatories No. 8 and 15, Defendants relied upon the *Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329 (May 26, 2021).

Interrogatory No. 3: Identify every person you intend to have offer testimony in this case and describe the substance of the anticipated testimony.

Response: Defendants object to this interrogatory as prematurely seeking information the disclosure of which is governed by Local Rule 3.06 and, by doing so, seeks litigation strategy protected by the attorney work product doctrine. Defendants will identify every person they intend to have offer testimony in this case in their pretrial disclosures, if such disclosures are necessary, as provided by Federal Rule of Civil Procedure 26(a)(3) and Local Rule 3.06.

Interrogatory No. 4: Identify every government interest that you contend is advanced by the “socially disadvantaged” provisions of Section 1005.

Response: Defendants object to this interrogatory as prematurely seeking information the disclosure of which is governed by the Case Management and Scheduling Order, ECF No. 43, and, by doing so, seeks litigation strategy protected by the attorney work product doctrine. Defendants will address the issues raised in this interrogatory, as appropriate, in their summary judgment briefing.

Without waiver of the foregoing objections, Defendants respond as follows: Section 1005 furthers the government's interests in remedying the lingering effects of the well-documented history of discrimination against minority farmers in USDA farm loan programs and in preventing public funds from being allocated in a way that perpetuates the effects of discrimination.

Interrogatory No. 5: For each government interest identified in your response to Interrogatory No. 4, explain how the "socially disadvantaged" provisions of Section 1005 is tailored to further that interest.

Response: Defendants object to this interrogatory as a blockbuster "contention interrogatory" to which no response is required. *See, e.g., Felix v. City & Cty. of Denver*, No. 08-02228, 2009 WL 3838587, at *1 (D. Colo. Nov. 13, 2009); *Grynberg v. Total, S.A.*, No. 03-01280, 2006 WL 1186836, at *6 (D. Colo. May 3, 1996); *Everett v. USAir Gp.*, 165 F.R.D. 1, 3 (D.D.C. 1995) ("Insofar as these interrogatories call for defendants to separately articulate the underlying facts upon which they base their defenses, however, they are contention interrogatories and defendants need not respond at this time."). Defendants will address the issues raised in this interrogatory, as appropriate, in their summary judgment briefing.

Without waiver of the foregoing objections, Defendants respond as follows: Defendants refer Plaintiff to Defendants' Response in Opposition to Plaintiff's Motion for Preliminary Injunction, ECF No. 22, at 17-39 & accompanying exhibits. Pursuant to Federal Rule of Civil Procedure 33(d), Defendants further identify the sources cited therein. Defendants also refer Plaintiff to the Congressional record to the extent Plaintiff seeks information related to Congress's intent in passing Section 1005.

Supplemental Response: Defendants have produced the documents cited above at the following Bates numbers: ARPA_WYNN_00001019—ARPA_WYNN_00001134,

ARPA_WYNN_00001150—ARPA_WYNN_00002304, ARPA_WYNN_00002310—
ARPA_WYNN_00002489, ARPA_WYNN_00002571—ARPA_WYNN_00002685,
ARPA_WYNN_00003153—ARPA_WYNN_00003215, ARPA_WYNN_00003400—
ARPA_WYNN_00003406, ARPA_WYNN_00003420—ARPA_WYNN_00003452,
ARPA_WYNN_00003464—ARPA_WYNN_00003666, ARPA_WYNN_00003675—
ARPA_WYNN_00004348.

Interrogatory No. 6: Identify all factual evidence and supporting documentation (including, but not limited to, legislative evidence, scientific studies, investigations, interviews, or testimony) that support the assertion that the interests identified in your response to Interrogatory No. 4 are advanced by Section 1005.

Response: Defendants object to this interrogatory as a blockbuster “contention interrogatory” to which no response is required. *See, e.g., Felix v. City & Cty. of Denver*, No. 08-02228, 2009 WL 3838587, at *1 (D. Colo. Nov. 13, 2009); *Grynberg v. Total, S.A.*, No. 03-01280, 2006 WL 1186836, at *6 (D. Colo. May 3, 1996); *Everett v. USAir Gp.*, 165 F.R.D. 1, 3 (D.D.C. 1995) (“Insofar as these interrogatories call for defendants to separately articulate the underlying facts upon which they base their defenses, however, they are contention interrogatories and defendants need not respond at this time.”). Defendants will address the issues raised in this interrogatory, as appropriate, in their summary judgment briefing.

Without waiver of the foregoing objections, Defendants respond as follows: Defendants refer Plaintiff to Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction, ECF No. 22, at 17-39 & accompanying exhibits. Pursuant to Federal Rule of Civil Procedure 33(d), Defendants further identify the sources cited therein.

Supplemental Response: Defendants have produced the documents cited above at the following Bates numbers: ARPA_WYNN_00001019—ARPA_WYNN_00001134,

ARPA_WYNN_00001150—ARPA_WYNN_00002304, ARPA_WYNN_00002310—
ARPA_WYNN_00002489, ARPA_WYNN_00002571—ARPA_WYNN_00002685,
ARPA_WYNN_00003153—ARPA_WYNN_00003215, ARPA_WYNN_00003400—
ARPA_WYNN_00003406, ARPA_WYNN_00003420—ARPA_WYNN_00003452,
ARPA_WYNN_00003464—ARPA_WYNN_00003666, ARPA_WYNN_00003675—
ARPA_WYNN_00004348.

Interrogatory No. 7: Identify all race-neutral means you have considered or used to further the government interests you identified in your response to Interrogatory No. 4.

Response: Defendants object to this interrogatory as a blockbuster “contention interrogatory” to which no response is required. *See, e.g., Felix v. City & Cty. of Denver*, No. 08-02228, 2009 WL 3838587, at *1 (D. Colo. Nov. 13, 2009); *Grynberg v. Total, S.A.*, No. 03-01280, 2006 WL 1186836, at *6 (D. Colo. May 3, 1996); *Everett v. USAir Gp.*, 165 F.R.D. 1, 3 (D.D.C. 1995). Defendants will address the issues raised in this interrogatory, as appropriate, in their summary judgment briefing.

Supplemental Objections and Response: Defendants also object to the terms “used” and “considered” as vague and ambiguous. Defendants will construe the term “used” to mean “actually implemented” by Congress or USDA and will construe the term “considered” to mean “reviewed and analyzed by Congress or USDA.”

Defendants further object to this request as overly burdensome and disproportionate to the needs of the case to the extent it seeks information about race-neutral means “considered” but not actually implemented at any point in time prior to Defendants’ consideration of the remedial measure adopted in Section 1005. Defendants will construe this request as seeking information

about race-neutral means considered by Congress or USDA since January 3, 2021, as an alternative to Section 1005.

Moreover, Defendants object to this request as overly burdensome and disproportionate to the needs of the case because it seeks identification of all race-neutral means ever “used” by Defendants without time limitation. Defendants will construe this interrogatory as seeking information about race-neutral means used by Congress or USDA since 1990 to further the government’s identified compelling interests.

Defendants additionally object to this request to the extent it is seeking information protected by the deliberative process privilege—including by application of the consultant corollary, *see Am. Oversight v. United States Dep’t of the Treasury*, 474 F. Supp. 3d 251, 262 (D.D.C. 2020)—the legislative privilege, *see United States v. Brewster*, 408 U.S. 501, 525 (1972), or any other applicable legal protection or privilege.

Without waiver of the foregoing objections, Defendants respond as follows: Defendants refer Plaintiff to the Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction, ECF No. 22, at 2-13, 18-19, 31-38 & accompanying exhibits. Pursuant to Federal Rule of Civil Procedure 33(d), Defendants further identify the sources cited therein. Defendants have produced the documents cited above at the following Bates numbers:

ARPA_WYNN_00003165—ARPA_WYNN_00003215, ARPA_WYNN_00003433—
ARPA_WYNN_00003435, ARPA_WYNN_00003675—ARPA_WYNN_00004348.

For ease of reference, Defendants also provide herein other means used or considered to further the government’s compelling interests, which were discussed in the relevant portions of the briefing or are identified by Defendants pursuant to this supplemental response:

- Congress created a program to provide outreach and technical assistance to socially disadvantaged farmers in 1990 (the “2501 Program”). Consolidated Farm and Rural

Development Act of 1961 (“CONACT”), as amended (7 U.S.C. § 1922, *et seq.*). In 2014, Congress expanded the 2501 program to include veterans, Agricultural Act of 2014, Sec. 12201 (7 U.S.C. § 2279), and permanently funded the 2501 Program in 2018, Agriculture Improvement Act of 2018, Sec. 12301 (7 U.S.C. § 2279).

- In 1994, Congress reorganized USDA to separate the farm loan programs mission area from the rural development and conservation mission areas, Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6901, *et seq.*), and other internal agency reorganizations have altered the role of county committees in loan making decisions, *see* Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction, ECF No. 22, at 2-3; Congressional Research Service (CRS), FSA Comms.: In Brief (Jan. 29, 2021) (FSA Comms.), available at <https://perma.cc/HA3L-PDPG>.
- USDA established administrative claims processes pursuant to settlement agreements entered in lawsuits brought by certain groups of minority farmers, *see, e.g. Pigford v. Glickman*, 1:97-cv-1978-PLF, ECF No. 167; and, in 2010, Congress allocated additional funds for settlements reached through those lawsuits, Claims Resolution Act of 2010, Pub. L. 111-291, 124 STAT. 3064.
- In 1998, Congress enacted legislation to waive the Equal Credit Opportunity Act statute of limitation for all individuals who previously filed discrimination complaints with USDA. Section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277 (codified in 7 U.S.C. § 2279 notes); *see also* 7 C.F.R. §15f.
- In 2002, Congress created an office at the Assistant Secretary level within USDA dedicated to enforcing civil rights. *See* <https://www.usda.gov/oascr>.
- In 2008, Congress mandated the creation of an Advisory Committee on Minority Farmers and required the Department to report civil rights complaints, resolutions, and personnel actions. Food, Conservation, and Energy Act of 2008, §§ 14008, 14010.
- In 2010, Congress enacted a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act that extended the statute of limitations for claims brought under the Equal Credit Opportunity Act, including claims against USDA/FSA, from 2 years to 5 years. 15 U.S.C. § 1691e(f) (2010), *amended by* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
- In 2014, Congress established the Socially Disadvantaged Farmer and Rancher Policy Research Center, required the compilation and public disclosure of data to assess participation of socially disadvantaged farmers and ranchers in programs of the Department, and authorized a permanent microloan program. Agricultural Act of 2014, §12202 (7 U.S.C. § 2279(c)(5); 7 U.S.C. § 2279-1; 7 U.S.C. § 1943(c))

- In 2018, Congress mandated the creation of a Tribal Advisory Committee and provided provisions ensuring eligibility for operators on heirs property land to obtain a farm number. Agriculture Improvement Act of 2018, §§ 12303, 12615 (7 U.S.C. § 6622b *et seq.*; 7 U.S.C. § 6921 *et seq.*)
- Congress has also held numerous oversight hearings focused on civil rights issues at USDA, including in FSA and its loan programs. *See, e.g.*, Hr’g on USDA’s Civil Rights Progs. and Responsibilities before The House Subcomm. on Dep’t Ops., Oversight, Nutrition, and Forestry, Comm. on Ag., 106th Cong. 37 (1999) (Goodlatte) (recognizing that “[c]ivil rights at the [USDA] has long been a problem”); 2002 Civil Rights Hr’g 16, 18, 26 (hearing testimony about the disparities in loan processing times and approval rates for Hispanic farmers; underrepresentation of minorities in USDA; and continuing delays in the resolution of civil rights complaints); Hr’g to Review the USDA’s Farm Loan Progs. before the Senate Comm. on Ag., Nutrition, and Forestry, 109th Cong. 800 (2006) (Karen Krub, Farmers’ Legal Action Group, Inc.) (“[T]here is still no meaningful process for investigation and resolution of allegations of discrimination [against] FSA decision-makers.”); Hr’g to Review Availability of Credit in Rural America before the House Subcomm. on Conserv., Credit, Energy, and Research, Comm. on Ag., 110th Cong. 8 (2007); Hr’g on Mgmt. of Civil Rights at the USDA before the House Subcomm. on Gov’t Mgmt., Org., and Procurement, Comm. on Oversight and Gov’t Reform, 110th Cong. 137 (2008) (hearing testimony about, and recognizing, the continued problem of USDA discrimination against minority farmers, including the inability of Native American and Hispanic farmers to receive loans; underrepresentation of minorities on county committees; and delayed processing of civil rights complaints, including allegations that complaints were shredded and not processed, all despite creation in 2002 of the Assistant Secretary of Civil Rights); House Ag. Comm. Hr’g on U.S. Ag. Policy and the 2012 Farm Bill (Apr. 21, 2010); House Ag. Comm. Hr’g on USDA Oversight 45, 50 (July 22, 2015). In 2018 and 2019, the Farm Service Agency was authorized to distribute up to \$25.1 billion through the Market Facilitation Program (MFP) to assist producers directly affected by retaliatory tariffs by China. *See* <https://perma.cc/67CF-L387>.
- FSA and its predecessor entity have had various structures and processes in place to provide oversight of farm loan programs, including audit systems for reviewing county offices’ general compliance with rules and regulations for making direct loans and for providing loan servicing and civil rights compliance processes to monitor county offices’ policies and practices.
- USDA has commissioned entities to conduct investigations and draft reports to attempt to address discrimination in USDA’s farm loan programs, including but not limited to the Civil Rights Action Team in 1996-1997 and Jackson Lewis LLP, and has conducted internal reviews of its programs through audits and Inspector General investigations. Congress has also requested reports concerning access to credit, discrimination and civil

rights compliance, and other issues related to USDA's farm loan programs from entities such as the Government Accountability Office.

Interrogatory No. 8: Please describe the process for determining whether a group is “socially disadvantaged” for purposes of Section 1005, including how Defendants determined that each group identified in the *Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329 (May 26, 2021) (namely, “American Indians or Alaskan Natives; Asians; Blacks or African Americans; Native Hawaiians or other Pacific Islanders; and Hispanics or Latinos”) is “socially disadvantaged.”

Response: Defendants object to this interrogatory as compound insofar as it seeks information concerning both the (pre-NOFA) process of pre-designation of socially disadvantaged groups and the current (post-NOFA) process for determining whether a group qualifies as socially disadvantaged for purposes of Section 1005, which are distinct topics not fairly encompassed by one interrogatory. Defendants will count this interrogatory as two against Plaintiff's limit.

A) Defendants object to the portions of this interrogatory concerning the pre-NOFA designation process to the extent it is seeking information protected by the deliberative process privilege—including by application of the consultant corollary, *see Am. Oversight v. United States Dep't of the Treasury*, 474 F. Supp. 3d 251, 262 (D.D.C. 2020)—or any other applicable legal protection or privilege.

Supplemental Objections and Response: To the extent this interrogatory seeks information regarding Congress's non-public gathering of information or advice for the purpose of enacting legislation, such information would be protected from disclosure under the legislative privilege. *See United States v. Brewster*, 408 U.S. 501, 525 (1972).

Without waiver of the foregoing objections, Defendants respond as follows: For purposes of Section 1005, a socially disadvantaged group is “a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without

regard to their individual qualities.” 7 U.S.C. § 2279(a)(6); *see* ARPA § 1005(b)(3). In determining which groups to include in the definition of “socially disadvantaged” provided by the NOFA, Defendants relied on the definition provided by 7 U.S.C. § 2279(a) and the race and ethnic categories USDA uses in administering the 2501 Program. *See* Pub. L. 115-334, Title XII, §§ 12301(b), 12306(a), Dec. 20, 2018, 132 Stat. 4951, 4968.

B) As to the current (post-NOFA) process, the Secretary of Agriculture “will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation.” *See the Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329, 28,330 (May 26, 2021).

Interrogatory No. 9: Please identify all other groups that Defendants have considered for inclusion as “socially disadvantaged” for purposes of Section 1005 and explain whether the group was determined to be “socially disadvantaged” and why or why not.

Response: Defendants object to the portions of this interrogatory concerning the pre-designation process as seeking information protected by the deliberative process privilege—including by application of the consultant corollary, *see Am. Oversight v. United States Dep’t of the Treasury*, 474 F. Supp. 3d 251, 262 (D.D.C. 2020)—or any other applicable legal protection or privilege.

Without waiver of the foregoing objections, Defendants respond as follows: Defendants have not yet considered groups not enumerated in the NOFA.

Interrogatory No. 10: Please identify and provide a complete list of the reasons that women were not included as a “socially disadvantaged” group for purposes of Section 1005 and 7 U.S.C. 2279.

Response: Defendants object to this interrogatory to the extent it seeks information protected by the deliberative process privilege—including by application of the consultant corollary, *see Am. Oversight v. United States Dep’t of the Treasury*, 474 F. Supp. 3d 251, 262 (D.D.C. 2020)—or any other applicable legal protection or privilege. Defendants further object to the extent that the interrogatory seeks information not within Defendants’ knowledge or control.

Without waiver of the foregoing objections, Defendants respond as follows: Women farmers and ranchers are eligible for Section 1005 relief so long as they are members of a socially disadvantaged group. For purposes of Section 1005, a socially disadvantaged group is “a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(6); *see* ARPA § 1005(b)(3). Defendants refer Plaintiff to Pub. L. 115-334, Title XII, §§ 12301(b), 12306(a), Dec. 20, 2018, 132 Stat. 4951, 4968, and its associated legislative history for evidence of Congress’s reasons for using that statutory language.

Interrogatory No. 11: If you contend that race (including both race and ethnicity) is not the sole criterion for determining whether a farmer or rancher is “socially disadvantaged” within the meaning of Section 1005, please state the complete basis for your contention.

Response: Under Section 1005, the sole criterion for whether a farmer or rancher is socially disadvantaged is whether the farmer or rancher is “a member of a socially disadvantaged group,” which is defined as “a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(5), (6); *see also* ARPA § 1005(b)(3).

Interrogatory No. 12: Please identify all instances in the past 25 years in which USDA or FSA engaged in or facilitated discrimination on the basis of race (including both race and ethnicity).

Response: Defendants object to this interrogatory on the ground that the phrase “engaged in or facilitated discrimination” as ambiguous. Defendants also object to this interrogatory as overly broad and disproportionately burdensome to the extent it seeks identification of all instances of race discrimination occurring in any and all USDA programs regardless of their relationship to FSA farm loan programs. Defendants further object to this interrogatory as overly broad and disproportionately burdensome because it is not premised on the relevant legal standard—that the Government have “a strong basis in evidence for its conclusion that [the challenged] action was necessary” to further its compelling interests. *Ensley Branch, NAACP v. Seibels*, 31 F.3d 1548, 1565 (11th Cir. 1994).

Without waiver of the foregoing objections, Defendants respond as follows: Defendants refer Plaintiff to Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction, ECF No. 22, at 3-13 & accompanying exhibits. Pursuant to Federal Rule of Civil Procedure 33(d), Defendants further identify the sources cited therein.

Supplemental Response: Defendants have produced the documents cited above at the following Bates numbers: ARPA_WYNN_00000001—ARPA_WYNN_00001114, ARPA_WYNN_00001135—ARPA_WYNN_00002309, ARPA_WYNN_00002490—ARPA_WYNN_00003432, ARPA_WYNN_00003453—ARPA_WYNN_00004399.

Interrogatory No. 13: Please identify the number of farmers who both (1) are eligible for debt relief under Section 1005; and (2) received payments pursuant to *Pigford*, *Pigford II*, and *Keepseagle* (cited in ¶¶ 35–37 of Plaintiff’s Complaint), together with total dollar amount of payments received by those farmers.

Response: Defendants object to this interrogatory on the ground that “payments” is ambiguous. Defendants will interpret the term to mean the debt relief and any other payments

specified in the settlement agreements for each action that were awarded to prevailing claimants. *See Pigford v. Glickman*, 1:97-cv-1978-PLF, ECF No. 167; *In re Black Farmers Discrimination Litigation*, 1:08-mc-511-PFL, ECF No. 170-2; *Keepseagle v. Vilsack*, No. 99-CV-03119, ECF No. 621-2.

Without waiver of the foregoing objection, Defendants respond as follows: Of borrowers who are eligible for debt relief under Section 1005, three-hundred seventy of them have received payments under *Pigford*, *Pigford II*, or *Keepseagle*, which payments total \$30,712,100.27.

Interrogatory No. 14: Please provide a listing (including, as appropriate, a spreadsheet or database) of all farmers who had outstanding loan balances on qualifying farm loans as of January 1, 2021, including the following information: name [or alternative unique identifier], location, original loan amount, loan date, outstanding loan amount as of January 1, age, race, and ethnicity.

Response: Defendants object to this interrogatory to the extent that it seeks information the disclosure of which would violate 5 U.S.C. § 552a and 7 U.S.C. § 8791. Defendants are available to meet and confer regarding appropriate measures, such as a protective order, to prevent unlawful disclosure of information.

Interrogatory No. 15: Please state the complete basis for your contention that “Plaintiff has failed to exhaust administrative remedies.” ECF No. 48 at 13.

Response: Defendants object to this interrogatory as a blockbuster “contention interrogatory” to which no response is required. *See, e.g., Felix v. City & Cty. of Denver*, No. 08-02228, 2009 WL 3838587, at *1 (D. Colo. Nov. 13, 2009); *Grynberg v. Total, S.A.*, No. 03-01280, 2006 WL 1186836, at *6 (D. Colo. May 3, 1996); *Everett v. USAir Gp.*, 165 F.R.D. 1, 3 (D.D.C. 1995) (“Insofar as these interrogatories call for defendants to separately articulate the underlying facts

upon which they base their defenses, however, they are contention interrogatories and defendants need not respond at this time.”).

Without waiver of the foregoing objections, Defendants respond as follows: Pursuant to the NOFA, “[t]he Secretary of Agriculture will determine on a case-by-case basis whether additional groups qualify under th[e] definition [of a socially disadvantaged group] in response to a written request for supporting explanation.” *Id.* at 28,330. Judicial review is not available under the Administrative Procedure Act unless “an aggrieved party has exhausted all administrative remedies expressly prescribed by statute or agency rule.” *Darby v. Cisneros*, 509 U.S. 137, 146 (1993). Upon information and belief, Plaintiff has not submitted a written request to the Secretary.

Interrogatory No. 16: Please state the complete basis for your contention that “Plaintiff is not entitled to attorney’s fees or costs.” ECF No. 48 at 13.

Response: Defendants object to this interrogatory as a blockbuster “contention interrogatory” to which no response is required. *See, e.g., Felix v. City & Cty. of Denver*, No. 08-02228, 2009 WL 3838587, at *1 (D. Colo. Nov. 13, 2009); *Grynberg v. Total, S.A.*, No. 03-01280, 2006 WL 1186836, at *6 (D. Colo. May 3, 1996); *Everett v. USAir Gp.*, 165 F.R.D. 1, 3 (D.D.C. 1995). Defendants will address the issues raised in this interrogatory, if and when necessary, in the context of any briefing on fees.

Interrogatory No. 17: Please provide the total dollar amount of outstanding farm loans as of January 1, 2021 for farmers that do not qualify as “socially disadvantaged” for purposes of Section 1005.

Response: Defendants object to this interrogatory on the ground that “outstanding farm loan” is ambiguous. Defendants will interpret the term to mean a loan falling within the definition of “farm loan” under Section 1005(b).

Without waiver of the foregoing objection, Defendants respond as follows: Based on currently available data, as of January 1, 2021, the total dollar amount of outstanding farm loan balances for borrowers who, as of July 14, 2021, were identified as White/Non-Hispanic is approximately \$30,226,629,606.42. This dollar amount includes outstanding balances as of January 1, 2021 for loans eligible for debt relief under ARPA Section 1005 that are held by those who identify as White/Non-Hispanic. It includes \$29,297,474,937 in outstanding Direct and Guaranteed loans administered or guaranteed by the Farm Service Agency and \$929,154,669.42 in outstanding Farm Storage Facilities Loans administered by the Commodity Credit Corporation.

Interrogatory No. 18: If you contend that COVID-19 relief for farmers was not administered in a racially neutral fashion, please state the basis for your contention.

Response: Defendants object to this interrogatory as a blockbuster “contention interrogatory” to which no response is required. *See, e.g., Felix v. City & Cty. of Denver*, No. 08-02228, 2009 WL 3838587, at *1 (D. Colo. Nov. 13, 2009); *Grynberg v. Total, S.A.*, No. 03-01280, 2006 WL 1186836, at *6 (D. Colo. May 3, 1996); *Everett v. USAir Gp.*, 165 F.R.D. 1, 3 (D.D.C. 1995) (“Insofar as these interrogatories call for defendants to separately articulate the underlying facts upon which they base their defenses, however, they are contention interrogatories and defendants need not respond at this time.”).

Without waiver of the foregoing objections, Defendants respond as follows: Defendants refer Plaintiffs to Defendants' Response in Opposition to Plaintiff's Motion for Preliminary Injunction, ECF No. 22, at 9-11 & accompanying exhibits. Pursuant to Federal Rule of Civil Procedure 33(d), Defendants further identify the sources cited therein.

Supplemental Response: Defendants have produced the documents cited above at the following Bates numbers: ARPA_WYNN_00000001—ARPA_WYNN_00001018, ARPA_WYNN_00001150—ARPA_WYNN_00002304, ARPA_WYNN_00002490—ARPA_WYNN_00002570, ARPA_WYNN_00002856—ARPA_WYNN_00002931, ARPA_WYNN_00003153—ARPA_WYNN_00003215, ARPA_WYNN_00003400—ARPA_WYNN_00003406, ARPA_WYNN_00003415—ARPA_WYNN_00003419, ARPA_WYNN_00003667—ARPA_WYNN_00003670, ARPA_WYNN_00004349—ARPA_WYNN_00004399.

For ease of reference, Defendants also provide herein the information discussed in the relevant portions of the briefing: Reporting before Congress in the lead-up to Section 1005's enactment showed that the overwhelming majority of funds distributed through the Coronavirus Food Assistance Program in 2020 went to non-minority farmers. J. Hayes, *USDA Data: Nearly All Pandemic Bailout Funds Went to White Farmers*, Envir'l Working Group (EWG) (Feb. 18, 2021), <https://perma.cc/PVZ7-QMFD>. In hearings leading to Section 1005's enactment, Senator Stabenow explained that "[t]he diminished relationships between [SDFRs] and USDA as a result of both latent barriers and historic discrimination limit[ed]" SDFRs' access to, and participation in, USDA programs, such that "73 percent of Black farmers ... were not even aware of the agricultural aid provisions of the[se] coronavirus rescue programs." 167 Cong. Rec. S1264 (March 5, 2021) (Senator Stabenow) (citing Fed'n of S. Coops/Land Assist. Fund, Ann. Rep. 4

(2020), <https://perma.cc/94PY-HSM6>). And a letter introduced into the record from 13 full-time professors who specialize in agricultural issues explained that federal farm programs “have perpetuated and exacerbated the problem” of discrimination, by preferring certain crops (those produced by white farmers) and “reward[ing] the largest farms the most” (those owned by white farmers), thereby “distort[ing] credit, land, input costs, and markets” to the disadvantage of minority farmers. *Id.* S1266 (summarizing Hr’g on the Decline of Minority Farming in the United States, Comm. on Gov’t Ops., U.S. House of Reps. (1990); D.J. Miller Disparity Study: Producer Participation and EEO Compl. Process Study), D.J. Miller & Associates report prepared for the USDA FSA (1996); USDA: Problems in Processing Discrim. Compls., GAO (2002); USDA: Recomms. and Options to Address Mgmt. Deficiencies in the Off. of the Assistant Secretary for Civil Rights, GAO (2008), <https://perma.cc/YW73-83WE>. *See* S1266-67).

As to the interrogatories, see Attachment for verification.

As to the objections, see below for signatories:

Dated: October 8, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Kyla Snow
EMILY SUE NEWTON (VA Bar No. 80745)
Senior Trial Counsel
KYLA M. SNOW (Ohio Bar No. 96662)
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Kyla.snow@usdoj.gov

Counsel for Defendants

ATTACHMENT

I declare under penalty of perjury that the responses to the above interrogatories are true and correct to the best of my knowledge.

ZACHARY
DUCHENEAUX

Digitally signed by ZACHARY
DUCHENEAUX
Date: 2021.10.08 17:43:17 -04'00'

Zach Ducheneaux
Administrator
Farm Service Agency

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories (as supplemented October 8, 2021) was served on counsel for Plaintiff via email on October 8, 2021.

/s/ Kyla M. Snow
KYLA M. SNOW

Exhibit 2

P. Mot. for Summ. J./D. Resp. to Rogs Set 2

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 3:21-cv-00514-MMH-JRK

**DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Thomas J. Vilsack, *et al.*, by and through their undersigned counsel, hereby respond to Plaintiff's Second Set of Interrogatories:

Defendants' objections and responses are based on information known to Defendants at this time and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit the discovery of information not privileged that is relevant to the claims or defenses in this civil action and that is proportional to the reasonable needs of the case. Fed. R. Civ. P. 26(b)(1). Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of

relevance, proportionality, accessibility, materiality, or any other appropriate ground. Defendants reserve the right to amend these responses until the close of discovery in this case.

**DEFENDANTS' OBJECTIONS TO
PLAINTIFF'S INSTRUCTIONS AND DEFINITIONS**

1. Defendants object to Instruction 1 insofar as it seeks information from Defendants' "attorneys" that may be protected by the attorney-client privilege, the attorney work product doctrine, the deliberative process privilege, or any other applicable legal protection from disclosure.

2. Defendants object to Definition 2 because requiring Defendants to "identify all oral communications which were made at the act or event identified" and "all documents concerning the act or event identified" is unduly burdensome. Defendants will identify oral communications and documents to the extent necessary to comply with their obligations under the Federal Rules.

3. Defendants object to Instruction 3 as imposing obligations in excess of those created by Federal Rule of Civil Procedure 26(b)(5). Defendants will comply with that Rule.

4. Defendants object to Instructions 4 and 5 to the extent they impose, individually or collectively, obligations in excess of those created by Federal Rule of Civil Procedure 26(e). Defendants will comply with that Rule.

RESPONSES

Interrogatory No. 19: Identify and describe all USDA or FSA programs that have determined eligibility based on the size, cost, or value of a farmer's loan.

Response: Defendants object that Interrogatory No. 19 requests information irrelevant to the claims or defenses in this case and is thus beyond the scope of the Federal Rules. *See* Fed. R. Civ. P. 26(b). Interrogatory No. 19 is also overbroad and disproportionately burdensome to the extent it seeks information pertaining to "all USDA or FSA programs." Plaintiff challenges only USDA's implementation of Section 1005 of ARPA, and Defendants rely principally on discrimination within USDA's lending programs. Without waiving the foregoing objections, Defendants are not aware of any USDA farm loan programs that base eligibility on the size, cost, or value of loans held by a farmer.

Interrogatory No. 20: Identify the maximum dollar amount of a qualifying farm loan that could be forgiven or repaid for an individual farmer under Section 1005.

Response: Loans are not "forgiven" under Section 1005. The current maximum loan principal limits for loans that could be eligible for payments under Section 1005 are \$400,000 (direct operating); \$600,000 (direct farm ownership); \$1,825,000 (guaranteed operating/ownership); and \$500,000 (farm storage facility).

Interrogatory No. 21: Explain and describe any context and any purpose for which USDA recognizes (meaning differentiates, distinguishes, or bases any determination on) a race or ethnicity other than those listed in Form AD-2047.

Response: Defendants object that Interrogatory No. 21 requests information irrelevant to the claims or defenses in this case and is thus beyond the scope of the Federal Rules. *See* Fed. R. Civ. P. 26(b). Plaintiff challenges only USDA's

implementation of Section 1005 of ARPA. Whether USDA recognizes a race or ethnicity other than those listed in Form AD-2047 in other contexts or for other purposes is thus irrelevant.

Interrogatory No. 22: Explain the source of the racial and ethnic designations on Form AD-2047, including how it was determined which races and ethnicities to include.

Response: Defendants object that Interrogatory No. 22 requests information irrelevant to the claims or defenses in this case and is thus beyond the scope of the Federal Rules. *See* Fed. R. Civ. P. 26(b). Plaintiff challenges only USDA's implementation of Section 1005 of ARPA. How USDA determined which races and ethnicities to include on Form AD-2047 is thus irrelevant. Defendants also object to the extent this interrogatory calls for information protected by the attorney-client privilege, the deliberative process privilege, and/or other governmental privileges. Without waiving the foregoing objections, the source of the designations is the Office of Management and Budget's Standards for Maintaining, Collecting, and Presenting Data Based on Race and Ethnicity (62 Fed. Reg. 58782-58790).

Interrogatory No. 23: Explain how USDA decided on or determined "the race and ethnic categories USDA uses in administering the 2501 Program." (Defs.' Supp'l Resp. to Interrog. No. 8).

Response: Defendants object that Interrogatory No. 23 requests information irrelevant to the claims or defenses in this case and is thus beyond the scope of the Federal Rules. *See* Fed. R. Civ. P. 26(b). Plaintiff challenges only USDA's implementation of Section 1005 of ARPA. Whether USDA recognizes a race or ethnicity other than those listed in Form AD-2047 in the administration of the 2501

program or for other purposes is thus irrelevant. Defendants also object to the extent this interrogatory calls for information protected by the attorney-client privilege, the deliberative process privilege, and/or other governmental privileges.

Interrogatory No. 24: Explain what USDA and FSA do or will do to check or evaluate the accuracy of a farmer's racial or ethnic designations in determining whether they qualify for debt relief under Section 1005.

Response: Defendants object to the extent Interrogatory No. 24 calls for information protected by the attorney-client privilege, the deliberative process privilege, and/or other governmental privileges. Without waiving the foregoing objection, FSA loan customers may voluntarily self-identify their race and ethnicity as part of their loan application or at any time through form AD-2047. On the loan payment notification letter mailed to eligible borrowers pursuant to the May 2021 Notice of Funds Availability, each borrower will be required to certify, under penalty of perjury and subject to applicable laws related to fraud, their racial or ethnic designation prior to FSA making any payments under Section 1005.

Interrogatory No. 25: Explain how USDA and FSA determine or will determine whether a farmer of multiple, mixed, or uncertain race qualifies for debt relief under Section 1005.

Response: Defendants object to the extent Interrogatory No. 24 calls for information protected by the attorney-client privilege, the deliberative process privilege, and/or other governmental privileges. Without waiving the foregoing objection, FSA loan customers may voluntarily self-identify their race and ethnicity as part of their loan application or at any time through form AD-2047. On the loan payment notification letter mailed to eligible borrowers pursuant to the May 2021 Notice of Funds

Availability, each borrower will be required to certify, under penalty of perjury and subject to applicable laws related to fraud, their racial or ethnic designation prior to FSA making any payments under Section 1005.

As to the interrogatory responses, see Attachment for verification.

As to the objections to the interrogatories, see the below for signatories.

Dated: December 3, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Emily Newton
EMILY SUE NEWTON (VA Bar No. 80745)
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Objections and Responses to Plaintiff's Second Set of Interrogatories was served on counsel for Plaintiff via email on December 4, 2021.

/s/ Emily Newton
EMILY SUE NEWTON
U.S. Department of Justice

Exhibit 3

P. Mot. for Summ. J./D. Resp. to RFA Set 1

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 3:21-cv-00514-MMH-JRK

DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUESTS FOR
ADMISSIONS, SET ONE (as supplemented October 6, 2021)

Pursuant to Federal Rules of Civil Procedure 26 and 36, Defendants Thomas J. Vilsack, *et al.*, by and through their undersigned counsel, hereby respond to Plaintiff's Requests for Admissions, Set One:

Defendants' objections and responses are based on information known to Defendants at this time, and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit the discovery of matters not privileged that are relevant to the claims or defenses in this civil action, and that is proportional to the reasonable needs of the case. Fed. R. Civ. P. 26(b)(1). Accordingly, Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or any other appropriate ground.

RESPONSES

Request for Admission No. 1: Admit that a farmer who has never suffered racial discrimination could still be considered “socially disadvantaged” under Section 1005.

Response: Defendants object to this request on the ground that the phrase “suffered racial discrimination” is ambiguous. Without waiver of the foregoing objection, Defendants admit that the only qualification to be a socially disadvantaged farmer or rancher is to be “a farmer or rancher who is a member of a socially disadvantaged group,” meaning a group “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(5), (6).

Supplemental Response: Defendants agree, in response to Plaintiff’s request in its September 20, 2021 letter, to construe the term “suffered racial discrimination” to mean “was discriminated against by USDA on the basis of race.” So construed, Defendants add to the above the following objections. Whether USDA has, in fact, discriminated against a farmer who is considered “socially disadvantaged” under Section 1005 is irrelevant and thus beyond the scope of Federal Rule of Civil Procedure 36(a) (incorporating Rule 26(b)(1)). Instead, the Government need have only a strong basis in evidence for its conclusion that discrimination occurred such that remedial action was necessary. And, in seeking to eradicate the effects the racial discrimination, the Government may enact reasonable race-conscious relief that benefits individuals who were not actual victims of discrimination. Without waiving any of the foregoing objections, Defendants maintain their initial responses to RFA No. 1.

Request for Admission No. 2: Admit that a farmer who has never suffered racial discrimination could still obtain debt relief under Section 1005 if that farmer were a member of a socially disadvantaged group.

Response: Defendants object to this request on the ground that the phrase “suffered racial discrimination” is ambiguous. Without waiver of the foregoing objection, Defendants admit that Section 1005 debt relief is available only to socially disadvantaged farmers and ranchers. Defendants further admit that the only qualification to be a socially disadvantaged farmer or rancher is to be “a farmer or rancher who is a member of a socially disadvantaged group,” meaning a group “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(5), (6).

Supplemental Response: Defendants agree, in response to Plaintiff’s request in its September 20, 2021 letter, to construe the term “suffered racial discrimination” to mean “was discriminated against by USDA on the basis of race.” So construed, Defendants add to the above the following objections. Whether USDA has, in fact, discriminated against a farmer who is considered “socially disadvantaged” under Section 1005 is irrelevant and thus beyond the scope of Federal Rule of Civil Procedure 36(a) (incorporating Rule 26(b)(1)). Instead, the Government need have only a strong basis in evidence for its conclusion that discrimination occurred such that remedial action was necessary. And, in seeking to eradicate the effects the racial discrimination, the Government may enact reasonable race-conscious relief that benefits individuals who were not actual victims of discrimination. Without waiving any of the foregoing objections, Defendants maintain their initial responses to RFA No. 2.

Request for Admission No. 3: Admit that not every farmer who is a member of a socially disadvantaged group has suffered racial discrimination.

Response: Defendants object to this request on the grounds that the phrase “suffered racial discrimination” is ambiguous. Without waiver of the foregoing objection, Defendants lack sufficient information to admit or deny that not every farmer who is a member of a socially disadvantaged group has suffered racial discrimination.

Supplemental Response: Defendants agree, in response to Plaintiff’s request in its September 20, 2021 letter, to construe the term “suffered racial discrimination” to mean “was discriminated against by USDA on the basis of race.” So construed, Defendants add to the above the following objections. Whether USDA has, in fact, discriminated against a farmer who is considered “socially disadvantaged” under Section 1005 is irrelevant and thus beyond the scope of Federal Rule of Civil Procedure 36(a) (incorporating Rule 26(b)(1)). Instead, the Government need have only a strong basis in evidence for its conclusion that discrimination occurred such that remedial action was necessary. And, in seeking to eradicate the effects the racial discrimination, the Government may enact reasonable race-conscious relief that benefits individuals who were not actual victims of discrimination. Without waiving any of the foregoing objections, Defendants admit that not every farmer who is a member of a socially disadvantaged group was discriminated against by USDA on the basis of race.

Request for Admission No. 4: Admit that USDA has entered into settlements with minority farmers as a fair and equitable remedy for past racial discrimination by the USDA.

Response: Defendant objects to the vagueness of the phrasing “as a fair and equitable remedy for past racial discrimination.” Without waiver of the foregoing objection, Defendants

admit that the Government has settled race discrimination claims against USDA. *See, e.g., Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999).

Request for Admission No. 5: Admit that a farmer who is a member of a socially disadvantaged group could obtain debt relief under Section 1005 even if that farmer had already been compensated by the USDA through a prior settlement.

Response: Defendant objects to the vagueness of the phrase “had already been compensated through a prior settlement.” Without waiver of the foregoing objection, Defendant admits an otherwise eligible farmer who received some form of settlement consideration by USDA for discrimination in a prior settlement agreement would not be precluded from qualifying for Section 1005 debt relief.

Request for Admission No. 6: Admit that white farmers (who are not Hispanic or Latino) have never been considered “socially disadvantaged” on the basis of their race in any program administered by USDA.

Response: Defendants object to the vagueness of the phrase “any program administered by the USDA.” Without waiver of the foregoing objection, Defendants admit that white farmers (who are not Hispanic or Latino) have never been considered “socially disadvantaged” on the basis of their race in any program administered by FSA.

Supplemental Response: To the above, Defendants add the following objections. Whether white farmers, as defined in RFA No. 6, have been considered “socially disadvantaged” for purposes of non-FSA programs, is irrelevant to Plaintiff’s claims, which challenge only USDA’s designation of Socially Disadvantaged Groups (“SDGs”) for purposes of implementing Section

1005, and Defendants' defenses, which largely rely on a strong basis in evidence of racial discrimination within FSA programs. *See* Fed. R. Civ. P. 36(a) (incorporating Rule 26(b)(1)). Without waiving these objections, Defendants admit that white farmers (who are not Hispanic or Latino) have never been considered "socially disadvantaged" on the basis of their race in any program administered by USDA.

Request for Admission No. 7: Admit that female farmers have suffered discrimination on the basis of sex.

Response: Defendants object to this request on the ground that the phrase "suffered discrimination on the basis of sex" is ambiguous. Without waiver of the foregoing objections, Defendants lack sufficient information to admit or deny that all female farmers have suffered discrimination on the basis of sex.

Supplemental Response: Defendants agree, in response to Plaintiff's request in its September 20, 2021 letter, to construe the term "suffered discrimination on the basis of sex" to mean "was discriminated against by USDA on the basis of sex" and to construe "female farmers" as "some female farmers." So construed, Defendants add to the above the following objections. Whether USDA has discriminated against some number of female farmers on the basis of sex is irrelevant to Plaintiff's claims that USDA has engaged in racial discrimination in implementing Section 1005, and Defendants' defenses, which largely rely on a strong basis in evidence of racial discrimination within FSA programs. Moreover, whether USDA has discriminated against some number of female farmers is irrelevant to whether female farmers should have been included in the SDGs under Section 1005. Without waiving any of the

foregoing objections, Defendants admit that some female farmers have been discriminated against by USDA on the basis of sex.

Request for Admission No. 8: Admit that female farmers have been considered socially disadvantaged on the basis of sex for purposes of other programs administered by USDA.

Response: Defendants object that the phrase “other programs” is ambiguous and will interpret it to mean “one or more program other than Section 1005.” Without waiver of the foregoing objection, Defendants admit that female farmers have been considered socially disadvantaged on the basis of their sex for some other USDA programs.

Request for Admission No. 9: Admit that female farmers are not socially disadvantaged (on the basis of their sex) for purposes of Section 1005.

Response: Defendants object to the Request as exceeding the scope of Federal Rule of Civil Procedure 36(a)(1) on the ground that it requests a purely legal conclusion regarding the meaning of ARPA Section 1005, rather than “the application of law to fact” or an opinion concerning such an application. Without waiver of the foregoing objection, Defendants admit that the only qualification to be a socially disadvantaged farmer or rancher is to be “a farmer or rancher who is a member of a socially disadvantaged group,” meaning a group “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(5), (6).

Supplemental Response: In Plaintiff’s September 20, 2021 letter, Plaintiff revised his request to include the following italicized text: “Admit that *USDA and FSA do not consider* female farmers to be socially disadvantaged for purposes of Section 1005 on the basis of their

sex (*i.e., apart from their race*).” Without waiving any of the foregoing objections, Defendants further admit that, apart from their belonging in the SDA categories referred to in the May 26, 2021 Notice of Funds Availability (“NOFA”), female farmers are not one of the groups listed as socially disadvantaged.

Request for Admission No. 10: Admit that race (including ethnicity) is the only relevant consideration in determining whether a farmer is socially disadvantaged for purposes of Section 1005.

Response: Defendants object to the Request as exceeding the scope of Federal Rule of Civil Procedure 36(a)(1) on the ground that it requests a purely legal conclusion regarding the meaning of ARPA Section 1005, rather than “the application of law to fact” or an opinion concerning such an application. Without waiver of the foregoing objection, Defendants admit that the only qualification to be a socially disadvantaged farmer or rancher is to be “a farmer or rancher who is a member of a socially disadvantaged group,” meaning a group “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” 7 U.S.C. § 2279(a)(5), (6).

Request for Admission No. 11: Admit that whether a farmer has suffered economic losses due to the Coronavirus pandemic is irrelevant to whether that farmer is considered socially disadvantaged under Section 1005.

Response: Defendants object to the Request as exceeding the scope of Federal Rule of Civil Procedure 36(a)(1) on the ground that it requests a purely legal conclusion regarding the meaning of ARPA Section 1005, rather than “the application of law to fact” or an opinion concerning

such an application. Although Congress established Section 1005 in part in light of the disproportionate impact of the Coronavirus pandemic on farmers of certain racial and ethnic groups and the disproportionately small share of past pandemic relief received by those farmers, without waiver of the foregoing objection, Defendants admit that the only qualification to be a socially disadvantaged farmer or rancher is to be “a farmer or rancher who is a member of a socially disadvantaged group,” meaning a group “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.” *Id.* §§ 2279(a)(5) & (a)(6).

Request for Admission No. 12: Admit that for purposes of Section 1005, the Secretary of Agriculture can only grant requests for racial or ethnic groups to be recognized as socially disadvantaged.

Response: Defendants object to the Request as exceeding the scope of Federal Rule of Civil Procedure 36(a)(1) on the ground that it requests a purely legal conclusion regarding the authority of the Secretary of Agriculture, rather than “the application of law to fact” or an opinion concerning such an application. Without waiver of the foregoing objection, Defendants admit that “[t]he Secretary of Agriculture will determine on a case-by-case basis” and “in response to a written request with supporting explanation” whether a group will “qualify under th[e] definition” in 7 U.S.C. § 2279(a)(6), *Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329, 28,330 (May 26, 2021), which is limited to “group[s] whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities,” 7 U.S.C. § 2279(a)(6).

Request for Admission No. 13: Admit that USDA has never implemented a debt relief program that hinges eligibility for debt relief on the size, cost, or value of a farmer's farm.

Response: Defendants object to this request on the grounds that the phrases "debt relief program" and "hinges eligibility" are as ambiguous. For the purposes of this response only, Defendants will interpret the former term as meaning "a program that decreases, through direct payment or other means, all or a portion of a recipient's outstanding debt" and the latter term as meaning the necessary criteria for eligibility for USDA debt relief programs. Without waiver of the foregoing objection, denied.

Request for Admission No. 14: Admit that USDA has never implemented a debt relief program that hinges eligibility for debt relief on economic losses that a farmer has suffered as a result of the COVID-19 pandemic.

Response: Defendants object to this request on the grounds that the phrases "debt relief program" and "hinges eligibility" are ambiguous. For the purposes of this response only, Defendants will interpret the former term as meaning "a program that decreases, through direct payment or other means, all or a portion of a recipient's outstanding debt" and the latter term as meaning the necessary criteria for eligibility for USDA debt relief programs. Although Congress established Section 1005 in light of the disproportionate impact of the Coronavirus pandemic on farmers of certain racial and ethnic groups and the disproportionately small share of pandemic relief received by those farmers, without waiver of the foregoing objections, Defendants admit that there is no debt relief program for which the necessary criteria is showing economic losses as a result of the COVID-19 pandemic.

Request for Admission No. 15: Admit that USDA has never implemented a debt relief program that hinges eligibility for debt relief on the type of crops grown or livestock raised by a farmer.

Response: Defendants object to this request on the grounds that the phrases “debt relief program” and “hinges eligibility” are as ambiguous. For the purposes of this response only, Defendants will interpret the former term as meaning “a program that decreases, through direct payment or other means, all or a portion of a recipient’s outstanding debt” and the latter term as meaning the necessary criteria for eligibility for USDA debt relief programs. Without waiver of the foregoing objections, admitted.

Request for Admission No. 16: Admit that a “socially disadvantaged” farmer with a qualifying farm loan that had an outstanding loan balance as of January 1, 2021 qualifies for debt forgiveness under Section 1005 regardless of the size of the loan.

Response: Defendants object to the Request as exceeding the scope of Federal Rule of Civil Procedure 36(a)(1) on the ground that it requests a purely legal conclusion regarding the meaning of ARPA Section 1005, rather than “the application of law to fact” or an opinion concerning such an application. Defendants further object that the term “debt forgiveness” is ambiguous and does not accurately characterize Section 1005. Defendants will interpret the phrase to mean “farm loan assistance” as provided by Section 1005 (“Farm Loan Assistance for Socially Disadvantaged Farmers”). Finally, Defendants object to the phrase “regardless of the size of the size of the loan” because Section 1005 applies only to USDA direct or guaranteed loans, the size and terms of which are governed by applicable statutes and regulations. Without waiver of the foregoing objections, Defendants admit that Section 1005 appropriates funds to provide “a

payment in an amount up to 120 percent of the outstanding indebtedness of each socially disadvantaged farmer or rancher as of January 1, 2021.”

Request for Admission No. 17: Admit that a “socially disadvantaged” farmer with a qualifying farm loan that had an outstanding loan balance as of January 1, 2021 qualifies for debt relief under Section 1005 regardless of whether the farmer was current on his or her loan payments.

Response: Defendants object to the Request as exceeding the scope of Federal Rule of Civil Procedure 36(a)(1) on the ground that it requests a purely legal conclusion regarding the meaning of ARPA Section 1005, rather than “the application of law to fact” or an opinion concerning such an application. Without waiver of the foregoing objection, Defendants admit that Section 1005 appropriates funds to provide “a payment in an amount up to 120 percent of the outstanding indebtedness of each socially disadvantaged farmer or rancher as of January 1, 2021.

Request for Admission No. 18: Admit that USDA lists five racial groups (“American Indian / Alaskan Native,” “Native Hawaiian/Other Pacific Islander,” “Asian,” “White,” and “Black/African American”) and two ethnicities (“Hispanic or Latino” and “Not Hispanic or Latino”) on the “Demographic Information” portion of Form AD-2047.

Response: Admitted.

Request for Admission No. 19: Admit that of the racial/ethnic combinations on Form AD-2047, White and Non-Hispanic is the only group that has not been recognized as socially disadvantaged for purposes of Section 1005.

Response: Admitted.

Request for Admission No. 20: Admit that USDA does not currently recognize any additional racial or ethnic groups beyond the ones listed in its Form AD-2047.

Response: Defendant objects to the phrase “recognizes . . . racial or ethnic groups” as ambiguous because racial and ethnic groups are recognized in different contexts and for different purposes. Defendants will respond to this request for admission when Plaintiff specifies the context and purpose he intends in this request.

Supplemental Response: In his September 20, 2021 letter, Plaintiff asks Defendants to “constru[e] the term ‘recognizes’ to mean ‘for any governmental purpose, expressly differentiates, distinguishes, or based any determination upon—including but not limited to determining eligibility for loan forgiveness under Section 1005.’ Pl.’s Resp. Letter 3. Defendants object that it is irrelevant whether USDA currently recognizes additional racial or ethnic groups beyond the ones listed in its Form AD-2047 for any governmental purpose. Plaintiff challenges only USDA’s implementation of Section 1005 of ARPA. This request is thus beyond the scope of Federal Rule of Civil Procedure 36(a) (incorporating Rule 26(b)(1)).

Without waiving those objections, Defendants agree construe the term “recognizes” to mean “for the purpose of determining eligibility for debt relief under Section 1005, expressly differentiates, distinguishes, or bases any determination upon” and respond as follows: Defendants admit that for the purpose of determining eligibility for debt relief under Section 1005, Defendants do not currently recognize any additional racial or ethnic groups beyond the ones listed in its Form AD-2047.

Request for Admission No. 21: Admit that USDA currently recognizes additional racial or ethnic groups beyond the ones listed in its Form AD-2047.

Response: Defendant objects to the phrase “recognizes . . . racial or ethnic groups” as ambiguous because racial and ethnic groups are recognized in different contexts and for different purposes. Defendants will respond to this interrogatory when Plaintiff specifies the context and purpose he intends in this request.

Supplemental Response: In his September 20, 2021 letter, Plaintiff asks Defendants to “constru[e] the term ‘recognizes’ to mean ‘for any governmental purpose, expressly differentiates, distinguishes, or based any determination upon—including but not limited to determining eligibility for loan forgiveness under Section 1005.’ Pl.’s Resp. Letter 3. Defendants object that it is irrelevant whether USDA currently recognizes additional racial or ethnic groups beyond the ones listed in its Form AD-2047 for any governmental purpose. Plaintiff challenges only USDA’s implementation of Section 1005 of ARPA. This request is thus beyond the scope of Federal Rule of Civil Procedure 36(a) (incorporating Rule 26(b)(1)). Without waiving those objections, Defendants agree construe the term “recognizes” to mean “for the purpose of determining eligibility for debt relief under Section 1005, expressly differentiates, distinguishes, or bases any determination upon” and respond as follows: Defendants deny that, for the purpose of determining eligibility for debt relief under Section 1005, they currently recognize any additional racial or ethnic groups beyond the ones listed in its Form AD-2047.

Dated: October 6, 2021

Signed,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY

Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Emily Sue Newton

EMILY SUE NEWTON (VA Bar No. 80745)

Senior Trial Counsel

KYLA M. SNOW (Ohio Bar No. 96662)

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Trial Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, NW

Washington, D.C. 20005

Tel: (202) 305-8356 / Fax: (202) 616-8460

emily.s.newton@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Objections and Responses to Plaintiff's Requests for Admissions, Set One (as supplemented October 6, 2021) was served on counsel for Plaintiff via email on October 6, 2021.

/s/ Kyla M. Snow
KYLA M. SNOW

Exhibit 4

P. Mot. for Summ. J./D. Resp. to RFA Set 2

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 3:21-cv-00514-MMH-JRK

**DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFF'S REQUESTS FOR ADMISSION, SET TWO**

Pursuant to Federal Rules of Civil Procedure 26 and 36, Defendants Thomas J. Vilsack, *et al.*, by and through their undersigned counsel, hereby respond to Plaintiff's Requests for Admission, Set Two:

Defendants' objections and responses are based on information known to Defendants at this time and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit the discovery of information not privileged that is relevant to the claims or defenses in this civil action and that is proportional to the reasonable needs of the case. Fed. R. Civ. P. 26(b)(1). Defendants do not, by

providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or any other appropriate ground.

RESPONSES

Request for Admission No. 22: Admit that qualifying farm loans of greater than \$1 million would be forgiven under Section 1005.

Response: Deny that loans are “forgiven” under Section 1005. Admit that eligible borrowers with loans with outstanding balances of greater than \$1 million could receive debt relief under Section 1005.

Request for Admission No. 23: Admit that a farmer who defaulted on a qualifying farm loan prior to January 1, 2021, would still be entitled to loan assistance or debt relief under Section 1005 if the loan had not yet been foreclosed as of that date.

Response: Admit.

Request for Admission No. 24: Admit that a farmer who was behind or in arrears on payments on a qualifying farm loan prior to January 1, 2021, but where the loan had not yet been foreclosed, would still be entitled to loan assistance or debt relief under Section 1005.

Response: Admit.

Request for Admission No. 25: Admit that a qualifying farm loan with multiple co-borrowers would be forgiven under Section 1005 as long as one of the co-borrowers was a member of a socially disadvantaged group, even if the others were not.

Response: Deny that loans are “forgiven” under Section 1005. Admit that a qualifying farm loan with multiple co-borrowers would be eligible for relief under

Section 1005 as long as one of the co-borrowers was a member of a socially disadvantaged group, even if the others were not. Otherwise, deny.

Request for Admission No. 26: Admit that a qualifying farm loan with two co-borrowers would be forgiven under Section 1005 as long as one of the co-borrowers was a member of a socially disadvantaged group, even if the other was not.

Response: Deny that loans are “forgiven” under Section 1005. Admit that a qualifying farm loan with two co-borrowers would be eligible for relief under Section 1005 as long as one of the co-borrowers was a member of a socially disadvantaged group, even if the other was not. Otherwise, deny.

Dated: December 3, 2021

Signed,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Emily Newton
EMILY SUE NEWTON (VA Bar No. 80745)
Senior Trial Counsel
KYLA M. SNOW (Ohio Bar No. 96662)
MICHAEL F. KNAPP (Cal. Bar No. 314104)
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emily.s.newton@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Objections and Responses to Plaintiff's Requests for Admissions, Set Two, was served on counsel for Plaintiff via email on December 3, 2021.

/s/ *Emily Newton*
EMILY SUE NEWTON
U.S. Department of Justice

Exhibit 5

P. Mot. for Summ. J./D. Resp. to RFP Set 1

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 3:21-cv-00514-MMH-JRK

DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendants Thomas J. Vilsack, *et al.*, by and through their undersigned counsel, hereby respond to Plaintiff's First Set of Requests for Production of Documents:

Defendants' objections and responses are based on information known to Defendants at this time, and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit the discovery of matters not privileged that are relevant to the claims or defenses in this civil action, and that is proportional to the reasonable needs of the case. Fed. R. Civ. P. 26(b)(1). Accordingly, Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or any other appropriate ground.

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S INSTRUCTIONS AND
DEFINITIONS**

1. Defendants object to Instruction 2 to the extent it purports to impose obligations in excess of those created by Federal Rule of Civil Procedure 34. Defendants will comply with that Rule.

2. Defendants object to Instruction 3 as imposing obligations in excess of those created by Federal Rule of Civil Procedure 26(b)(5). Defendants will comply with that Rule.

3. Defendants object to Instruction 4 to the extent it would require them to produce documents not fairly described by the requests below.

4. Defendants object to Instructions 5 and 6 to the extent they impose, individually or collectively, obligations in excess of those created by Federal Rule of Civil Procedure 26(e). Defendants will comply with that Rule.

5. Defendants object to Plaintiff's Definition No. 3 to the extent that it defines "document" to include "draft[s]," as such a definition is inherently overbroad and unduly burdensome. To the extent that Plaintiff seeks either drafts or information contained within drafts, that information is highly likely to be subject to withholding as protected by one or more governmental privileges, including the deliberative process privilege. Searching for, reviewing, redacting and/or producing a privilege log for all such records would be unduly burdensome and disproportionate to the needs of the case. Moreover, to the extent Plaintiff seeks all "nonidentical cop[ies]" of a document or electronically stored information without limitation, the definition is unduly burdensome in that it would require Defendants to search for redundant documents without regard to whether those documents contain any meaningfully distinct information. Accordingly, unless otherwise noted, Defendants will not search for or produce all "nonidentical cop[ies]" or draft documents.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: All documents identified in Defendants' Initial Disclosures.

Response: Defendants will produce, on a rolling basis, all non-privileged documents identified in their initial disclosures.

Request for Production No. 2: All documents identified in your response to INTERROGATORY NO. 2.

Response: Defendants object to this request to the extent that it seeks information that is protected by the deliberative process privilege, the attorney-client privilege, or other governmental privileges. Defendants further object that this request is unduly burdensome and disproportionate to the needs of the case insofar as it seeks production of documents readily available to the public or that do not contain information relevant to the claims or defenses in this case.

Subject to the limitations and objections stated above, Defendants will produce, on a rolling basis, all non-privileged documents identified in their response to Plaintiff's Interrogatory No. 2.

Request for Production No. 3: All documents identified in your response to INTERROGATORY NO. 4.

Response: Defendants object to this request as nonsensical. Interrogatory No. 4 does not ask Defendants to identify documents.

Defendants are available to meet and confer regarding this request.

Request for Production No. 4: All documents, including communications, concerning any attempts to tailor the “socially disadvantaged” provisions of Section 1005 to further each interest you identify in your answer to INTERROGATORY NO. 4.

Response: Defendants object to the phrase “attempts to tailor” as ambiguous. Defendants further object to this request as overly burdensome and disproportionate to the needs of the case because (a) communications about hypothetical alternatives to Section 1005 that were not considered by Congress are not relevant to the merits of Plaintiff’s legal challenge to the law enacted by Congress, (b) requiring production of all documents merely “concerning” tailoring of the relevant provisions of Section 1005 is disproportionate to Plaintiff’s purported need for information about the existence and nature of such tailoring, and (c) the request overwhelmingly seeks information protected from discovery, especially information protected by the deliberative process privilege. Requiring Defendants to search intra-governmental communications and generate a privilege log would create an undue burden and would be disproportionate to the needs of the case, particularly given that Plaintiff brings a facial challenge to a federal statute.

Without waiving the foregoing objections, Defendants will produce responsive, non-privileged documents, excluding intra-governmental communications, that are within their possession, custody, or control and that can be obtained through a reasonable search and which demonstrate that Section 1005 is tailored to further the interests Defendants identify in response to Plaintiff’s Interrogatory No. 4,.

Request for Production No. 5: All documents, including communications, concerning any race-neutral alternatives that were implemented or considered to further each interest you identify in your answer to INTERROGATORY NO. 4.

Response: Defendants object to the phrases “race-neutral alternatives” and “alternatives that were implemented” as ambiguous. Defendants further object to this request as overly burdensome and disproportionate to the needs of the case because (a) communications about

hypothetical alternatives to Section 1005 that were not considered by Congress are not relevant to the merits of Plaintiff's legal challenge to the law enacted by Congress, (b) requiring production of all documents merely "concerning" race-neutral alternatives to Section 1005 is disproportionate to Plaintiff's purported need for information about the existence and nature of such alternatives, (c) producing documents about every race-neutral program intended to further the identified Government interests would be exceptionally burdensome, and (d) the request overwhelmingly seeks information protected from discovery, especially information protected by the deliberative process privilege. Requiring Defendants to search intra-governmental communications and generate a privilege log would create an undue burden and would be disproportionate to the needs of the case, particularly given that Plaintiff brings a facial challenge to a federal statute.

Defendants are available to meet and confer regarding this request.

Request for Production No. 6: All documents concerning how it is determined which groups are "socially disadvantaged groups" for purposes of Section 1005 and 7 U.S.C. 2279.

Response: Defendants object to this request as overly burdensome and disproportionate to the needs of the case because requiring production of all documents merely "concerning" which groups are considered socially disadvantaged under Section 1005 and 7 U.S.C. § 2279 but not necessary to demonstrate the process for determining socially disadvantaged groups. Defendants also object to this request as overly burdensome and disproportionate to the needs of the case to the extent it seeks production of all documents concerning which groups are considered socially disadvantaged "for purposes of . . . 7 U.S.C. 2279," because that statute provides a definition of "socially disadvantaged" that applies to various, distinct USDA programs that are entirely

independent from Section 1005; thus, documents concerning how specific groups were determined to be socially disadvantaged for those other, independent programs would not be relevant to Plaintiff's challenge to Section 1005.

Without waiving the foregoing objections, Defendants will produce responsive, non-privileged documents that are within their possession, custody, or control and that can be obtained through a reasonable search and which are sufficient to show how socially disadvantaged groups are determined for purposes of Section 1005.

Request for Production No. 7: All documents that were used or considered by FSA in making the determination in *Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329 (May 26, 2021), that the following are "socially disadvantaged groups" for purposes of Section 1005: American Indians or Alaskan Natives; Asians; Blacks or African Americans; Native Hawaiians or other Pacific Islanders; and Hispanics or Latinos.

Response: Defendants object to this request because requiring production of all documents that were "used" or "considered," but not actually relied upon, in determining that the groups identified in the *Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)*, 86 Fed. Reg. 28,329 (May 26, 2021) ("NOFA"), are socially disadvantaged is overly burdensome and disproportionate to the needs of the case.

Without waiving the foregoing objections, Defendants will produce responsive, non-privileged documents within their possession, custody, or control that can be obtained through a reasonable search and which were relied upon in making the determination that the groups identified in the NOFA are socially disadvantaged for purposes of Section 1005.

Request for Production No. 8: All documents, including any communications, concerning the consideration of any additional groups for inclusion as a “socially disadvantaged” group for purposes of Section 1005 or 7 U.S.C. 2279.

Response: Defendants object to this request because requiring production of all documents merely “concerning” the consideration of any additional groups for inclusion as socially disadvantaged under Section 1005 or 7 U.S.C. § 2279 but not reflecting the substance of the considerations of additional groups for designation as socially disadvantaged for the purposes of Section 1005 or 7 U.S.C. § 2279 is overly burdensome and disproportionate to the needs of the case. Defendants further object to this request insofar as it seeks intra-governmental communications that are likely to be overwhelmingly protected from discovery by the attorney-client privilege or deliberative process privilege. Requiring Defendants to search intra-governmental communications and generate a privilege log would create an undue burden and would be disproportionate to the needs of the case, particularly given that Plaintiff brings a facial challenge to a federal statute. Defendants also object to this request as overly burdensome and disproportionate to the needs of the case to the extent it seeks production of all documents concerning which groups are considered socially disadvantaged “for purposes of . . . 7 U.S.C. 2279,” because that statute provides a definition of “socially disadvantaged” that applies to various, distinct USDA programs that are entirely independent from Section 1005; thus, documents concerning how specific groups were determined to be socially disadvantaged for those other, independent programs would not be relevant to Plaintiff’s challenge to Section 1005.

Without waiving the foregoing objections, Defendants will produce, on a rolling basis, requests for the Secretary to consider additional groups for inclusion in the definition of socially disadvantaged group for purposes of Section 1005 that are or have been received by Defendants as well as Defendants’ responses to those requests.

Request for Production No. 9: Documents sufficient to show the demographics (including location, crops grown, age, race, and ethnicity) of all farmers and ranchers who hold a “qualifying loan” under Section 1005.

Response: Defendants object to this request as ambiguous as to the traits included in the term “demographics” and overly burdensome as to the specific traits identified as examples. Many demographic traits have no relevance to any claim or defense in light of the nature of Plaintiff’s claims. Defendants object to this question to the extent that it seeks documents the disclosure of which would violate 5 U.S.C § 552a and 7 U.S.C. § 8791.

Defendants are available to meet and confer regarding this request.

Request for Production No. 10: Documents sufficient to show the demographics (including location, crops grown, age, race, and ethnicity) of all socially disadvantaged farmers and ranchers who hold a “qualifying loan” under Section 1005.

Response: Defendants object to this request as ambiguous as to the traits included in the term “demographics” and overly burdensome as to the specific traits identified as examples. Many demographic traits have no relevance to any claim or defense in light of the nature of Plaintiff’s claims. Defendants object to this question to the extent that it seeks information the disclosure of which would violate 5 U.S.C § 552a and 7 U.S.C. § 8791.

Defendants are available to meet and confer regarding this request.

Request for Production No. 11: All communications between USDA or FSA and any member of Congress or congressional staff, including the staff of any congressional committee,

regarding the development of Section 1005 or any similar provision (including proposed Senate Bill 278).

Response: Defendants object to this request as ambiguous as to the scope of the phrase “similar provision.” Defendants further object that the request is overly burdensome and disproportionate to the needs of the case because legislative consultations about the development of Section 1005 and other provisions are not relevant to the merits of Plaintiff’s legal challenge to the actual law as-enacted and applied. The requests are additionally unduly burdensome because the request overwhelmingly seeks information protected from discovery, especially information protected by the deliberative process privilege. *See Am. Oversight v. United States Dep’t of the Treasury*, 474 F. Supp. 3d 251, 262 (D.D.C. 2020) (applying consultation corollary to deliberative process privilege to communications with Congress). The burden of collecting, reviewing, redacting, and logging responsive documents would therefore be grossly disproportionate to the possibility of identifying some small quantity of non-privileged, responsive-but-still-irrelevant information.

Defendants are available to meet and confer regarding this request.

Dated: September 10, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

LESLEY FARBY
Assistant Branch Director
Civil Division, Federal Programs Branch

/s/ Michael F. Knapp
EMILY SUE NEWTON (VA Bar No. 80745)
Senior Trial Counsel
KYLA M. SNOW (Ohio Bar No. 96662)
MICHAEL F. KNAPP (Cal. Bar No. 314104)
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emily.s.newton@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Objections and Responses to Plaintiff's First Set of Requests for Production of Documents was served on counsel for Plaintiff via email on September 10, 2021.

/s/ Kyla M. Snow
KYLA M. SNOW

Barbara A. Siebert

From: Wen Fa
Sent: Saturday, September 11, 2021 7:51 AM
To: Incoming Lit; Sam M. Chang; Brien P. Bartels; Joshua P. Thompson; Christopher M. Kieser; Christina M. Martin; Glenn E. Roper; Daniel M. Ortner
Subject: FW: Wynn - discovery responses
Attachments: Wynn - RFA 1 Responses.pdf; Wynn - RFP 1 Responses.pdf; Wynn - Rog 1 Responses.pdf

3-1624

Sam: Can you download the first set of document production and put them in a document production folder in 3-1624? Thanks!

Wen

Wen Fa | Attorney
Pacific Legal Foundation
930 G Street | Sacramento, CA 95814
916.419.7111



From: Snow, Kyla (CIV) [mailto:Kyla.Snow@usdoj.gov]
Sent: Friday, September 10, 2021 7:13 PM
To: Wen Fa <WFa@pacificlegal.org>
Cc: Glenn E. Roper <GERoper@pacificlegal.org>; Daniel M. Ortner <DOrtner@pacificlegal.org>; Knapp, Michael F. (CIV) <Michael.F.Knapp@usdoj.gov>; Feldon, Gary D. (CIV) <Gary.D.Feldon@usdoj.gov>; Newton, Emily S. (CIV) <Emily.S.Newton@usdoj.gov>
Subject: Wynn - discovery responses

Good evening, Wen:

Attached are Defendants' responses and objections to Plaintiff's discovery requests.

Additionally, this morning, we uploaded our first production to JEFS, Wynn Prod001. These documents are being produced in response to RPF 1 in Plaintiff's first set of requests for production and to supplement our initial disclosures under Rule 26(e). Please let us know if you have any trouble accessing the documents.

Best,
Kyla

Kyla M. Snow
Trial Attorney | U.S. Department of Justice
Civil Division | Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
Kyla.Snow@usdoj.gov

(202) 514-3259

Exhibit 6

P. Mot. for Summ. J./D. Resp. to RFP Set 2

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 3:21-cv-00514-MMH-JRK

**DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendants Thomas J. Vilsack, *et al.*, by and through their undersigned counsel, hereby respond to Plaintiff's Second Set of Requests for Production of Documents:

Defendants' objections and responses are based on information known to Defendants at this time and are made without prejudice to additional objections should Defendants subsequently identify additional grounds for objection. The information submitted herewith is being provided in accordance with the Federal Rules of Civil Procedure, which generally permit the discovery of information not privileged that is relevant to the claims or defenses in this civil action and that is proportional to the reasonable needs of the case. Fed. R. Civ. P. 26(b)(1). Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of

relevance, proportionality, accessibility, materiality, or any other appropriate ground. Defendants reserve the right to amend these responses until the close of discovery in this case.

**DEFENDANTS' OBJECTIONS TO
PLAINTIFF'S INSTRUCTIONS AND DEFINITIONS**

1. Defendants object to Instruction 2 to the extent it purports to impose obligations in excess of those created by Federal Rule of Civil Procedure 34. Defendants will comply with that Rule.

2. Defendants object to Instruction 3 as imposing obligations in excess of those created by Federal Rule of Civil Procedure 26(b)(5). Defendants will comply with that Rule.

3. Defendants object to Instruction 4 to the extent it would require them to produce documents not fairly described by the requests below.

4. Defendants object to Instructions 5 and 6 to the extent they impose, individually or collectively, obligations in excess of those created by Federal Rule of Civil Procedure 26(e). Defendants will comply with that Rule.

5. Defendants object to Plaintiff's Definition No. 2 to the extent that it defines "document" to include "draft[s]," as such a definition is inherently overbroad and unduly burdensome. To the extent Plaintiff seeks either drafts or information contained within drafts, that information is highly likely to be subject to withholding as protected by one or more governmental privileges, including the deliberative process privilege. Searching for, reviewing, redacting and/or producing a privilege log for all

such records would be unduly burdensome and disproportionate to the needs of the case. Moreover, to the extent Plaintiff seeks all “nonidentical cop[ies]” of a document or electronically stored information without limitation, the definition is unduly burdensome in that it would require Defendants to search for redundant documents without regard to whether those documents contain any meaningfully distinct information. Accordingly, unless otherwise noted, Defendants will not search for or produce draft documents or all “nonidentical cop[ies].”

RESPONSES

Request for Production No. 12: Documents sufficient to identify all USDA or FSA programs that have based eligibility on the size, cost, or value of a farmer’s loan.

Response: Defendants object that RFP No. 12 requests information irrelevant to the claims or defenses in this case and is thus beyond the scope of the Federal Rules. *See* Fed. R. Civ. P. 26(b). RFP No. 12 is also overbroad and disproportionately burdensome to the extent it seeks documents sufficient to identify “all USDA or FSA programs.” Plaintiff challenges only USDA’s implementation of Section 1005 of ARPA, and Defendants rely principally on discrimination within USDA’s lending programs. Without waiving those objections, Defendants refer Plaintiff to Defendants’ response to Interrogatory No. 19.

Request for Production No. 13: Documents supporting the calculation of the number and dollar amount identified in response to Interrogatory No. 13.

Response: Defendants will produce any responsive, non-privileged material in response to this request pursuant to their ongoing document review and production.

Request for Production No. 14: Documents supporting the calculation of the number and dollar amount identified in response to Interrogatory No. 17.

Response: Defendants will produce any responsive, non-privileged material in response to this request pursuant to their ongoing document review and production.

Dated: December 3, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Objections and Responses to Plaintiff's Second Set of Interrogatories was served on counsel for Plaintiff via email on December 3, 2021.

/s/ Emily Newton
EMILY SUE NEWTON
U.S. Department of Justice

Exhibit 7

P. Mot. for Summ. J./D. Expert Report

Court: S.D. Ill. Case No. 3:21cv540-NJR

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

Expert Report of
Alicia M. Robb, Ph.D.

In the matter of
Morton v. Vilsack, 3:21-cv-00540-NJR (S.D. Ill.)

January 7, 2022

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I. Summary of Principal Conclusions

I, Alicia Robb, am an economic consultant and have previously served as an economist with several government agencies: the U.S. Small Business Administration (Office of Economic Research in the Office of Advocacy), the Federal Reserve (Board of Governors), and the U.S. Census Bureau (Center for Economic Studies). A full statement of my qualifications follows the Executive Summary of this report, which briefly describes my conclusions. I was retained by counsel for Defendants, the Secretary of Agriculture, who leads the United States Department of Agriculture (“USDA”), and the USDA Administrator of the Farm Service Agency, to evaluate the anecdotal and statistical evidence of discrimination against minority farmers in USDA’s lending programs and provide an opinion on whether there are any lingering effects of this past discrimination that disadvantage individual groups of minority farmers in the present day.

Based on my review of historical program information, numerous non-governmental and governmental reports, including Government Accountability Office (“GAO”) and Office of Inspector General (“OIG”) reports and audits, census data, loan data, and various other documents described in Appendix B, I have reached the following conclusions:

- 1) These materials and data provide substantial evidence of past discrimination against minority farmers in USDA loan programs.
- 2) These materials and data reveal large and adverse disparities between minority and non-minority farmers today.
- 3) These disparities cannot be explained solely by differences between minority and non-minority farmers or other factors untainted by discrimination.
- 4) Instead, these disparities are consistent with what one would expect given both the well-established historical discrimination in USDA’s loan programs and the nature of credit markets and the agricultural sector.

II. Executive Summary

This case involves the claim that white farmers are being discriminated against because the debt relief provided in Section 1005 of the American Rescue Plan Act (“ARPA”) is being provided to farmers of certain races and ethnicities (“minority farmers”). I understand that the Government contends that debt relief to minority farmers is necessary to remedy the lingering effects of prior discrimination against minority farmers in USDA lending programs and to ensure that the allocation of government funding does not serve to perpetuate the effects of that discrimination. I have been asked to review the evidence of discrimination against minority farmers in USDA’s lending programs, evaluate the data related to the status of minority farmers today, and opine on whether the data are consistent with the expected effects of the documented history of discrimination against minority farmers in USDA’s lending programs. Based on my review and analysis, I have concluded that they are.

USDA has historically discriminated against minority farmers and ranchers in USDA farm loan programs, as amply demonstrated by evidence in numerous reports issued by the U.S. Commission on Civil Rights, the GAO, and the USDA OIG; reports funded by USDA itself; in Congressional testimony; and in numerous lawsuits that have resulted in payments to thousands of minority farmers totaling billions of dollars.

This discrimination manifested in many ways throughout the loan cycle, including disparate treatment in: 1) outreach and education about existing loan programs and eligibility; 2) assistance with loan applications; 3) processing time for applications; 4) loan application approvals; and 5) post-disbursement loan servicing. In addition, various reports indicated that minority farmers were given additional requirements, such as needing a joint signature of an FSA representative for withdrawing funds for expenses, which were not typically imposed on white

farmers. The evidence tells a clear story: For decades, USDA discriminated against minority farmers in numerous ways in administering its loan programs.

That discrimination has been to the obvious and continuing detriment of minority farmers. The principal purpose of USDA's lending programs is to provide credit to farmers otherwise excluded from private credit markets so that those farmers can invest in, grow, and improve their farms—up to the point where they can then “graduate” from USDA programs and obtain credit in private markets. A major consequence of discrimination in USDA lending programs was that minority farmers who were already struggling were denied the very help they needed, while white farmers were given that help. Thus, minority farmers were unable to expand their farms or invest in them to grow their farm businesses, or were pushed out of farming entirely.

The results we see today are entirely consistent with this history of discrimination—which deprived generations of minority farmers of needed credit, payments, and technical assistance to run and expand their farms—and with the nature of an industry reliant on ready and frequent credit. For instance, the diminution of minority participation in farming is apparent. In 1920, minority farm owners made up 14.7% of all farm owners in the United States. By 2017, they made up just 4.3% of all farm owners, and minorities' participation in farming lagged well below what would be expected based on their shares of the general population and rural population. In addition to their underrepresentation in farming, the data show that minority farms are on average smaller and bring in lower revenues. By every metric—acreage, market value of production, government payments, net farm income, per-acre market value, and overall wealth—minority farmers generally lag behind their white counterparts.

Minority farmers may be harmed for decades after a discriminatory act. For example, minority farmers, with less wealth, are more vulnerable to negative shocks such as natural

disasters, poor growing seasons, or economic downturns. This is reflected in higher rates of delinquency and foreclosure among minority farmers today. Many government payment programs are based on crop-acreage or are targeted toward crops primarily grown on large farms, so minorities, who disproportionately have smaller farms, receive less government support. The reduced collateral and income caused by denied loans continue to hinder minority farmers seeking private credit to the present day. Moreover, historical discrimination in USDA loan programs may have caused minority farmers to become “discouraged borrowers” who may be less likely to seek future USDA assistance precisely because of past USDA discrimination and a resultant lack of trust. Data provided by USDA on loan applications and application withdrawal rates show that minority farmers were less likely to apply for USDA loans in the first place and that their loan applications were more likely to be withdrawn when they did apply.

These present-day disparities are consistent with the expected effects of the well-documented and systemic historical discrimination in the provision of USDA loans and technical assistance to minority farmers and are not solely the product of race-neutral factors untainted by discrimination. There are several additional reasons to attribute the present-day disadvantaged position of minority farmers to historical discrimination in USDA’s loan programs. For one, the disparities are large and across several relevant, and interrelated, metrics. Second, the documented discrimination occurred over a long period of time until at least 2010. Given the longevity and recency of the prior discriminatory conduct, together with the investment timeline for agriculture, it is unsurprising that there are still effects of that discrimination only a decade later. Third, Congress and USDA have taken substantial steps to eliminate and remediate historical discrimination, but even as those efforts have had some success, the disparities have persisted. Finally, it is well understood that historical discrimination discourages minority groups that have

been discriminated against from seeking credit, even when they may both need it and objectively qualify for it. That pattern is consistent with the observed data. The data also show that these disparities are not largely explainable by race-neutral factors such as geography and types of agricultural products produced or by race-neutral characteristics of farmers, such as prior experience in farming or number of annual days devoted to farming, which might influence farming outcomes.

In summary:

- 1) The materials and data I reviewed provide substantial evidence of past discrimination against minority farmers in USDA loan programs;
- 2) These materials and data reveal large and adverse disparities between minority and non-minority farmers today;
- 3) These disparities cannot be explained solely by differences between minority and non-minority farmers or other factors untainted by discrimination;
- 4) Instead, these disparities are consistent with what one would expect given both the well-established historical discrimination in USDA's loan programs and the nature of credit markets and the agricultural sector.

The debt relief provided by Section 1005 addresses the lingering effects of discrimination, including by increasing minority farmers' available capital to permit reinvestment in their farm operations, by helping to ensure that minority farmers, who have higher rates of delinquency and foreclosure, do not lose their farms during a time of national distress, and by focusing targeted relief on those groups that have been disproportionately left out of previous government funding. While this relief may not fully remedy the effects of USDA's past discrimination against minority farmers, it is an important step towards leveling the playing field for minority farmers going forward to help ensure that they do not continue to experience the cyclical effects of prior discrimination in USDA's loan programs.

III. Statement of Qualifications

I have more than 25 years of experience in economic consulting, research, and publishing in the fields of economics, entrepreneurship and finance. I have previously served as an economist with several government agencies: the U.S. Small Business Administration (Office of Economic Research in the Office of Advocacy), the Federal Reserve (Board of Governors), and the U.S. Census Bureau (Center for Economic Studies). I was previously a senior fellow with the Kauffman Foundation for twelve years, where I led a longitudinal study of U.S. startups that were tracked over the 2004-2011 period. I have worked as a consultant on a number of projects for various government agencies, including: the Securities and Exchange Commission, the Minority Business Development Agency, the Small Business Administration, and the Chicago Transit Authority, as well as groups such as the World Bank.

I have a Ph.D. in economics from the University of North Carolina at Chapel Hill. My graduate curriculum included advanced courses in statistics and econometrics. My dissertation examined race, gender, and discrimination among U.S. employer businesses and used confidential microdata from the U.S. Census Bureau. I have worked extensively with large and complex datasets including the Survey of Business Owners (Census), the Characteristics of Business Owners Survey (Census), the Longitudinal Business Database (Census), the Survey of Small Business Finances (Federal Reserve), and the Kauffman Firm Survey (Kauffman Foundation).

Much of my work has focused on entrepreneurship and entrepreneurial finance, and I have studied the particular roles of racial and gender gaps in business financing, racial and gender differences in entrepreneurial outcomes, and disparity studies on government contracting. I have participated in a number of committees and working groups, such the National Advisory Council for Minority Business Enterprise, the OECD Pilot Scoreboard on SME Financing, and the G20 Working Group on SME Financing. My CV is included as Appendix A and lists all of my

publications and work experience. I have not provided expert testimony in court cases before this; however some of my previous consulting engagements have involved disparity studies in the context of federal and state procurement and set asides for minority-owned businesses.

IV. Scope of Work

A. Questions Considered

I was retained by counsel for the Defendants, the Secretary of Agriculture and the FSA Administrator, to conduct research and analyze data regarding various USDA programs, including data regarding the operation of the Farm Loan Programs through the USDA's Farm Service Agency ("FSA") and its predecessor agency, the Farmers Home Administration ("FmHA"). FSA's Farm Loan Programs are designed to provide credit to family farmers who would not otherwise qualify for commercial loans. I was asked to evaluate the evidence of discrimination against minority farmers from the available reports, data, congressional testimony, lawsuits, and anecdotal evidence around these lending programs and opine on whether there are any lingering effects from this past discrimination that disadvantage individual groups of minority farmers.

B. Compensation

I am being compensated for my services at the rate of \$300/hour, which is my standard rate. My rate for depositions is \$400/hour. I have been supported in my work by Jonathan Zandberg, a post-doc researcher who I have worked with in the past. He recently received his Ph.D. in Finance from Boston College and is now an assistant professor at the University of Pennsylvania. His billing rate was \$150/hour. I was also supported in my work by Robert Fairlie, a professor at the University of California at Santa Cruz. His billing rate was \$350/hour.

C. Materials Relied Upon

In conducting my research and analysis, I relied upon a wide variety of data and other information sources. I performed an extensive review of government publications related to FSA's

Farm Loan Programs and other services, including audit reports from the GAO and the USDA OIG. I also reviewed farm characteristics from various years of the Census of Agriculture conducted by the USDA and demographic characteristics of the U.S. population from various years of the Decennial Census conducted by the U.S. Census Bureau. Where necessary, I requested and obtained additional data and reports from officials from the USDA. A true and correct list of all materials relied upon in arriving at my conclusions is attached as Appendix B.

V. Overview of FSA and its Loan Programs and Services

A. FSA Lending Programs

USDA has long directly issued loans and also guaranteed loans issued by commercial lenders.¹ Beginning in 1935, USDA provided financial support in the form of short-term loans and grants to shore up the struggling agricultural sector.² USDA's Farm Loan Programs are administered today by the FSA and, before 1994, by the FmHA. These programs' primary focus over the past several decades is in supporting those shut out of commercial credit markets.³

USDA lending programs account for just a small share of the total lending in the agricultural sector. USDA operates primarily as a lender of last resort, with the vast majority of its

¹ USDA is authorized to guarantee loans for various kinds of third-party lenders, including commercial, non-profit, or cooperative lenders. I use the term "commercial lender" to refer generally to any third-party lender.

² USDA, A Qualitative Study of Civil Rights Implications in Farm Loan Program Administration: Perceptions and Vulnerabilities at 9 (1998) ("FLP Qualitative Study"). Direct credit was available even earlier, through the Federal Land Banks. See Charles Dodson & Steven Koenig, *Evaluating the relative cost effectiveness of the Farm Service Agency's farm loan programs*, USDA FSA Report to Congress (August 2006) ("Dodson & Koenig 2006"), at 13, available at <https://perma.cc/HNT2-BNCV>.

³ Dodson & Koenig 2006 at 13; see Consolidated Farm and Rural Development Act, Pub. L. No. 87-128, 75 Stat. 294, 307 (1961) (codified as amended in scattered sections of the U.S. Code).

loans available only to family farms that are unable to obtain credit elsewhere at reasonable rates and terms. As a share of total farm business debt, USDA direct loans increased from under 6% in 1977 to a peak of 17% in 1987, concurrent with broad disruption in credit and agriculture markets, before declining to their current levels.⁴ Guaranteed loans, which have higher borrowing limits, have consistently grown as a proportion of total USDA-subsidized lending since the mid-1980s.⁵ At the end of fiscal year 2019, FSA had a portfolio of \$12 billion in direct loans to 87,000 borrowers and loan guarantees of \$16 billion for 39,000 borrowers.⁶ FSA direct loans were about 3% of the market for farm debt and FSA loan guarantees accounted for about another 5% of the market.⁷

There are two types of loans based on the entity that funds the loan—direct and guaranteed—and also several categories of loans based on the purpose for which the loan is made.⁸ The two primary categories of loans are “farm ownership” loans, made to allow a farmer to purchase or improve farm land or buildings, and “operating” loans, made for continuing operations, including equipment and supply purchases, on an existing farm.⁹ Many borrowers take

⁴ Dodson & Koenig 2006 at 14.

⁵ Dodson & Koenig 2006 at 15 *fig.* III-2; *id.* at 17.

⁶ Cong. Rsch. Serv. (“CRS”), *Agricultural Credit: Institutions and Issues*, R-46768, at 1 (April 21, 2021).

⁷ *Id.*

⁸ In some materials I reviewed, these loan types are broken down further by the specific features of the loan, which I list here for clarity even before describing them: Regular Farm Ownership Loans; Farm Ownership Downpayment Loans; 7-Year Term Operating Loans; Annual (1-year) Operating Loans; Microloan Operating Loans; Youth Operating Loans; Farm Storage Facility Loans; Conservation Loans; and Soil and Water Loans.

⁹ Dodson & Koenig 2006 at 18-19 & *fig.* III.-6; *see generally id.* App. B.

out multiple loans over the course of time. For example, a farmer might take out an ownership loan to purchase land, later take out one or more operating loans to buy equipment or supplies, and then take out an additional ownership loan to expand the farm. Additional loan categories include emergency loans for covering losses incurred during natural disasters, conservation loans, and farm storage facility loans.¹⁰

1. Loan application process

Both direct and guaranteed loans are reserved for farmers who cannot otherwise obtain credit in commercial markets on reasonable terms, and thus serve as “a safety net to family farmers and ranchers who otherwise would be unable to contribute to the farm sector.”¹¹ These two different loan types are processed and administered differently. For guaranteed loans, USDA guarantees up to 95% of a commercial lender’s losses in the event of default, but the loan is issued and serviced by the commercial lender.¹² The commercial lender processes the loan application, and USDA itself has no direct transactional relationship with the borrower but instead works with the commercial lender to process the loan guarantee.

¹⁰ See USCCR, Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations, vol. III (June 12, 2003) (“USCCR 2003”) at 35, <https://perma.cc/MV89-VBMS>. Some loans, which represent a very small share of total USDA loan programs, are available to farmers, without the same eligibility restrictions generally imposed for operating and ownership loans. This includes emergency loans, conservation loans, and farm storage facility loans. See CONACT § 304 (conservation loans); 7 C.F.R. pt. 1436 (farm storage facility loans). Emergency loans have their own distinct limitations. See 7 U.S.C. § 1961. Farm storage facility loans are a program of the Commodity Credit Corporation, not Farm Loan Programs, but the program is also administered by the FSA.

¹¹ USCCR 2003 at 35; see also, e.g., Dodson & Koenig 2006 at 20; USCCR, *The Decline of Black Farming in America*, at 85 (1982) (“1982 Rep.”) at 76, <https://perma.cc/HNT2-BNCV> (“lender of last resort”). Recall too that farm storage facility loans and soil and land/conservation loans are not so limited.

¹² Dodson & Koenig 2006 at 20.

Direct loans are generally available only to those who could not qualify even for a guaranteed loan. Direct loans are issued and serviced by USDA, and USDA bears the entire risk of default.¹³ Unlike with guaranteed loans, for direct loans, the borrower must file the application directly with USDA.¹⁴ USDA first determines whether the applicant is *eligible* for the loan; second, USDA decides whether to *approve* the loan.¹⁵ Both loan eligibility and loan approval decisions are highly decentralized; the key decisions are made at one of hundreds of county-level offices.¹⁶ Although there have been numerous changes in county office structure and in loan processing over the decades of USDA Farm Loan Programs, it has consistently been the case that “decisions regarding direct loans are made primarily by local staff.”¹⁷

Eligibility criteria are set by statute and regulation, which have varied over the years.¹⁸ Generally, to be eligible for either a direct or guaranteed loan, the applicant must (1) be a citizen or qualified noncitizen¹⁹; (2) have “training or farming experience” that is “sufficient to assure reasonable prospects of success”; (3) operate a “family farm”; and (4) be “unable to obtain

¹³ *See id.* at 19.

¹⁴ *Id.* at 19-20.

¹⁵ FLP Qualitative Study at 17.

¹⁶ 1982 Rep. at 71 (identifying, in 1982, “1,800 county offices located in 50 states”); Dodson & Koenig 2006 at 19 (identifying, in 2005, “2,351 county FSA offices” but observing that “less than half” of those offices had a farm credit specialist who could “provide full farm lending and servicing functions”).

¹⁷ Dodson & Koenig 2006 at 19; *see also* 1982 Rep. at 71-72 (“it is at the county level that most individual loans are approved or disapproved”). The most significant change occurred in 1995, when Congress shifted most responsibilities related to administering FSA Farm Loan Programs, including eligibility and approval determinations, from elected county committees to USDA employees in the local USDA county offices.

¹⁸ *See* 7 U.S.C. § 1922(a)(1) (ownership loans); *id.* § 1941(a)(1) (operating loans).

¹⁹ *See, e.g.*, 7 U.S.C. § 1996.

sufficient credit elsewhere.”²⁰ Although these terms have been developed in regulatory language and internal guidance, they still leave substantial discretion to the local county-level official assessing the loan.²¹

Once deemed eligible, the decision whether to approve the loan again requires judgments from the relevant county-level officials.²² An applicant will be approved for a loan only if the “farm operating plan reflects a feasible plan.”²³ Whether a business plan is feasible is determined by the local officials, who assess the proposed plan in light of local conditions and their own experience and judgment; these officials are also available to provide guidance to the applicant and to assist them in improving their plan to obtain the loan.²⁴ In addition, county-level officials are involved in decisions whether the applicant has adequate security for the requested loan.²⁵

2. *Loan servicing options*

When a borrower under an FSA loan program is delinquent or distressed, he or she may, if eligible, receive relief in any of many forms from FSA (or, in the case of a guaranteed loan, from

²⁰ I draw the quoted terms from the current statutory language for farm ownership and farm operating loans. I understand these core terms have been modified slightly over the years without meaningful change. *Compare, e.g.* CONACT § 302 (farm ownership loans). In addition to minor changes in language, Congress also added restrictions related to an applicant’s earlier loan history, including prior USDA loans. *See, e.g.*, 7 U.S.C. § 1925 (total indebtedness cap); *see also* 7 C.F.R. § 764.101 (listing additional eligibility requirements).

²¹ *See, e.g.*, Report of William T. Bielby, *Keepseagle v. Vilsack*, 1:99-cv-3119-EGS, ECF No. 551-51 (Feb 20, 2009) (“Bielby 2009”) ¶¶ 14-17; *see also* FLP Qualitative Study at 21-22.

²² Statutory and regulatory deadlines for action, coupled with onerous paperwork requirements, created another obstacle for applicants to overcome. *See* FLP Qualitative Study at 18.

²³ 7 C.F.R. § 764.401(a)(1)(i); *see also id.* § 762.125(a)(2) (requirements for guaranteed loans).

²⁴ *See* Bielby 2009 ¶¶ 18-19.

²⁵ *See* Report of Lynn A. Hayes, *Keepseagle v. Vilsack*, 1:99-cv-3119-EGS, ECF No. 551-25 (Feb 20, 2009) (“Hayes 2009”) at 18-24.

the commercial lender working with FSA). This relief is referred to generally as “loan servicing.” Loan servicing options have changed significantly over the years,²⁶ and are now codified in statute or regulation.²⁷ At all times, however, the county-level officials have remained the primary officials responsible for determining eligibility for loan servicing.²⁸

The goal of loan servicing is to preserve the lender’s investment to the maximum extent possible.²⁹ In many cases, this can mean restructuring loan payments to preserve the farm as a going concern; in other cases, where the proposed plan even with restructuring is deemed not feasible, foreclosure is an option.³⁰ The options for loan servicing are many, and the selection can have wide ranging consequences.³¹ For example:

- Rescheduling: for operating loans, lengthening the period of repayment, at the lower of current or original interest rates. Restrictions on this option varied with the specific loan type and changed over the past few decades.
- Re-amortization: for ownership loans, lengthening the period of repayment, at the lower of current or original interest rates. As with rescheduling, restrictions on this option varied with loan type and changed over the past few decades.
- Consolidation: the combination of multiple of related loan types, often used together with another servicing option.
- Limited Resource Program: a special reduced interest rate available to low-income farmers; could be used together with other loan servicing options to obtain an even lower interest rate.

²⁶ See generally FLP Qualitative Study at 10 (describing some changes).

²⁷ See, e.g., 7 C.F.R. §§ 766.105 *et seq.*; *id.* § 762.143 (servicing distressed guaranteed loan accounts); see FLP Qualitative Study at 22 (noting comparatively recent limits on loan servicing discretion). Congress provided certain procedural rights, including requiring FSA to provide notice of all servicing options, in response to litigation in the 1980s.

²⁸ Bielby 2009 ¶¶ 20-21; see FSA Qualitative Study at 18 (explaining that servicing decisions in particular were ripe for subjective judgments)

²⁹ See 7 C.F.R. § 766.105(a) (USDA will “consider loan servicing options and combinations of options to maximize loan repayment and minimize losses”); see also, e.g., 7 U.S.C. § 2001(a).

³⁰ See *id.*; see also Bielby 2009 ¶ 11.

³¹ For a more detailed description of these servicing options, see Hayes 2009.

- Deferral: a delay in making a payment, with the loan's term potentially correspondingly extended. The number of deferrals a borrower could use changed over time.
- Debt Write-Down: reduction in principal and interests amounts. To qualify for this form of debt servicing—in addition to the ordinary requirements to obtain debt servicing—the borrower had to demonstrate a feasible business plan if the servicing options were applied. In addition, this option was only available if the net projected recovery exceeded the proceeds of foreclosure and liquidation.
- Foreclosure and liquidation: the lender forces a sale of the collateral for the creditors' benefit.

To qualify for any form of debt servicing, the borrower had to show an inability to pay beyond the borrower's control and that the borrower acted in good faith to make his payments. In assessing eligibility for servicing options, therefore, county officials were necessarily called to exercise subjective judgment on topics like plan feasibility and the "good faith" of the borrower.³² As has been well-documented, and as discussed more below, this created opportunities for both intentional and unintentional discrimination against minority farmers. A lack of diversity in FSA staff for many decades, and especially on county committees, likely exacerbated these problems.³³ In response to indications that debt servicing options were being arbitrarily offered (or arbitrarily not offered), Congress specifically mandated that USDA provide information concerning available options and eligibility requirements to delinquent borrowers.³⁴

³² See 7 U.S.C. § 2001(b) (setting forth eligibility requirements).

³³ See Civil Rights at the USDA - A Report by the Civil Rights Action Team (CRAT) (1997) (CRAT Rep.) at 18, 20, <https://perma.cc/5DNF-PFJY> (1997 report indicating that, of the 101 county offices covering counties with the greatest concentration of minority farmers, fully one quarter had *no* minority employees, and scarcely a third of county committees in those counties had even one minority member); see also Jackson Lewis, LLC, "Civil Rights Assessment" Final Report (Mar. 31, 2011) ("JL Rep."), at 107, 163, <https://perma.cc/8X6Q-GZ5V>.

³⁴ See 7 U.S.C. § 1981d (enacted 1988).

B. Other Related USDA Programs

In addition to the broader loan programs, USDA and FSA have implemented several related and adjacent programs to assist farmers. The most important programs, for purposes of my analysis, relate to government payments. USDA issues payments to farmers throughout the country through numerous programs. Two recent programs are especially relevant: (1) government payments through the Market Facilitation Program (“MFP”), and (2) government payments through the Coronavirus Food Assistance Program (“CFAP”). Under the MFP, USDA was authorized in 2018 and 2019 to distribute up to \$25.1 billion to farmers who had grown specified crops that were affected by foreign tariffs.³⁵ Through CFAP, USDA provided up to \$16 billion in direct support payments to farmers affected by market disruptions in 2020 from the coronavirus pandemic.³⁶

I outline just a few of the other USDA programs below:

- **Outreach programs:** In 1990, Congress directed (in the “2501 program”) that the Secretary support outreach programs that “encourage and assist” minority farmers through “education and training” and through “equitable participation in all agricultural programs.”³⁷ The 2501 program authorizes grants to community organizations, schools, and other entities to improve participation for minority farmers (and veteran farmers) in USDA programs.³⁸
- **Education programs:** The federal government provides substantial financial support to agriculture-focused schools.³⁹

³⁵ See USDA, Market Facilitation Program, <https://perma.cc/947S-7JCX> (last visited on Oct. 28, 2021).

³⁶ See *USDA Announces [CFAP]*, USDA (Apr. 17, 2020), <https://perma.cc/B7N9-PTRE>.

³⁷ 7 U.S.C. § 2279(b)(2).

³⁸ *Id.* § 2279(c).

³⁹ See, e.g., *id.* § 322.

- **Technical assistance:** In addition to formal training at agriculturally focused schools, USDA operates field training programs—often referred to as “extension” programs⁴⁰—to bring new techniques and advice to working farmers.⁴¹

VI. There Is Substantial Evidence of Historical Discrimination Within USDA’s Loan Programs

Congress’s and the USDA’s recognition of certain farmers as “socially disadvantaged” reflects the acknowledgment that government policies have served to the advantage of white (non-Hispanic, non-Latino) farmers.⁴² The five racial and ethnic groups included in the category of “socially disadvantaged farmers and ranchers” are Black/African American, Asian, Native Hawaiian/Pacific Islander, American Indian/Alaskan Native (at times herein, “AI/AN”), and Hispanic/Latino farmers and ranchers. These groups are not mutually exclusive, as Hispanics can be of any race, including white, and an individual may identify as multiple different races.

I begin my analysis with a review of the numerous reports, audits, lawsuits, and other documents, the list of which may be found in Appendix B,⁴³ that provided evidence of past discrimination in USDA loan programs against each of the minority farmer groups. Where possible in my review, I highlight specific evidence and factors that have affected each socially disadvantaged group separately, although they have all suffered discrimination in USDA lending

⁴⁰ See *id.* § 3103(8) (defining “extension” to mean “the informal education programs conducted in the States in cooperation with the Department of Agriculture”).

⁴¹ See, e.g., *id.* § 341.

⁴² Many materials use the term “socially disadvantaged farmers or ranchers,” which is sometimes abbreviated “SDFR,” and is sometimes abbreviated as “SDA farmer.” Other materials use the abbreviation “SDG” to refer to “socially disadvantaged groups.”

⁴³ Much of this was summarized in the congressional record as part of the deliberation of Section 1005 and the larger ARPA bill.

programs and continue to suffer the negative effects of that discrimination today.⁴⁴ The evidence shows that many of these policies have advantaged white farmers and perpetuated ongoing disparities between white and minority farmers.⁴⁵

This discrimination has manifested itself in many ways, including: disparate treatment in 1) outreach and education about existing loan programs and eligibility; 2) assistance with loan applications; 3) processing time for applications; 4) loan application approvals; and 5) loan servicing. In addition, various reports indicate that minority farmers were given additional requirements, such as needing a joint signature of an FSA representative for withdrawing funds for expenses, which were not imposed on their white counterparts. But the story the evidence tells is clear: For decades, USDA discriminated against minority farmers in numerous ways in administering its loan programs, to the obvious and immediate detriment of those farmers. Although both USDA and Congress were aware of these ongoing problems and made major efforts to address them, it took many successive changes over many years to change the structure and culture of USDA to eliminate discriminatory practices.

These reports also document the follow-on effects of this discrimination. The principal purpose of the Farm Loan Programs is to provide credit to farmers otherwise excluded from private credit markets so that those farmers can invest in, grow, and improve their farms—up to the point where they can then “graduate” from the Farm Loan Programs and obtain credit in private markets. Thus, a major consequence of discrimination in lending programs by FmHA and FSA was that minority farmers who were already struggling to stay afloat were denied the very help they needed

⁴⁴ See CRS, *Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case* at 2 (Feb. 22, 2013), <https://perma.cc/WS9F-CADR> (“Allegations of unlawful discrimination against minority farmers in the management of USDA programs have been long-standing and well-documented at USDA.”).

⁴⁵ See USCCR 2003 (explaining that the FSA’s relationship with farmers goes back to the 1930s).

to stop struggling, while white farmers were given that help. Minority farmers were thus caught in a feedback loop in which their lack of assets or creditworthiness drove them to FSA, which then denied them the relief they needed to increase their assets or improve their creditworthiness. The results of this feedback loop are unmistakable in the data: in 1920, minority farm owners made up 14.7% of all farm owners in the United States. By 1959, that number had dropped to 7.8%. By 1987, it had dropped further to just 2.1%.⁴⁶ It is only since 1997 that there are apparently any meaningful increases in the number and percentage of minority farm owners, although as of 2017, they still made up just 4.3% of all farm owners.

1965 USCCR Report

In 1965, the U.S. Commission on Civil Rights (“USCCR” or “Commission”)⁴⁷ issued a seminal report in which it found discrimination at USDA in program delivery and employment. With respect to the FmHA, it found “a different kind of service to the two races,” Black and white.⁴⁸ Based on “the untenable theory that Negro farmers should be served only by Negro staff,” USDA programs “failed to reach the Negro rural residents most in need of them because of inadequate numbers of Negro staff.”⁴⁹ Thus, white farmers, “[a]ided by Federal loans and technical advice, . . . increasingly diversified their crops and applied modern farming practices,” while Black

⁴⁶ See *infra* Table 6; see also Hr’g on Mgmt. of Civil Rights at the USDA before the House Subcomm. on Gov’t Mgmt., Org., & Procurement, Comm. on Oversight and Gov’t Reform, 110th Cong. (2008), (“2008 Senate Ag. Hr’g”) at 23.

⁴⁷ The U.S. Commission on Civil Rights is a bipartisan agency established by Congress in 1957 to, among other things, investigate and report to Congress and the President on civil rights issues. See USCCR, *Equal Opportunity in Farm Programs, An Appraisal of Services Rendered by Agencies of the USDA* (1965) (“1965 Rep.”) at vii, <https://perma.cc/34HP-5V9P>.

⁴⁸ *Id.* at 100.

⁴⁹ *Id.* at 101.

farmers were increasingly displaced.⁵⁰ Moreover, even when FmHA programs did reach Black farmers, the level of assistance provided to them was consistently inferior; for instance Black farmers would receive smaller loans and thus have fewer opportunities for capital investments.⁵¹ At the same time, the Commission emphasized, USDA was “helping thousands of rural white families to achieve substantial gains in income, housing, and education,” thus increasing the gap between white and Black rural residents.⁵² Indeed, the Commission concluded that “[t]here is unmistakable evidence that racial discrimination has served to accelerate the displacement and impoverishment of the Negro farmer.”

There is also clear statistical evidence of lending discrimination in this report. The Commission requested detailed data on loans to Black and white farmers over the period of July 1963 through May 1964 in 13 counties selected from a list of 71 counties with heavy concentration of Blacks in agriculture. They were able to analyze loans to Black and white farmers from the same economic classes as defined by net worth and their findings provide strong evidence of discrimination against Black farmers.

For instance, Black farmers were more likely to be in the lower net worth classes compared with white farmers, as Table 1 shows.

⁵⁰ *Id.* at 8-9.

⁵¹ *Id.* at 99-100.

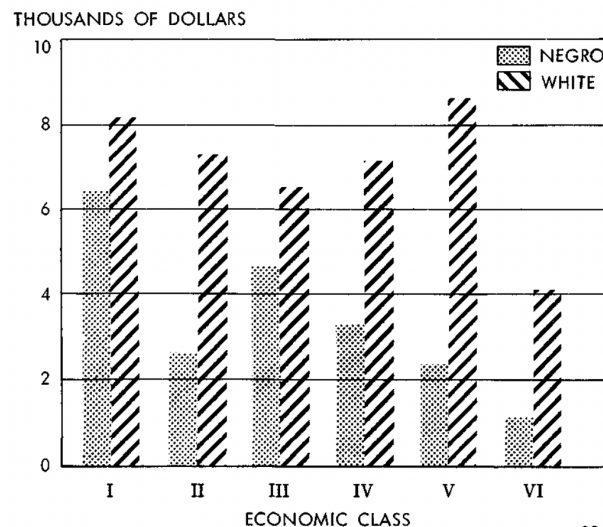
⁵² *Id.* at 100.

Table 1

*Number of borrowers by race and economic class (net worth—
figures rounded)*

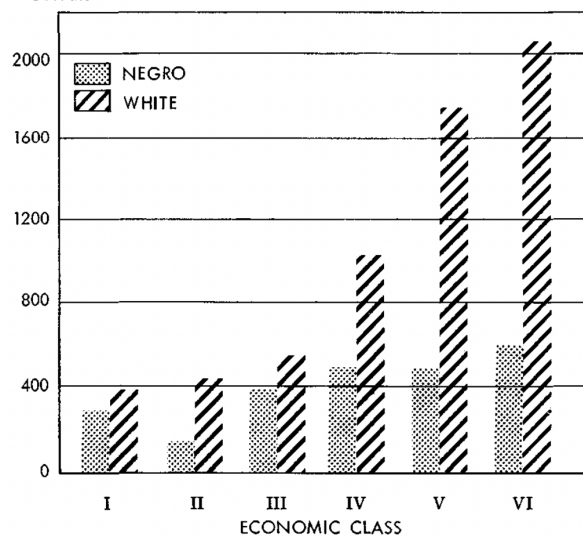
	Negro	White
Class I (over \$20,000)	10	90
Class II (\$15–20,000)	20	80
Class III (\$10–15,000)	50	110
Class IV (\$6–10,000)	130	110
Class V (\$3–6,000)	270	90
Class VI (less than \$3,000)	680	80
	—	—
Total	1,160	560

Yet the Commission found that, in each economic class, the average loan size for whites was larger than it was for Blacks. Moreover, the average loan size for poorer white farmers in classes III through V actually *increased* as net worth *decreased*. On the other hand, Black farmers were loaned lower amounts of funding as their level of net worth decreased. In fact, the disparity between whites and Blacks in the average size of loan *increased* as the borrowers got poorer, such that the average size of loans for whites was *four times the size* for Blacks in the poorest net worth categories. (See Figure 1 below.)

**FIGURE 1. AVERAGE LOAN
SIZE BY RACE AND ECONOMIC CLASS**

The next figure shows the number of dollars loaned per \$1,000 of net worth. For white borrowers, the loan-to-net-worth ratio increased from the richest net worth class to the poorest, with the white borrowers in the poorest class receiving loans proportionately five times as large as those in the richest class. For Blacks, there were only slight increases, which meant poor white borrowers received both absolutely and proportionately higher loans than poor Black borrowers.⁵³ So, for example, white farmers in class VI, which had net worth of \$3,000 or less, were able to borrow upwards of \$6,000, while a Black farmer with \$3,000 in net worth was only able to borrow \$1,800. This is strong evidence of discriminatory lending practices toward Black farmers that not only contributed to the decline in Black farms over time—as farmers were unable to obtain the necessary capital to survive—but also hampered their efforts to buy prime land, expand their farms, diversify their crops, cultivate crops with higher returns, or invest in needed machinery to improve productivity.

**FIGURE 2. AVERAGE LOAN SIZE PER \$1000
OF NET WORTH BY RACE AND ECONOMIC CLASS**
DOLLARS



⁵³ *Id.* at 71.

1982 USCCR Report

A subsequent USCCR report in 1982 also found that USDA's lending practices were actively contributing to the decline in minority farm ownership. The report detailed numerous complaints filed against the FmHA, alleging that Black farmers "[we]re subjected to disrespect, embarrassment, and humiliation by FmHA officials" and a range of discriminatory actions.⁵⁴ One such complaint alleged that FmHA discriminated against Black farmers in their loan applications by:

- Denying them the opportunity to submit loan applications;
- Awarding them loans in lower amounts than requested;
- Failing to give them the full loan amount actually awarded;
- Accelerating loan repayment schedules without explanation;
- Applying loan payments to the wrong accounts, so as to pay off low-interest rather than high-interest loans; and
- Contacting creditors and other businesses to inform them that no loans will be made to these black farmers, thereby preventing them from obtaining other credit, goods, and services needed to continue their farm operations.⁵⁵

The complaint further alleged "a pattern and practice of Black farmers being foreclosed, liquidated, or being forced to sell their property by the county supervisor...."⁵⁶ A subsequent investigation by USDA's Office of Equal Opportunity confirmed that there were various equal opportunity violations of the type alleged above. And these types of complaints were common: at the time, FmHA "le[d] all USDA agencies in civil rights complaints."⁵⁷ Notably, however, the civil rights

⁵⁴ 1982 Rep.

⁵⁵ *Id.*

⁵⁶ *Id.* at 85-86.

⁵⁷ *Id.* at 166.

complaints process was largely “ineffective” and “untimely,” which further contributed to minority farmers’ lost revenues “and ultimately their farms.”⁵⁸

The report further documents that, despite Black farmers being disproportionately in need of assistance, they “received only a very small proportion, 2.5 percent, of the total dollar amount loaned through FmHA’s farm credit programs in 1981.”⁵⁹ In fact, the Commission reported that FmHA was actually manipulating data to prevent minority farmers from obtaining FmHA loans: FmHA had “twice ... changed the data base ... to determine the rate at which minorities [we]re receiving loans,” thereby “narrow[ing] the data base of minority farmers considered eligible for FmHA services.”⁶⁰

Even loans specifically intended for minority and low income farmers were not reaching minority farmers. The FmHA had set aside 25% of farm ownership and operating loan program funds for “limited resource loans,” which were to be provided under special terms and at reduced interest rates to farmers who would have difficulty repaying their loans at regular interest rates.⁶¹ But while it would have been “expected that ... black borrowers would receive limited resource loans at a disproportionately higher rate than white borrowers,” “[t]he majority of blacks receiving farm operating loans did so at regular interest rates.”⁶² “In fact, in six States white borrowers were more likely than blacks to have received these low interest, limited resource loans.”⁶³ The

⁵⁸ *Id.* at 173.

⁵⁹ *Id.* at 133.

⁶⁰ *Id.* at 96.

⁶¹ *Id.* at 125.

⁶² *Id.*

⁶³ *Id.* at 134.

provision of “low interest loans to well-established, predominantly white farmers, further compound[ed] the disadvantageous and noncompetitive position of black and small farmers.”⁶⁴

The Commission emphasized that these disparities were leading to a rapid loss of Black-owned farmland, expressing a sense of urgency over the possibility of the “extinction of black farms in this country” absent “immediate measures” to counter bias and historical discrimination.⁶⁵ There was strong evidence supporting the Commission’s concern over the loss of Black farms. Indeed, the Commission found that between 1970 and 1980, Black-operated farms had declined “57 percent—a rate of loss 2 1/2 times that for white-operated farms”—and “almost 94 percent of the farms operated by blacks ha[d] been lost since 1920.”⁶⁶ Based on the interviews it conducted and the findings and analysis it reviewed, the Commission concluded that the FmHA was “contribut[ing] to the problem rather than to its amelioration.”⁶⁷

Litigation: 1997-2013

A series of lawsuits brought by minority farmers provides further evidence of discrimination in USDA’s Farm Loan Programs that has contributed to land loss over time and disparities in the present day. Beginning in 1997, African American, Native American and Hispanic farmers initiated actions, some of which were certified as class actions, alleging that USDA had systematically discriminated against them on the basis of race and ethnicity in the

⁶⁴ *Id.* at 183.

⁶⁵ *Id.* at 69.

⁶⁶ *Id.* at 176.

⁶⁷ *Id.* at 179.

administration of farm loans and other benefits.⁶⁸ In general, the minority borrowers in each of these actions alleged that (1) USDA willfully discriminated against them on the basis of their race when they sought to apply for farm program loans, loan servicing, and farm program benefits; and (2) when they filed administrative discrimination complaints with USDA to seek redress for that discrimination, USDA failed to adequately respond, instead delaying review, conducting meaningless investigations, or failing to take any investigative action whatsoever to resolve the complaints.⁶⁹ Specific allegations in the various court decisions and pleadings highlight the extent to which discrimination pervaded FmHA's administration of its loan programs.

In *Pigford I* and *Pigford II*, African American farmers recounted:

- Being denied loans even though they complied with the application requirements, rendering them unable to buy supplies, and causing them to lose farmland⁷⁰;
- Receiving conflicting information concerning the status of loan applications, or having to reapply due to FmHA denying that it had received submitted applications, which caused delayed loan approval and receipt of funds when planting season was over and the loan was “virtually useless”⁷¹;
- Having loans placed in “supervised” bank accounts, which required obtaining the signature of a county supervisor before funds could be withdrawn, even though this requirement was not routinely imposed on white farmers⁷²;

⁶⁸ *Pigford v. Glickman* (“*Pigford I*”), Civ. No. 97-1978 (D.D.C.); *Keepseagle v. Glickman*, Civ. No. 99-03119 (D.D.C.); *Garcia v. Glickman*, Civ. No. 00-2445 (D.D.C.); and *In re Black Farmers Discrimination Litigation* (“*Pigford II*”), Misc. No. 08-mc-0511 (D.D.C.), respectively. An action brought by female farmers, which was later consolidated with *Garcia*, made similar allegations, but my review does not cover that lawsuit. See *Love v. Glickman*, Civ. No. 00-2502 (D.D.C.).

⁶⁹ *Pigford v. Glickman*, 185 F.R.D. 82, 86 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), and *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008); *Pigford v. Vilsack*, No. 91-cv-1978, Monitor's Final Report 2, ECF No. 1812.

⁷⁰ See *Pigford*, 185 F.R.D. at 87.

⁷¹ *Id.*

⁷² *Id.*

- Being promised a loan after developing a farm plan with FmHA, and investing in equipment in reliance on that promise, only to have the loan application rejected for no apparent reason.⁷³

In *Keepseagle*, Native American farmers alleged that they routinely:

- Were not advised of the availability of USDA loans and loan servicing options;
- Were not provided loan applications upon request;
- Were not provided adequate technical assistance to enable them to complete the loan and loan servicing application process⁷⁴;
- Experienced “hostility by white County Committee members,” including by committee members using racial slurs and other derogatory comments, when attempting to obtain FmHA assistance.⁷⁵

And in *Garcia*, Hispanic farmers similarly complained of:

- Repeated refusals by FmHA to offer assistance;
- Arbitrary rejection of loan applications, even after working with FmHA to develop a farm plan;
- Delayed resolution or arbitrary denial of loan servicing requests, leading to lost profit or loss of farmland.⁷⁶

Moreover, in all of the lawsuits, farmers told of a “functionally nonexistent” civil rights complaints process for redressing these harms,⁷⁷ in which some farmers’ complaints were simply thrown “in the trash,”⁷⁸ and they recounted how FmHA’s mistreatment had resulted in lost profits and farmland. Indeed, as the court found in the action brought by African American farmers,

⁷³ *Id.*

⁷⁴ *Keepseagle v. Veneman*, No. 1:99-cv-3119, Seventh Am. Compl. ¶ 52, ECF No. 460.

⁷⁵ *Keepseagle* Class Cert. Br. at 18, ECF No. 551-1.

⁷⁶ *Garcia v. Veneman*, No. 00-cv-2445, Third Am. Compl. ¶¶ 4, 18-24, ECF No. 144.

⁷⁷ *Id.* ¶¶ 7, 18-24; *Pigford*, 185 F.R.D. at 88; *Keepseagle v. Veneman*, No. Civ. A. 9903119EGS1712, 2001 WL 34676944, at *1 (D.D.C. Dec. 12, 2001).

⁷⁸ *Pigford v. Glickman*, 182 F.R.D. 341, 343-44 (D.D.C. 1998).

discrimination by FSA “deprived countless farmers of desperately needed credit and payments under various aid programs, with the result that many farmers suffered severe financial losses and even, in many cases, lost title to their land.”⁷⁹

As a result, USDA established a two-track administrative claims process for minority farmers to recover relief for the discrimination alleged in the complaints. The *Pigford I* settlement agreement set the basic framework that the rest of the cases adopted in large part. Under that framework, claimants who supported their discrimination allegations by “substantial evidence”⁸⁰ under “Track A” received a cash award of \$50,000, debt relief for qualifying USDA farm program loans, and tax relief. Claimants who supported their allegations by a “preponderance of the evidence”⁸¹—a higher evidentiary bar—under “Track B” received actual damages and debt relief on qualifying USDA farm program loans. By the end of 2012, when the claims process was closed in *Pigford I* and *Pigford II*, a total of 34,059 African American claimants were awarded roughly \$2.16 billion in combined cash payments, debt relief, and tax payments to the IRS.⁸² As of the close of the *Keepseagle* claims process in August 2013, a total of 3,601 claimants were awarded

⁷⁹ *In re Black Farmers Discrimination Litig.* (“*Pigford II*”), 856 F. Supp. 2d 1, 8 (D.D.C. 2011), *as amended* (Nov. 10, 2011).

⁸⁰ “Substantial evidence” was defined as “such relevant evidence as appears in the record before the Adjudicator that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence that fairly detracts from that conclusion. Monitor’s Final Report 27.

⁸¹ A “preponderance of the evidence” was defined as “such relevant evidence as is necessary to prove that something is more likely true than not.” *Id.*

⁸² *Id.*

more than \$227.5 million.⁸³ The deadline for filing *Garcia* claims was May 1, 2013, and more than 700 claimants were awarded more than \$45 million.⁸⁴

Although USDA has paid approximately \$2.25 billion to claimants, the settlements and related claims processes did not provide complete relief. It has been reported that State taxes eroded recoveries, and the debt relief provided under the claims processes left some farmers with tax burdens they could not bear.⁸⁵ It is also worth noting that debt relief was an extremely minor portion of each of the claims processes. For instance, in *Pigford I*, fewer than 450 farmers received debt relief out of the 22,721 claimants found eligible to participate in the claims process.⁸⁶ And in *Pigford II*, fewer than 15 farmers received debt relief out of approximately 39,536 claimants found eligible to participate in the claims process.⁸⁷ Likewise, a very small percentage of Native American and Hispanic farmers eligible to participate in their respective claims processes received debt relief.

Additional investigations and reports between 1997 and 2011 documented the ongoing issues of discrimination in the provision of USDA loans and technical assistance during this period. Seminal among them were two reports commissioned by USDA—a 1997 report by the Civil Rights Actions Team (“CRAT”) and a 2011 report by the law firm Jackson Lewis—and a 1997 audit performed by USDA’s OIG.

⁸³ *Keepseagle v. Vilsack*, No. 99-cv-3119, Status Report II.A., ECF No. 646.

⁸⁴ USDA provided an excel sheet with the payments from *Garcia* broken out by Hispanics and women.

⁸⁵ See 167 Cong. Rec. S1264 (Mar. 5, 2021) (Stabenow).

⁸⁶ *Pigford I*, Monitor’s Final Rep. at 1, 61 Table 12.

⁸⁷ *Pigford II*, Status Rep. of Class Counsel Regarding Projected Timeline for Completion of Claims Process at 3, ECF No. 367 (July 8, 2013).

1997 CRAT Report

The CRAT was a group of USDA leaders commissioned by the Secretary of Agriculture in response to the civil rights complaints against the Department to investigate issues related to discrimination at USDA and develop a report with recommended solutions.⁸⁸ The group hosted 12 “listening sessions” in early 1997 in 11 locations across the country to hear from USDA customers, in particular minority farmers interacting with FSA.⁸⁹ At the listening sessions, Black, Hispanic, Asian American, and American Indian farmers all “told stories of years of bias, hostility, greed, ruthlessness, rudeness, and indifference not only by USDA employees, but also by the local county committees that provide access to USDA’s [FSA] programs.”⁹⁰ According to one farmer, if county officials “don’t like you, they won’t give you the loan”⁹¹; as another put it, FSA would treat minority farmers “worse than I would treat a dog.”⁹²

The CRAT reported that, while details varied, the “general outlines” of minority farmers’ stories “remained constant.” Those stories hit on the following types of mistreatment:

- *Delayed approval of loan applications, leading to lost profits:* Minority farmers of limited resources recounted trying “to apply for a farm operating loan through the FSA county office well in advance of planting season,” but having the review process delayed by FSA offices either claiming that no applications were available; providing no assistance in completing the applications; or stretching out application revisions over a period of months. The application would finally be approved after planting season had already passed, which would either leave the farmer unable to plant at all

⁸⁸ CRAT Rep. at 3.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 6.

⁹² *Id.* at 4.

or limit the farmer's ability to procure "supplies necessary for the best yields," thereby reducing the farmer's profit.⁹³

- *Arbitrary reduction or denial of loans, leading to lost land*: Many farmers also had their FSA loan "arbitrarily reduced" or never come at all—"leaving the farmer without enough money to repay suppliers and any mortgage or equipment debts." Then, "because of the farmer's debt load," additional "operating and disaster loans [might] be denied," which would make it "impossible for the farmer to earn any money from the farm." This would result in the farmer being forced to sell the land or face foreclosure. In other instances, an FSA official might offer a lease and buy-back option but appraise the land at an inflated price, only to auction it off for half that price later—sometimes to friends or relatives of the FSA official.⁹⁴
- *No recourse through civil rights complaints process*: Farmers also complained of an ineffective process for bringing civil rights complaints based on this inequitable treatment. Some observed that those who brought complaints were foreclosed on more quickly. Others reported that their complaints simply went unanswered. "In Tulsa, OK, an advocate representing black and American Indian farmers said" that they had "filed 72 civil rights complaints" and not one of them had "ever been answered."⁹⁵

The Report also discussed studies requested by Congress and FSA that contained statistics showing lower participation and loan approval rates for minorities in most FSA programs. Although the variances in regional and state statistics showed no consistent picture, some states showed very wide disparities for approval rates and processing times between minorities and non-minorities. In Louisiana, for example, 67% of African American loans were approved, as compared to 83% of non-minority loans; in Alabama, 78% of African American loans were approved, as compared to 90% of non-minority loans.⁹⁶ And in states in the Southeast, data reflected consistently longer applications processing times for minorities; in some states loan

⁹³ *Id.* at 15.

⁹⁴ *Id.* at 16.

⁹⁵ *Id.* at 24.

⁹⁶ CRAT Rep. at 21.

processing took up to three times longer for African American loan applications.⁹⁷ A number of states in the Northwest showed similar disparities in loan processing between non-minorities and American Indians.⁹⁸ The CRAT Report further noted that the Congressional reports providing these statistics suggested that these disparities “may be partially accounted for by the smaller average size of minority- and female-operated farmers, their lower average crop yields, and their greater likelihood not to plant program crops, as well as less sophisticated technology, insufficient collateral, poor cash flow, and poor credit ratings.”⁹⁹ But as representatives of minority groups emphasized, “previous discrimination in USDA programs has helped produce these very conditions now used to explain disparate treatment.”¹⁰⁰

At the end of its investigation, CRAT concluded that USDA had “done more to hurt than to help small and minority farmers.”¹⁰¹ The result was lower participation rates of minority farmers “in most FSA programs”¹⁰² and the loss of significant amounts of land and potential farm income.”¹⁰³

1997 OIG Audit

In 1997, USDA OIG conducted an audit of loan programs and published its findings in a report entitled *Minority Participation in Farm Service Agency’s Farm Loan Programs – Phase II*.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 6.

¹⁰² *Id.* at 21.

¹⁰³ *Id.* at 30.

The audit looked at, among other things, loan servicing decisions made in 11 states and 33 counties in the decade following the enactment of the Agricultural Credit Act of 1987. Through that Act, Congress mandated that FSA “restructure delinquent farm program loans to the maximum extent possible to avoid losses and allow borrowers to continue their operations.”¹⁰⁴ To that end, FSA was to modify “amounts, rates, and terms of delinquent loans, using any combination of primary loan-servicing.”¹⁰⁵

And yet, OIG’s audit showed that FSA’s loan-servicing decisions made from January 1, 1989, through March 3, 1997, disproportionately benefitted non-minority farmers.¹⁰⁶ This was so even though minority borrowers were experiencing higher rates of delinquency. A review of the status of 5,465 borrower accounts as of March 3, 1997, in the 33 loan service centers audited showed that 34% of the non-minority borrowers were delinquent while 46% of the minority borrowers were delinquent.¹⁰⁷

OIG’s audit specifically compared the rates at which minorities and non-minorities received two or more loan-servicing decisions during the applicable time period.¹⁰⁸ Of the 5,465 borrower accounts reviewed, 526 of them had received multiple loan-servicing decisions, including “loan rescheduling, loan consolidation, restructuring, and debt write-down.”¹⁰⁹ OIG

¹⁰⁴ Minority Participation in Farm Service Agency’s Farm Loan Programs, Evaluation Report No. 50801-3-Hq at 29.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 30.

¹⁰⁸ *Id.* at 29-30.

¹⁰⁹ *Id.* at 30.

found that “[n]on-minority borrowers received 449 (85 percent) of the multiple decisions, and minority borrowers received 77 (15 percent) of them.”¹¹⁰ That meant that “nonminorities, who had 34 percent of their accounts in the delinquent or may require attention categories, received 85 percent of the [Agency’s] multiple servicing decisions while minorities, with 46 percent of their accounts in these categories, received only 15 percent of the . . . multiple decisions.”¹¹¹

Additionally, OIG noted a “lack of follow-up with borrowers who did not respond to notices concerning availability of [loan] servicing,” which affected minorities and non-minorities differently. FSA “generally notified” borrowers “of the availability of loan servicing programs” but “did not actively recontact those borrowers who either did not respond or did not actively seek loan-servicing.” OIG also observed that “certain minority borrowers who did not actively seek loan-servicing” from FSA “based their lack of response on negative experiences with FSA during the early stages of the implementation of [FSA’s Primary Loan Service Programs].”¹¹²

Minority borrowers generally suffered more adverse consequences for failing to actively seek loan servicing or respond to FSA notices regarding loan servicing options. For instance, in one state reviewed, FSA “noted that two nonminority borrowers in one county did not respond to notifications of availability of Primary Loan Servicing Programs (PLSP) within the 60-day timeframe required by” FmHA’s internal policies. But staff “did not initiate actions to accelerate these accounts, as required,” and instead “rescheduled the borrowers’ debts when they applied for

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 31.

new loans.”¹¹³ At the time of OIG’s review, “each of the two accounts were on or ahead of schedule, and one of the two borrowers received two additional servicing decisions.”¹¹⁴ Two minority borrowers in the same county were treated differently. Like the two non-minority borrowers, they likewise failed to respond to FSA’s notification regarding loan-servicing options within the 60-day time period required by FSA policies, but in contrast to the non-minority borrowers, FSA accelerated their accounts.¹¹⁵

2011 Jackson Lewis Report

Secretary Vilsack commissioned the firm Jackson Lewis LLP (“JL”) to assess the “effectiveness” of USDA agencies “in reaching America’s diverse population in a non-discriminatory manner.”¹¹⁶ The firm conducted an 18-month investigation and analysis of USDA delivery processes and practices, focused on four USDA agencies, one of which was the FSA.¹¹⁷ At the conclusion of the investigation in 2011, the firm issued a 569-page “Civil Rights Assessment,” where it detailed the “substantiated claims of denial of equal program access and continuing institutional discrimination” within USDA and FSA.¹¹⁸

The firm based its findings and conclusions on the substantial anecdotal and statistical evidence it collected. The anecdotal evidence depicted “a system where the deck was always stacked, not only against access to USDA programs, but also against [customers’] ultimate

¹¹³ *Id.* at 31-32.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 32.

¹¹⁶ JL Rep. at i.

¹¹⁷ *See id.* at 569.

¹¹⁸ *See id.* at iv, viii, 62.

success” due to their status as minorities.¹¹⁹ The focus groups and community-based organizations representing SDGs¹²⁰ and participating in the JL investigation raised many of the same complaints already detailed in prior reports and lawsuits—specifically:

- FSA employees giving minority farmers “the runaround instead of trying to be helpful,” treating them “like dirt,” and blowing them “off like [they] were nothing or nobody,” often to the point that the loan applicants “just gave up”¹²¹;
- FSA giving conflicting information about application requirements—for instance, Hispanics and Latinos complained of “jump[ing] through all the hoops and dott[ing] all the I’s,” receiving assurances that “[e]verything’s good,” only to have the application rejected¹²²;
- FSA delaying the application process by telling applicants that their information “was incomplete” and requiring them to “come back with additional information,” only to tell the applicant later that “there were no funds left”¹²³;
- FSA officials falsely asserting that a minority applicant lied on the application in order to deny the loan¹²⁴;
- FSA delaying disbursement of funds for approved loans “until the planting season was half-way finished,” thereby “prevent[ing] the farmers from taking full advantage of the program’s benefits and contribut[ing] to their losses.”¹²⁵

African American, Hispanics and Latinos, Asians, and Native Americans all complained of specific instances of mistreatment, explaining that:

- “African Americans [we]re denied loans at a higher rate than Whites,” and receive[d] [loans] ... in small amounts ... or subject to dual signature requirements, whereas

¹¹⁹ *Id.* at viii.

¹²⁰ The JL Report included women in its groups of SDGs, along with Hispanics/Latinos; Blacks/African Americans; Asians; American Indians/Alaskan Natives; and Native Hawaiians/Pacific Islanders. *See id.* at 66 n.33. USDA’s interpretation of SDGs, consistent with the statutory definition, includes only racial and ethnic groups, and the JL Report contains many findings specific to the aforementioned racial and ethnic groups.

¹²¹ *Id.* at 83, 112.

¹²² *Id.* at 84.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 81-82.

Whites receive[d] all their funding up front and d[id] not have their funds supervised”¹²⁶;

- Hispanic and Latino farmers were “stereotyped as being farm workers, rather than owners,” and were not provided materials in Spanish¹²⁷;
- Native Americans, African Americans, and Southeast Asian clients stated that they were “not always treated fairly by USDA,” and did “not feel comfortable” when seeking assistance from USDA.¹²⁸

The JL firm found that these substantiated claims of ongoing “unfair treatment and denial of program access” to SDGs “had a broad and longstanding negative impact on the size, profitability, sustainability, business prospects, successes, and failures of SDG farmers and ranchers—including the loss of scarce or irreplaceable farm lands.”¹²⁹

Congressional Hearings

In addition to the reports discussed above, Congress has held numerous hearings concerning discrimination in USDA programs and the ongoing effects of that discrimination. I reviewed many of those hearing transcripts, which provide substantial additional anecdotal evidence of historical discrimination, and also of the lingering effects of that discrimination. I highlight just a few of those anecdotes here.

- An African American farmer testified that county-level officials delayed processing her and her husband’s ownership loan application for five years, causing direct additional expenses.¹³⁰

¹²⁶ *Id.*

¹²⁷ *Id.* at 86.

¹²⁸ *Id.* at 84, 86.

¹²⁹ *Id.* at 64, viii.

¹³⁰ Hr’g on the USDA’s Civil Rights Prog. for Farm Prog. Participants before House Sub-comm., Dep’t Ops., Oversight, Nutrition, and Forestry, Comm. on Ag., 107th Cong. 23, at 81-83 (2002) (2002 Civil Rights Hr’g).

- The same farmer testified that county-level officials delayed processing a later operating loan, preventing her and her husband from obtaining the necessary facilities to care for livestock, resulting in the death of 500 pigs.¹³¹
- Congress heard testimony that USDA took 25% longer to process loan applications from Hispanic farmers and approved them at lower rates.¹³²
- A Hispanic farmer testified that she and her family were unable to obtain relief on their loan payments to USDA after a series of natural disasters because, they were told, they “were bad farmers.” County-level officials then blocked her and her family from selling part of the farm to remain solvent, and then the same officials foreclosed, costing them their entire farm.¹³³
- A Native American farmer testified to the difficulties he faced in obtaining FSA loans because of an inability or refusal to resolve questions about using land as collateral.¹³⁴

Congress heard testimony that illustrated the enduring effects of historic discrimination on farm credit markets and the difficulties that smaller farms have in escaping economic insecurity.

- Witnesses testified that export markets favored “large scale” agriculture businesses, so that export growths were unlikely to substantially benefit minority farmers who generally have much smaller farms.¹³⁵
- Witnesses testified that past discrimination discouraged minority farmers from seeking additional credit, even when they might have received it.¹³⁶
- Witnesses testified that litigation settlements were inadequate and would not “improve [minority farmer’s] chances of remaining on the land.”¹³⁷

¹³¹ *Id.* at 83.

¹³² *Id.* at 33-35, 46.

¹³³ *Id.* at 78, 149-50.

¹³⁴ See Hr’g on Management of Civil Rights at the USDA before House Sub-comm., Gov’t Management, Organization, and Procurement, Comm. on Oversight and Gov’t Reform, Serial No. 110-137 at 15-16 (May 14, 2006) (2006 Oversight Hr’g).

¹³⁵ 2015 House Ag. Hr’g at 49-50.

¹³⁶ 2002 Civil Rights Hr’g at 109 (“What has happened in this whole process is that there is an active discouragement of minority people from making an application in the first place. . . . [M]any of [the *Pigford* claimants] are people who attempted and tried to use the programs of the Agency and were turned down along the way.”).

¹³⁷ 2015 House Ag. Hr’g. at 73; see also *id.* at 105-06.

The aforementioned lawsuits, investigations, reports, and other materials contain qualitative evidence, including thousands of complaints by minority farmers of various forms of discrimination in USDA's loan programs, occurring as recently as 2010 when the JL Report was compiled. They also contain quantitative evidence showing statistical disparities in outreach and education about existing loan programs and eligibility; assistance with loan applications; processing time for applications; loan application approvals; and loan servicing.

More recent reporting, discussed below, confirms that many of these disparities persist. These disparities and other lingering effects are consistent with the well-documented and systemic discrimination in the provision of USDA loans and technical assistance to minority farmers and are not solely the product of race-neutral factors untainted by discrimination.

VII. Minority Farmers Continue to Suffer the Effects of Past Discrimination in USDA Loan Programs

A. The Evident Failure of Prior Efforts to Remediate Historic Discrimination in USDA Loan Programs and Its Effects

I am aware of numerous initiatives that Congress has enacted over the last several decades in recognition of USDA's discriminatory behavior towards minority farmers and the resulting detrimental effects. For instance, in Section 617 of the 1987 Agricultural Credit Act, Congress required the USDA to establish annual target participation rates to attempt to ensure that members of socially disadvantaged groups receive direct and guaranteed farm loans. That Act also required FSA to restructure delinquent farm program loans to the maximum extent possible to avoid losses and allow borrowers to continue their operations—including by modifying the amounts, rates, and terms of delinquent loans and using any combination of primary loan-servicing, such as

consolidation, rescheduling, re-amortization, reduction of interest rates, deferrals, and debt write-down.¹³⁸

In the 1990 Farm Bill, Congress established the 2501 program to improve outreach and education to minority farmers and ultimately their participation in USDA programs.¹³⁹ And in Section 741 of the 1999 Agriculture, Rural Development, Food and Drug Administration and related Agencies Appropriations Act, Congress suspended the application of the then two-year statute of limitations regarding Equal Credit Opportunity Claims.¹⁴⁰ This allowed claimants in discrimination suits against USDA, including Black farmers in *Pigford v. Glickman*, Civ. No. 97-1978 (D.D.C.), Native American farmers in *Keepseagle v. Veneman*, No. 1:99-cv-3119 (D.D.C.), and Hispanic farmers in *Garcia v. Vilsack*, No. 1:00-cv-2445 (D.D.C.), to cite instances of discrimination dating back years and even decades in order to qualify for payments under the respective class action settlements and administrative claims processes.

In the 2002 Farm Bill, Congress established the Office of the Assistant Secretary for Civil Rights to attempt to address the well-documented civil rights issues at the USDA, including issues resolving civil rights complaints in a timely manner, and in the 2008 Farm Bill, Congress declared discrimination claims should be quickly resolved.¹⁴¹ In the 2014 Farm Bill, Congress created the

¹³⁸ These provisions were further modified by the Food, Agriculture, Conservation, and Trade Act of 1990, and the Federal Agriculture Improvement and Reform Act of 1996.

¹³⁹ See S. 2830, 101st Cong., enacted at Pub. L. No. 101-624, 104 Stat. 3359 (1990); H.R. Stat. 2854, enacted at Pub. L. No. 104-127, 110 Stat. 888 (1996).

¹⁴⁰ H.R. 1906, 106th Cong., Pub. L. No. 106-78, 113 Stat. 1135 (1999).

¹⁴¹ Farm Security & Rural Investment Act of 2002, H.R. 2646, 107th Congress, enacted at Pub. L. No. 107-171, 116 Stat. 134; Food Conservation & Energy Act of 2008, H.R. 6124, enacted at Pub. L. No. 110-246, 122 Stat. 1651.

Office of Tribal Relations under the Secretary of Agriculture to ensure that relevant programs and policies are efficient, easy to understand, accessible, and developed in consultation with the American Indian and Alaskan Native constituents they impact.¹⁴² And in the 2018 Farm Bill, Congress permanently funded the 2501 program and required GAO to produce two reports concerning: 1) the ability of the Farm Credit System to meet the agricultural credit needs of Indian tribes and their members, and 2) credit service to socially disadvantaged farmers and ranchers. Both reports focused on how to better meet the needs of minority farmers.¹⁴³

These efforts may have addressed some of the underlying problems of USDA discrimination against minority farmers and somewhat improved their situations with respect to certain metrics. It is apparent, however, that these and other efforts, including the payments made to minority farmers through the various claims processes, have not fully remedied the problematic effects of decades of USDA discrimination. This is evidenced by several metrics that continue to show that minority farmers suffer the lingering effects of past discrimination in USDA's loan programs.

B. Existing Disparities Between Minority and Non-Minority Farmers

As discussed more fully below, the lingering effects of past discrimination against minority farmers in USDA loan programs include the current (i) underrepresentation of minority groups in farming in the United States, (ii) smaller size and lower revenues of minority farms, and (iii) lower overall wealth of minority farmers. These disparities, in turn, have had cyclical effects, resulting in minority farmers becoming discouraged borrowers, experiencing higher rates of delinquency on

¹⁴² Agricultural Act of 2014, H.R. 2642, 113th Cong., enacted at Pub. L. No. 113-79, 128 Stat. 649.

¹⁴³ Agricultural Improvement Act of 2018, H.R. 2, 116th Cong., enacted at Pub. L. No. 115-334, 132 Stat. 4490.

their loans and foreclosure on their farms, and having less access to government funds and private lending.

In my analysis below, I used data provided by USDA, as well as published data from the Census of Agriculture and the U.S. Census Bureau. The most recent Census of Agriculture was conducted in 2017. These data provide not only a basic benchmark to show how most minorities are underrepresented in farming, compared with whites, but also how the characteristics of minority farms contrasted with the characteristics of white farms reflect further disparities between the groups.¹⁴⁴

1. Underrepresentation of minority farmers

Because farmers turn to USDA as a “lender of last resort,” discriminatory loan practices can force minorities out of farming altogether. The data show that minority farmers are underrepresented in farming today, meaning that they are a smaller share of the farming population than they are of the general population, the population in rural areas, and in the states where the majority of minority farmers are concentrated.¹⁴⁵

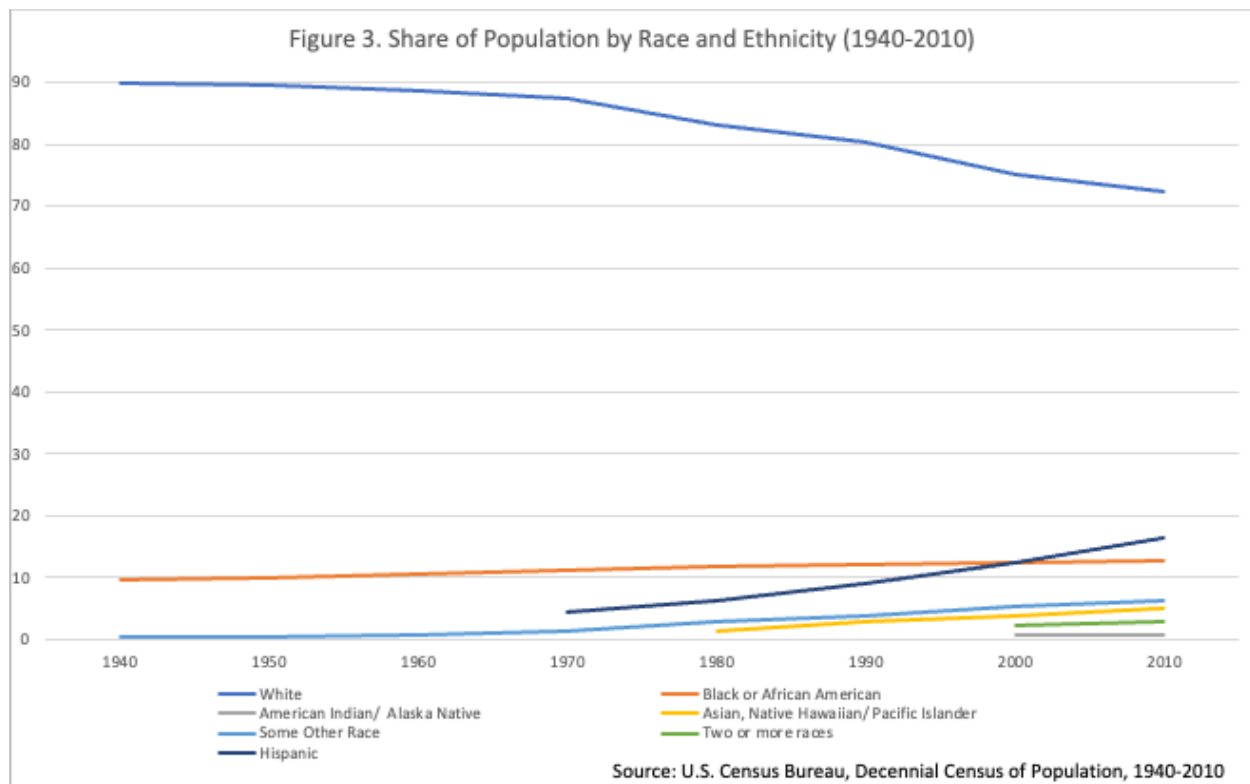
i. Underrepresentation based on comparisons with the national population

While the demographics of the U.S. population have been changing over the last several decades, becoming more diverse as the share of minority groups has increased over time, there has not been a corresponding increase in the share of minority farmers. As shown in Figure 3 below,

¹⁴⁴ I use the term “Black farms” (or Hispanic farms, etc.) interchangeably with “farms with Black producers” (or farms with Hispanic producers, etc.).

¹⁴⁵ For example, Blacks are underrepresented in farming because they constitute more than 12% of the general population, and 8% of the rural population, but they make up only 1.43% of farm producers and 1.6% of farms nationwide have Black principal producers. Additionally, the proportion of Black producers in the five states where they are most heavily concentrated is lower than their corresponding share of that state’s population.

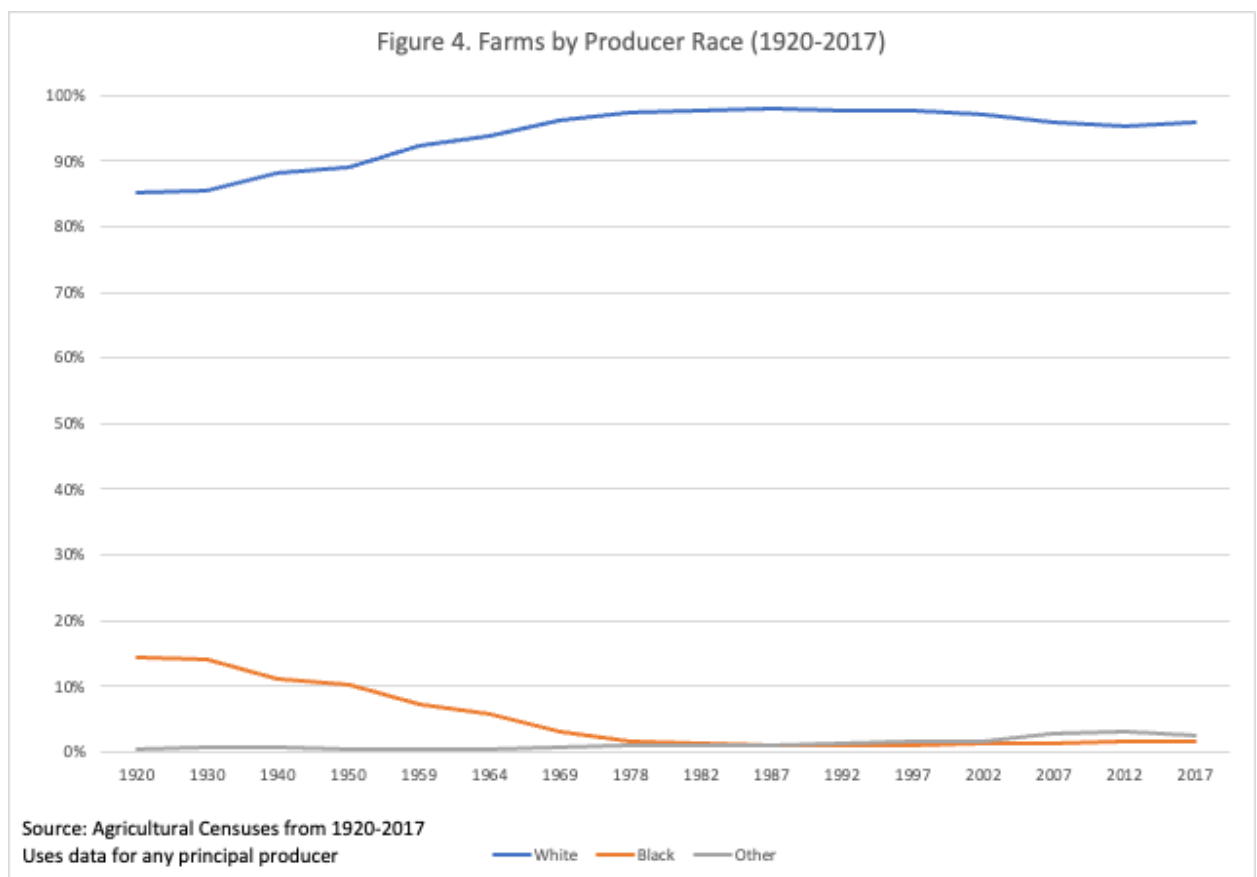
in 1940, the U.S. population was mainly white (90%) and Black (10%), with less than a half of one percent being of some other race. By 2010, whites made up less than three quarters of the population, while minority populations steadily increased, with Blacks making up 12.6%; Asians, Pacific Islanders, and Native Hawaiians making up 5%; and Hispanics making up 16.3%. For more details, see Table 1 in Appendix C.



As Figure 4 below shows, the percentage of white farms in the first half of this century was nearly identical to their share of the overall population—approximately 89% in 1950.¹⁴⁶ But while the percentage of whites in the general population has been declining over the decades, the percentage of white farms has increased from 85.2% in 1920 to a high of 97.1% in 2002, before declining slightly over the last three censuses in 2007, 2012, and 2017, when they made up just

¹⁴⁶ More details can be found in Table 2 in Appendix C.

under 96% of all U.S. farms. Black farms, on the other hand, were 14.3% of farms in 1920, but less than 2% by 2017, dipping to a low of 1% of U.S. farms in the 1992 and 1995 censuses. While Census of Agriculture surveys did not report detailed racial and ethnic data until later years, we can see that minority farmers in the other categories increased their share of U.S. farms from a total 0.4% in 1920 to nearly 3% by 2017, but those increases lagged considerably in proportion to their increases in the overall U.S. population.



A more detailed breakout by race and ethnicity is available beginning in 1978. Table 2 shows that Black farmers' share of farms decreased over the 1978-1997 period before beginning to rise; but by 2017 they still had not reached the level they were at in 1978, which was itself substantially lower than their levels in all of the previous decades. And while the data show that Hispanics' share of farms apparently has increased the most over the 1978-2017 period, their

representation in farming still lags considerably behind their growing share of the U.S. population. In 2017, Hispanics made up about 17% of the population but less than 4% of farms. This is also shown in Figure 5 below. It should be noted, however, that beginning with the 2002 Census of Agriculture USDA began refining its data collection and reporting methodology in ways that may over-represent increases in the number of minority farms. Specifically, statistical adjustments to account for nonresponsive farmers, and more targeted outreach to improve counting of specific groups (especially minorities), led to more accurate counting of minority farmers, which may give the impression that there has been a greater increase in the number of minority farmers than has actually occurred.¹⁴⁷ Moreover, USDA only began producing statistics by farmer ethnicity in 1978.

Table 2. Number of Farms and Percentage of Farms by Race/Ethnicity, 1978-2017

Number of Farms	1978	1982	1987	1992	1997	2002	2007	2012	2017
Hispanic	17,572	16,183	17,476	20,956	27,717	50,592	55,570	67,000	77,416
American Indian	6,889	7,211	7,134	8,346	10,638	15,494	34,706	37,851	39,632
Asian (or Pacific Islander)*	7,942	8,000	7,900	8,096	8,731	8,375	11,214	13,669	13,904
Black	37,351	33,250	22,954	18,816	18,451	29,090	30,599	33,371	32,052
Other*	5,806	5,906	6,652	8,229	9,838				
Native Hawaiian/Pacific Islander*						983	1,356	1,468	2,092
White	2,199,787	2,186,609	2,043,119	1,881,813	1,864,201	2,067,379	2,114,325	2,012,652	1,955,737
More than one race reported*						7,661	12,592	10,292	19,773
Total	2,257,775	2,240,976	2,087,759	1,925,300	1,911,859	2,128,982	2,204,792	2,109,303	2,042,220
Share of Farms	1978	1982	1987	1992	1997	2002	2007	2012	2017
Hispanic	0.8%	0.7%	0.8%	1.1%	1.4%	2.4%	2.5%	3.2%	3.8%
American Indian	0.3%	0.3%	0.3%	0.4%	0.6%	0.7%	1.6%	1.8%	1.9%
Asian or Pacific Islander	0.4%	0.4%	0.4%	0.4%	0.5%	0.4%	0.5%	0.6%	0.7%
Black	1.7%	1.5%	1.1%	1.0%	1.0%	1.4%	1.4%	1.6%	1.6%
Other	0.3%	0.3%	0.3%	0.4%	0.5%				
Native Hawaiian/Pacific Islander						0.05%	0.1%	0.1%	0.1%
White	97.4%	97.6%	97.9%	97.7%	97.5%	97.1%	95.9%	95.4%	95.8%
More than one race reported						0.4%	0.6%	0.5%	1.0%

Source: U.S. Census of Agriculture 1978-2017

* Other is defined as follows: In 1978, 1982, 1987, 1992, and 1997 it indicates "All other races", which was a category that was "primarily limited to persons native to or of ancestry from Mexico, the Caribbean, and Central and South America". Beginning in 2002, NHPI were tabulated separately from Asians. Beginning in 2002 "More than one race reported" was tabulated and reported. Uses data for any principal producer or equivalent metric.

¹⁴⁷ Nathan Rosenberg. 2017. "Farmers Who Don't Farm: The Curious Rise of the Zero-Sales Farmer." Journal of Agriculture, Food Systems, and Community Development, October, 1-9, 2017, <https://perma.cc/AD8N-MX9M>.

One can also see that even as the share of minority farms for some groups has risen over time (though, again, this is likely due in part to improved counting of minority groups since 2002), the gap in most minority groups' share of farms as compared to their percentage of the overall population is large—and growing. American Indians and Alaskan Natives are the one exception to this trend. But the apparent diminishing representation gap for this group is likely an artifact of another change in data collection methodology. The 2007 Census of Agriculture marked the first time the National Agricultural Statistics Service (“NASS”) attempted to collect a census report from individual farm operators on American Indian reservations in all states. In all censuses prior to 2007, each reservation was counted as a single farm and tribal government officials and/or Bureau of Indian Affairs officials supplied counts of individual operators.¹⁴⁸

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¹⁴⁸ See USDA, 2007 Census of Agriculture, <https://perma.cc/GD57-RF7R> at 3, Column: Every Voice Counts.

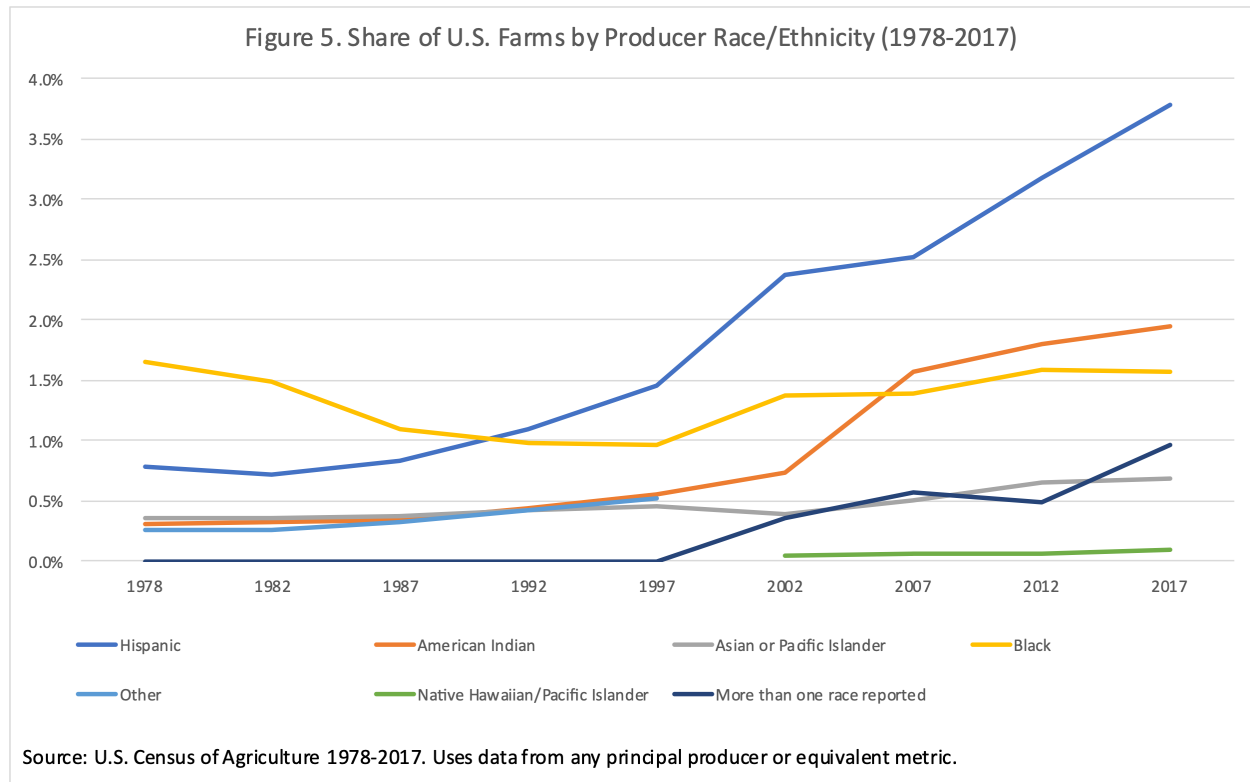


Table 3A, which compares each minority group's shares of producers¹⁴⁹ to share of the population, shows that all of the minority groups except American Indians and Alaskan Natives are extremely underrepresented as farmers in the United States. There are far fewer farms and farmers from the other minority groups than would be expected given their shares in the general population. For instance, while Asians made up nearly 5% of the U.S. population in 2010, they were only 0.6% of producers in 2017. Hispanics, which made up 16.3% of the population in 2010,

¹⁴⁹ USDA distinguishes between farm "owners," which reflects a property law status, and "producers," who actually farm the land. The term "producer" may include the farm owner but also may include a non-owner manager or tenant. *See, e.g.*, 2017 Agriculture Census, Appendix B at 19, <https://perma.cc/J3ZW-TPAG> (defining "producer" as "a person who is involved in making decisions for the farm operation. Decisions may include decisions about such things as planting, harvesting, livestock management, and marketing"). Farms can have multiple producers. Beginning in 2017, data were collected for a maximum of four producers per farm. USDA previously used the term "primary operator," which was limited to one per farm.

represented just 3.3% of the producers in 2017. Blacks, who made up 12.2% of the population in 2010, were just 1.3% of the producers in 2017.

Table 3A. Number of U.S. Producers by Race/Ethnicity, 2017 versus 2010 Population			
	Number	Share of Producers	Share of Population
American Indian/Alaska Native	58,199	1.7%	0.7%
Black or African American	45,508	1.3%	12.2%
Asian	22,016	0.6%	4.7%
Pacific Islander/Native Hawaiian	3,018	0.1%	0.2%
Hispanic	112,451	3.3%	16.3%
White	3,244,344	95.4%	72.4%
Non-minority (White Non-Hispanic) **	3,063,170	90.1%	63.7%
Some other race (alone)			0.2%
Two or More Races	26,749	0.8%	1.9%
Total	3,399,834		100%
Note: Hispanic producers may be of any race, but most Hispanics identify as white. The population estimates represent shares of non-hispanics in the race categories.			
** Note: Provided by a special tabulation from USDA.			
Source: 2017 U.S. Census of Agriculture. Uses data for any producer.			

ii. *Underrepresentation based on comparisons with the rural population*

Because minorities tend to account for a smaller proportion of rural populations, where the majority of farms—and especially large farms—are located, making comparisons only to nationwide population may not provide a complete picture. Figure 6¹⁵⁰ below shows that minorities tend to be more concentrated in urban areas. The concentration of minority populations in urban areas where farming is less prevalent might arguably skew the nationwide data such that it exaggerates underrepresentation. However, the fact that minority populations are less rural may itself be in part a consequence of unequal access to agricultural wealth caused by discrimination

¹⁵⁰ The chart below appears in the November 2018 ERS report, *Rural America at a Glance, 2018 Edition*, <https://perma.cc/C24E-QTQ8>.

in the farm loan sector, which discrimination may have driven minorities from farming in rural areas to more urban areas where the economy is less agriculturally driven.¹⁵¹ Still, focusing only on rural population metrics is one way to control for any effects of uneven population distribution. One would expect that, absent the effects of discrimination pushing minorities out of the farming economy, the share of minority producers in rural areas would be on par with their share of the population in those areas. In fact, just as when considering the general nationwide population data, the rural population data show that minority farmers are also underrepresented in rural population areas nationwide.¹⁵²

As shown in Table 3B and Figure 6 below, in 2017, non-Hispanic whites were estimated to account for nearly 80% of the rural population but 90% of producers. On the other hand, Hispanics made up 9% of the rural population but only 3.3% of producers, and Blacks made up 8% of the rural population but only 1.3% of producers. American Indians made up 2% of the rural

¹⁵¹ This concept is sometime referred to as “survivorship bias,” where the characteristics of a given sample are skewed by the absence of data from those who drop out of the sample before the measurement is taken. *See, e.g.,* Paul Nightingale, & Alex Coad, Muppets and gazelles: political and methodological biases in entrepreneurship research, *Industrial & Corporate Change*, 23(1), 113-143 (2014), <https://perma.cc/C6AY-57G8>; Gavin Cassar, “The financing of business start-ups”, *Journal of Business Venturing* 19.2 (2004): 261-283, <https://perma.cc/FP3E-XCWK>.

¹⁵² Rural is defined here as nonmetropolitan (nonmetro) areas by the Office of Management and Budget (OMB) on the basis of counties or county-equivalent units (e.g., parishes, boroughs). Nonmetro counties are those outside the boundaries of metropolitan (metro) areas. In 2013, OMB defined metro areas as broad labor-market areas that include: 1) central counties with one or more urbanized areas; urbanized areas (described in the next section) are densely-settled urban entities with 50,000 or more people and 2) outlying counties that are economically tied to the core counties as measured by labor-force commuting. Outlying counties are included if 25 percent of workers living in the county commute to the central counties, or if 25 percent of the employment in the county consists of workers coming out from the central counties. (*See* ERS, What is Rural, <https://perma.cc/V3FT-NMM9> for more details).

population and under 2% of producers.¹⁵³ Finally, Asians and Pacific Islanders (included in the “Other” category) accounted for 1.1% of the rural population but only 0.7% of producers.¹⁵⁴

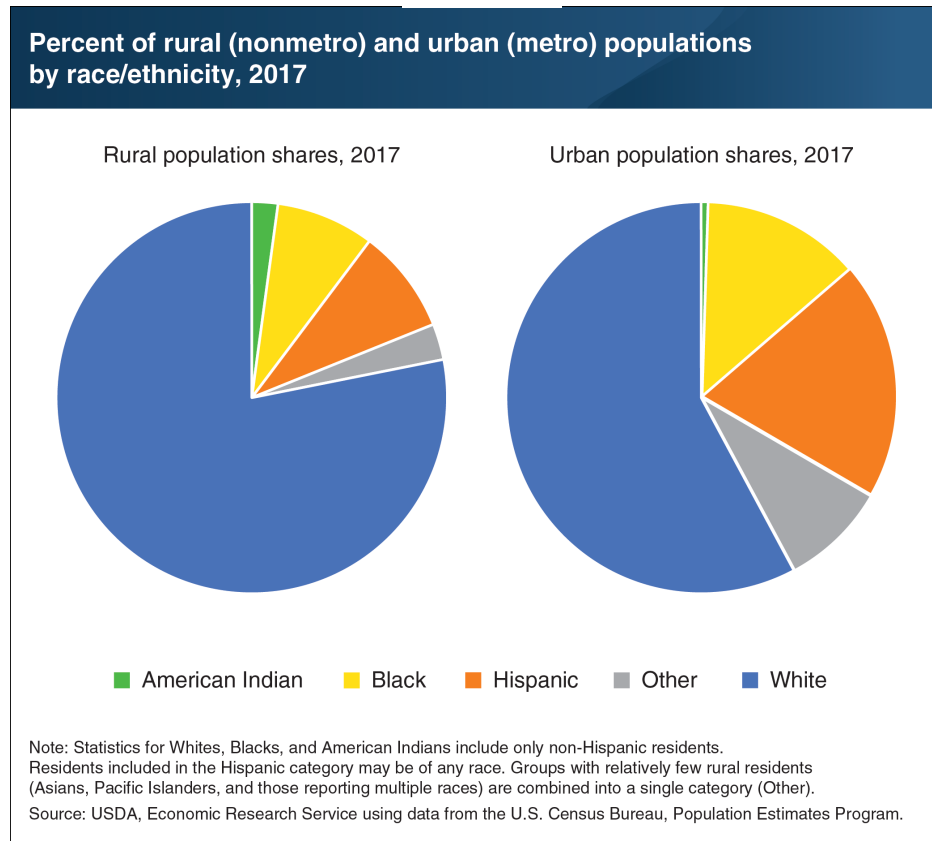
Table 3B. Number of U.S. Producers by Race/Ethnicity, 2017 versus 2010 Rural Population		
	Share of Producers	Share of Rural Population
American Indian/Alaska Native	1.7%	2.0%
Black or African American	1.3%	8.0%
Asian/Pacific Islander/Native Hawaiian	0.7%	1.1%
Hispanic	3.3%	9.0%
White	95.4%	
Non-minority (White Non-Hispanic) **	90.1%	79.9%
Two or More Races	0.8%	0.5
Note: Hispanic producers may be of any race, but most Hispanics identify as white. The population estimates represent shares of non-Hispanics in the race categories.		
** Note: Provided by a special tabulation from USDA.		
Source: 2017 U.S. Census of Agriculture and USDA, ERS using data from US Census Bureau, Population Estimates Program. Uses data for any producer.		

[Continued on next page]

¹⁵³ American Indians were the only minority group more concentrated in rural areas (2% of the population) than urban (only 0.5% of the population).

¹⁵⁴ But relatively few Asians and Pacific Islanders were rural residents.

Figure 6



iii. Underrepresentation based on comparisons with state-level population data

Another way to measure minority representation in farming is by using state-level data to compare the minority population and producer shares in the states where minority farmers are most heavily concentrated. One would expect that, absent discrimination and its lingering effects, minority farmers would be better represented in the states where they are principally located. In fact, the state-level data show the same pattern as the national-level data. Table 3C below compares each minority group's share of farms with their share of the population in the top five states where

each minority group's producers nationwide are primarily located.¹⁵⁵ As the data illustrate, each minority group's share of farms in these five states is much smaller than its share of the state population.

For example, while Hispanics made up 37.6% of the population of Texas, only 11.3% of the farms in Texas had a Hispanic principal producer. Similarly, in California, where Hispanics also made up 37.6% of the population, only 13.5% of farms had a Hispanic principal producer. And Hispanics made up more than 46% of the population of New Mexico but less than a third of New Mexican farms had a Hispanic principal producer.

The data show similar patterns across almost every minority group. American Indian/Alaskan Native farmers provide one exception to this pattern. In four of the five states where the majority of AI/AN farmers are located, they are actually overrepresented when compared to their share of each state's population.¹⁵⁶ However, other data show that AI/AN farmers are still at a disadvantage as compared to non-minority farmers in several other respects. For instance, as will be discussed below, AI/AN farms in the majority of these same states are substantially smaller in size than white farms (*See* Table 7), and the market value of production of AI/AN farms nationwide is, on average, only one-quarter that of white farms (*See* Table 4).

Additionally, while the share of Native Hawaiian/Pacific Islander farmers is relatively on par with their share of the state populations, other data discussed below show that Native Hawaiian/Pacific Islander farms are significantly smaller than white farms in terms of acreage in

¹⁵⁵ For example, for Black farmers, I looked at Texas, Mississippi, Alabama, Louisiana, and Georgia. Texas has more Black farmers than any other state; Mississippi has the second-greatest number of Black farmers, and so on. See Table 3 in Appendix C for a breakout of farms and acreage by race and ethnicity for each state and Table 4 in Appendix C for the top five states for each race and ethnic group and the shares of farmers that are located in each.

¹⁵⁶ However, this drops to three states when using rural populations as a benchmark (*See* Table 3D).

the same states. In Hawaii, white farms are more than twice as large as Native Hawaiian/Pacific Islander farms; in Florida, they are nearly seven times larger. (*See* Table 7.)

For each state, I also looked at the proportion of the population that was white, and the proportion of farms that had white principal producers. The data for every state show white farmers dominating the farming industry—in Mississippi, for instance, whites make up less than 60% of the population but account for over 85% of the farms. In Hawaii, whites make up 25% of the population but account for 54% of the farms.

[Continued on next page]

Table 3C. Top Five States by % of Farms by Race/Ethnicity, 2017 and Shares of Population (2010) and Farms (2017)

	Share of Farms that have a Hispanic, Latino, or Spanish Principal Producer	Share of Population that is Hispanic, Latino, or Spanish	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	3.8%	17.3%	95.8%	72.4%
States				
Texas	11.3%	37.6%	95.5%	70.4%
California	13.5%	37.6%	92.5%	57.6%
New Mexico	32.8%	46.3%	76.0%	68.4%
Florida	10.2%	22.5%	94.1%	75.0%
Colorado	7.1%	20.7%	98.3%	81.3%
	Share of Farms that have an American Indian or Alaskan Native Principal Producer	Share of Population that is American Indian or Alaskan Native	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	1.9%	0.9%	95.8%	72.4%
States				
Arizona	60.6%	4.6%	38.8%	73.0%
Oklahoma	11.0%	8.6%	88.1%	72.2%
New Mexico	23.6%	9.4%	76.0%	68.4%
Texas	0.9%	0.7%	95.5%	70.4%
Montana	4.8%	6.3%	95.1%	89.4%
	Share of Farms that have an Asian Principal Producer	Share of Population that is Asian	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	0.7%	4.7%	95.8%	72.4%
States				
California	5.8%	13.0%	92.5%	57.6%
Hawaii	31.5%	38.6%	54.2%	24.7%
Texas	0.4%	3.8%	95.5%	70.4%
Florida	1.8%	2.4%	94.1%	75.0%
Washington	1.4%	7.2%	97.1%	77.3%
	Share of Farms that have a Black or African American Principal Producer	Share of Population that is Black or African American	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	1.6%	12.6%	95.8%	72.4%
States				
Texas	3.2%	11.8%	95.5%	70.4%
Mississippi	14.0%	37.0%	85.4%	59.1%
Alabama	7.2%	26.2%	91.0%	68.5%
Louisiana	8.0%	32.0%	90.9%	62.6%
Georgia	4.5%	30.5%	94.3%	59.7%
	Share of Farms that have a Native Hawaiian or Other Pacific Islander Principal Producer	Share of Population that is Native Hawaiian or Other Pacific Islander	Share of Farms that have a White Principal Producer	Share of Population that is White
United States	0.1%	0.2%	95.8%	72.4%
States				
Hawaii	10.5%	10.0%	54.2%	24.7%
California	0.4%	0.4%	92.5%	57.6%
Texas	0.1%	0.1%	95.5%	70.4%
Florida	0.2%	0.1%	94.1%	75.0%
Oregon	0.2%	0.3%	97.8%	83.6%

Source: 2017 U.S. Census of Agriculture and 2010 Decennial Census.

If we again compare the share of farms that have producers of a given demographic with their corresponding shares of the rural population for the states with the vast majority of the

minority farms, we again see similar patterns of underrepresentation.¹⁵⁷ (Recall also that this analysis may overstate minority participation in agriculture because of survivorship bias—those who cannot overcome discrimination to succeed in farming may move away from rural areas to places where there are more available opportunities.) For example, as shown in Table 3D, Hispanics made up 31.6% of the rural population in Texas, but only 11.3% of the farms in Texas had a Hispanic principal producer. Blacks made up 7.8% and 38.7% of the rural populations in Texas and Mississippi respectively, but only 3.2% and 14% of the farms in those same states had a Black principal producer. Whites, on the other hand, made up 58.6% of the rural population in Texas, but 95.5% of the farms in Texas had a white principal producer. American Indians and Alaskan Natives and Asians are the only two groups whose proportion of statewide producers sometimes exceeded their proportion of the rural population.

[Continued on next page]

¹⁵⁷ The data for urban and rural populations by state come from the data download from the Atlas of Rural and Small-Town America, which do not break out Native Hawaiians and Other Pacific Islanders out separately. USDA-ERS, Atlas of Rural and Small-Town America, <https://perma.cc/8S8S-ABFY>.

Table 3D. Top Five States by % of Farms by Producer Race/Ethnicity, 2017 and Shares of Rural Population (2010) and Farms (2017)

Top Three States	Share of Farms that have a Hispanic, Latino, or Spanish Principal Producer	Share of Rural Population that is Hispanic, Latino, or Spanish	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
Texas	11.3%	31.6%	95.5%	58.6%
California	13.5%	15.7%	92.5%	75.2%
New Mexico	32.8%	44.1%	76.0%	40.4%
Florida	10.2%	13.7%	94.1%	68.9%
Colorado	7.1%	21.0%	98.3%	74.5%
	Share of Farms that have an American Indian or Alaskan Native Principal Producer	Share of Rural Population that is American Indian or Alaskan Native	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
Arizona	60.6%	32.4%	38.8%	40.7%
Oklahoma	11.0%	12.3%	88.1%	71.2%
New Mexico	23.6%	11.6%	76.0%	40.4%
Texas	0.9%	0.4%	95.5%	58.6%
Montana	4.8%	7.6%	95.1%	87.1%
	Share of Farms that have an Asian Principal Producer	Share of Rural Population that is Asian	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
California	5.8%	1.4%	92.5%	75.2%
Hawaii	31.5%	23.7%	54.2%	31.1%
Texas	0.4%	0.6%	95.5%	58.6%
Florida	1.8%	0.6%	94.1%	68.9%
Washington	1.4%	1.9%	97.1%	78.8%
	Share of Farms that have a Black or African American Principal Producer	Share of Rural Population that is Black or African American	Share of Farms that have a White Principal Producer	Share of Rural Population that is White
Texas	3.2%	7.8%	95.5%	58.6%
Mississippi	14.0%	38.7%	85.4%	57.1%
Alabama	7.2%	24.1%	91.0%	69.2%
Louisiana	8.0%	31.7%	90.9%	63.0%
Georgia	4.5%	25.6%	94.3%	66.3%

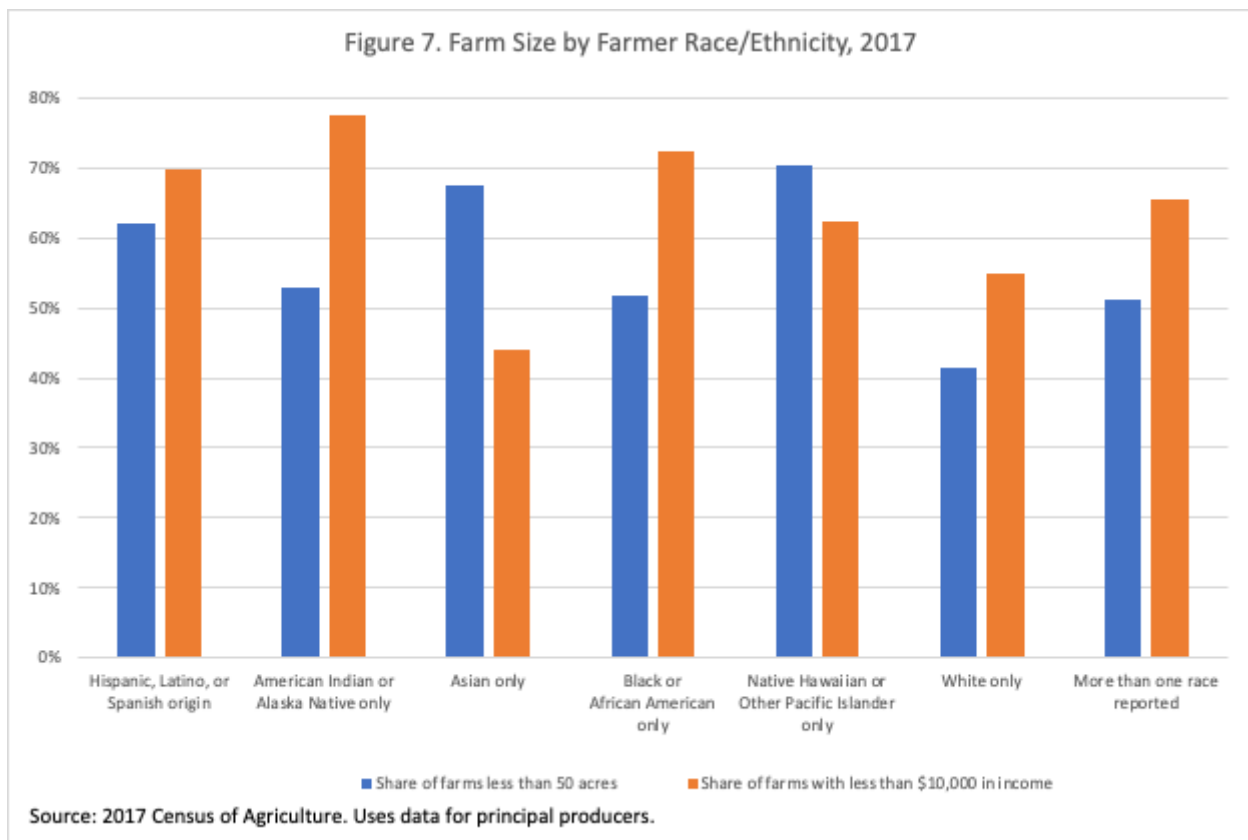
Source: 2017 U.S. Census of Agriculture, 2010 Decennial Census, Atlas of Small Town and Rural America
(<https://www.ers.usda.gov/data-products/atlas-of-rural-and-small-town-america/>).

In sum, the current reality of farming in the United States is that it is predominantly and disproportionately the occupation of whites. The data consistently show that minorities are underrepresented in farming. At both the national and state levels, minorities generally account for a smaller—and, in many cases, much smaller—share of farmers than they do of the population. And this is generally true when making comparisons based on both the general and rural populations.

2. *Smaller farms and lower revenues of minority farms*

In addition to most minority groups currently being underrepresented in farming, most minority farms are also smaller on average, in terms of both acreage and revenue, when compared with white farms. This is a natural consequence of past discrimination in lending practices, which

hindered minority farmers seeking to expand or invest in their farms. Figure 7 below shows farm size by race and ethnicity. The data indicate that minority farmers tend to have a larger share of the farms that are less than 50 acres and with income less than \$10,000. Indeed, the majority of all minority farms are less than 50 acres; but only approximately 40% of white farms are less than 50 acres.



The next set of tables provides more detail. Table 4 specifies various farm characteristics, including acreage, value of production, industry sector, and revenues, as of 2017, by the race or ethnicity of the principal producers.¹⁵⁸ Table 5 shows the same characteristics by race or ethnicity of the principal producers in percentage breakdowns,¹⁵⁹ while Table 6 shows how farms with certain characteristics are distributed within racial or ethnic categories as of 2017.

[Continued on next page]

¹⁵⁸ A principal producer may be any race and also of Hispanic/Latino origin; therefore, each of the racial groups listed in Table 4, and all the other tables below, includes farmers who belong to that racial group and also are of Hispanic or Latino origin. In addition, the tables separately include a column specific to Hispanic/Latino origin for purposes of highlighting the data pertaining to those farmers in particular. To prevent double-counting of Hispanics—once in the Hispanic/Latino column and again in the columns pertaining to each racial group—the totals listed in the far right column in each table do not include the data separately listed in the “Hispanic, Latino, or Spanish origin” column.

¹⁵⁹ Some of the totals listed in Table 5 may be greater than 100% because each farm has up to four principal producers. If a farm has multiple principal producers who do not all belong to the same racial group, that farm is counted once in each column corresponding to the racial groups to which the producers belong. For example, if a farm has two principal producers, one white and one Black, the farm is counted twice—once in the column for “white only” and once in the column for “Black or African American only”; but if a farm has two or more white producers, the farm is counted only once in the “white only” column. If a principal producer identifies with more than one race, the farm is counted in the last column entitled, “More than one race reported.”

Table 4. Selected Farm Characteristics by Principal Producer Race/Ethnicity: 2017

	Any principal producer reporting race as -							
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported	Total
Characteristics								
FARMS AND LAND IN FARMS								
Farmsnumber	77,416	39,632	13,904	32,052	2,092	1,955,737	19,773	2,042,220
Land in farmsacres	26,041,600	51,095,994	1,831,229	3,862,936	426,068	843,497,615	6,712,435	900,217,576
FARMS BY SIZE								
1 to 9 acres	20,312	11,716	4,693	4,971	810	251,601	3,783	273,325
10 to 49 acres	27,828	9,300	4,718	11,613	661	557,536	6,327	583,001
50 to 179 acres	15,104	7,523	2,951	10,909	336	543,042	5,218	564,763
180 to 499 acres	7,259	4,345	926	3,421	163	305,998	2,582	315,017
500 acres or more	6,913	5,748	616	1,138	122	297,560	1,863	306,114
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD AND GOVERNMENT PAYMENTS (in \$1000s)								
Total (\$)	\$ 14,600,970	\$ 2,137,232	\$ 6,659,080	\$ 987,475	\$ 414,300	\$ 388,248,112	\$ 1,696,604	\$ 397,466,269
Market value of agricultural products sold (\$)	\$ 14,471,891	\$ 2,082,765	\$ 6,642,403	\$ 937,852	\$ 411,777	\$ 379,433,107	\$ 1,651,761	\$ 388,522,695
Crops, including nursery and greenhouse crops	\$ 9,237,329	\$ 751,356	\$ 3,628,008	\$ 516,021	\$ 217,192	\$ 189,187,769	\$ 913,865	\$ 193,546,699
Livestock, poultry, and their products	\$ 5,234,562	\$ 1,331,409	\$ 3,014,395	\$ 421,831	\$ 194,585	\$ 190,245,338	\$ 737,896	\$ 194,975,996
Government payments (\$)	\$ 129,078	\$ 54,467	\$ 16,677	\$ 49,623	\$ 2,523	\$ 8,815,005	\$ 44,843	\$ 8,943,574
FARMS BY ECONOMIC CLASS								
Less than \$2,500	36,885	22,941	3,627	14,102	802	647,756	8,154	688,834
\$2,500 to \$4,999	8,718	3,802	1,079	4,331	225	201,905	2,284	211,272
\$5,000 to \$9,999	8,571	4,007	1,431	4,770	280	223,989	2,508	234,209
\$10,000 to \$24,999	7,721	3,698	1,775	4,700	275	242,335	2,727	252,619
\$25,000 to \$49,999	4,184	1,873	1,134	1,953	187	149,973	1,405	155,061
\$50,000 or more	11,337	3,311	4,858	2,196	323	489,779	2,695	500,225
PER FARM AVERAGE								
Market value of agricultural products sold (\$)	\$ 186,937	\$ 52,553	\$ 477,733	\$ 29,260	\$ 196,834	\$ 194,010	\$ 83,536	\$ 190,245
Government payments (\$)	\$ 1,667	\$ 1,374	\$ 1,199	\$ 1,548	\$ 1,206	\$ 4,507	\$ 2,268	\$ 4,379
Acres	336	1289	132	121	204	431	339	441
PER ACRE AVERAGE (\$)	\$ 556	\$ 41	\$ 3,627	\$ 243	\$ 966	\$ 450	\$ 246	\$ 432
FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)								
Oilseed and grain farming (1111)	2,907	1,001	307	2,272	58	321,035	1,051	325,724
Vegetable and melon farming (1112)	2,475	1,354	1,913	2,123	180	39,669	718	45,957
Fruit and tree nut farming (1113)	10,251	1,088	4,708	875	404	88,960	1,553	97,588
Greenhouse, nursery, and floriculture production (1114)	2,664	336	1,460	392	178	43,277	617	46,260
Other crop farming (1119)	11,914	4,454	1,279	5,661	277	444,099	3,446	459,216
Tobacco farming (11191)	31	6	6	78	0	3,673	4	3,767
Cotton farming (11192)	286	43	13	126	5	8,631	36	8,854
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)	11,597	4,405	1,260	5,457	272	431,795	3,406	446,595
Beef cattle ranching and farming (112111)	28,298	16,598	1,642	15,989	528	607,334	7,203	649,294
Cattle feedlots (112112)	141	54	8	13	3	13,296	41	13,415
Dairy cattle and milk production (11212)	598	101	24	64	12	37,517	133	37,851
Hog and pig farming (1122)	622	293	70	398	27	22,263	254	23,305
Poultry and egg production (1123)	1,714	609	1,279	402	45	42,030	572	44,937
Sheep and goat farming (1124)	6,877	7,856	529	1,224	160	83,343	1,290	94,402
Aquaculture and other animal production (1125, 1129)	8,955	5,888	685	2,639	220	212,914	2,895	225,241
Source: 2017 Census of Agriculture								

Source: 2017 Census of Agriculture

With respect to **acreage**, Table 5 shows that most minority groups had a much smaller share of farm acreage than they had of farms nationwide in 2017.

- Whites had 95.8% of the farms and 93.7% of the acreage;
- Hispanics had 3.8% of farms but only 2.9% of the acreage;
- Asians had 0.7% of the farms but only 0.2% of the acreage;
- Blacks had 1.6% of the farms but only 0.4% of the acreage; and

- Native Hawaiians and Pacific Islanders had 0.1% of the farms but only 0.05% of the acreage.

American Indians and Alaskan Natives were the exception, insofar as they had 1.9% of the farms and 5.7% of the acreage, but those numbers are misleading. Farms with AI/AN principal producers make up a disproportionate share (4.3%) of the smallest farms (those under 10 acres), but they also make up 1.9% of the large farms (those with 500 acres or more). All of the other minority groups have a much smaller share of the large farms (500 acres or more) compared with their share of farms overall. There are several explanations for the larger relative share of farms of 500 acres or more with AI/AN principal producers. First, data discussed further below indicate that some large farms concentrated in a small number of states are artificially driving up the average overall acreage for AI/AN farms nationwide. That table shows that in most of the states where the majority of AI/AN farmers are located, their farms are actually substantially smaller than the average size of white farms in that state. In Texas, for example, the average white farm is almost twice as large as the average AI/AN farm. Other data showed that even on reservations, AI/AN farms were smaller than farms with non-AI/AN farms on the same reservations.¹⁶⁰ In addition, American Indian farms are fairly concentrated in cattle ranching,¹⁶¹ and thus a much larger percentage of the acreage of American Indian and Alaskan Native farms, as compared to farms held by other racial or ethnic groups, is dedicated to pasture (78% in 2017). Whites, for

¹⁶⁰ See *infra* Table 10.

¹⁶¹ The vast majority of the acreage of American Indian farms is located on reservations (see Tables 4 and 8), which tend to be more rural and focused on agriculture. Terry L. Anderson & Dean Lueck, *Land Tenure and Agricultural Productivity on Indian Reservations*, The Journal of L. & Econ., 35(d), 427-454 (1992), <https://perma.cc/777V-EBBN>; USDA-NASS Montana Field Off., U.S. American Indian Agriculture at a Glance, <https://perma.cc/HHB3-UFJ5>, at 1.

example, had only 43% of their acreage in pastureland.¹⁶² Notably, as discussed below, cattle ranching generally brings in less income than other types of agricultural production. Accordingly, despite their acreage, AI/AN farms are less profitable. And in fact, even on reservations, where the majority of farm acreage belongs to American Indian farmers, white farms account for a highly disproportionate share of agricultural products sold. (*See* Tables 4 and 10.)

[Continued on next page]

¹⁶² USDA-NASS, 2017 Race/Ethnicity/Gender Profile from the 2017 Census of Agriculture (NASS), <https://perma.cc/FPW3-VUMV>.

Table 5. Share of Farms by Selected Farm Characteristics and Principal Producer Race/Ethnicity: 2017

Table 3. Share of Farms by Selected Farm Characteristics and Principal Producer Race/Ethnicity, 2017								
	Any principal producer reporting race as -							
Characteristics	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported	Total
FARMS AND LAND IN FARMS								
Farmsnumber	3.8%	1.9%	0.7%	1.6%	0.1%	95.8%	1.0%	101%
Land in farmsacres	2.9%	5.7%	0.2%	0.4%	0.05%	93.7%	0.7%	101%
FARMS BY SIZE								
1 to 9 acres	7.4%	4.3%	1.7%	1.8%	0.3%	92.1%	1.4%	102%
10 to 49 acres	4.8%	1.6%	0.8%	2.0%	0.1%	95.6%	1.1%	101%
50 to 179 acres	2.7%	1.3%	0.5%	1.9%	0.1%	96.2%	0.9%	101%
180 to 499 acres	2.3%	1.4%	0.3%	1.1%	0.1%	97.1%	0.8%	101%
500 acres or more	2.3%	1.9%	0.2%	0.4%	0.0%	97.2%	0.6%	100%
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD AND GOVERNMENT PAYMENTS								
Total	3.7%	0.5%	1.7%	0.2%	0.1%	97.7%	0.4%	101%
Market value of agricultural products sold	3.7%	0.5%	1.7%	0.2%	0.1%	97.7%	0.4%	101%
Crops, including nursery and greenhouse crops	4.8%	0.4%	1.9%	0.3%	0.1%	97.7%	0.5%	101%
Livestock, poultry, and their products	2.7%	0.7%	1.5%	0.2%	0.1%	97.6%	0.4%	100%
Government payments	1.4%	0.6%	0.2%	0.6%	0.03%	98.6%	0.5%	100%
FARMS BY ECONOMIC CLASS								
Less than \$2,500	5.4%	3.3%	0.5%	2.0%	0.1%	94.0%	1.2%	101%
\$2,500 to \$4,999	4.1%	1.8%	0.5%	2.0%	0.1%	95.6%	1.1%	101%
\$5,000 to \$9,999	3.7%	1.7%	0.6%	2.0%	0.1%	95.6%	1.1%	101%
\$10,000 to \$24,999	3.1%	1.5%	0.7%	1.9%	0.1%	95.9%	1.1%	101%
\$25,000 to \$49,999	2.7%	1.2%	0.7%	1.3%	0.1%	96.7%	0.9%	101%
\$50,000 or more	2.3%	0.7%	1.0%	0.4%	0.1%	97.9%	0.5%	101%
FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)								
Oilseed and grain farming (1111)	0.9%	0.3%	0.1%	0.7%	0.0%	98.6%	0.3%	100%
Vegetable and melon farming (1112)	5.4%	2.9%	4.2%	4.6%	0.4%	86.3%	1.6%	100%
Fruit and tree nut farming (1113)	10.5%	1.1%	4.8%	0.9%	0.4%	91.2%	1.6%	100%
Greenhouse, nursery, and floriculture production (1114)	5.8%	0.7%	3.2%	0.8%	0.4%	93.6%	1.3%	100%
Other crop farming (1119)	2.6%	1.0%	0.3%	1.2%	0.1%	96.7%	0.8%	100%
Tobacco farming (11191)	0.8%	0.2%	0.2%	2.1%	0.0%	97.5%	0.1%	100%
Cotton farming (11192)	3.2%	0.5%	0.1%	1.4%	0.1%	97.5%	0.4%	100%
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)	2.6%	1.0%	0.3%	1.2%	0.1%	96.7%	0.8%	100%
Beef cattle ranching and farming (112111)	4.4%	2.6%	0.3%	2.5%	0.1%	93.5%	1.1%	100%
Cattle feedlots (112112)	1.1%	0.4%	0.1%	0.1%	0.0%	99.1%	0.3%	100%
Dairy cattle and milk production (11212)	1.6%	0.3%	0.1%	0.2%	0.0%	99.1%	0.4%	100%
Hog and pig farming (1122)	2.7%	1.3%	0.3%	1.7%	0.1%	95.5%	1.1%	100%
Poultry and egg production (1123)	3.8%	1.4%	2.8%	0.9%	0.1%	93.5%	1.3%	100%
Sheep and goat farming (1124)	7.3%	8.3%	0.6%	1.3%	0.2%	88.3%	1.4%	100%
Aquaculture and other animal production (1125, 1129)	4.0%	2.6%	0.3%	1.2%	0.1%	94.5%	1.3%	100%
Source: 2017 Census of Agriculture								

Source: 2017 Census of Agriculture

Only whites have a larger share of the large farms (500 acres or more) than they have of farms overall (97.2% versus 95.8% respectively). Whites are also the only group to have a smaller share of the smallest farms (under 10 acres) than their share of farms overall (92.1% versus 95.8% respectively). All of the minority groups have a greater share of the smallest farms (less than 10 acres) than their share of farms overall.

Table 6 shows the distribution of farms by certain characteristics within each race or ethnicity. For example, it indicates that 26.2% of farms that had one or more Hispanic producer were between 1 and 9 acres. This data, too, shows that minorities have a comparatively larger share of smaller farms and whites have a comparatively larger share of bigger farms. Only 12.9% of white farms were under 10 acres, in contrast with nearly 39% of Native Hawaiian/Pacific Islander farms, more than 33% of Asian farms, nearly 30% of AI/AN farms, and more than 26% of Hispanic farms. More than 15% of white farms were 500 acres or more, compared with just 8.9% of Hispanic farms, 14.5% of AI/AN farms, 4.4% of Asian farms, 3.6% of Black farms, and 5.8% of Native Hawaiian/Pacific Islander farms.

[Continued on next page]

Table 6. Distribution of Farms by Principal Producer Race/Ethnicity: 2017

Characteristics	Any principal producer reporting race as -						
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported
FARMS BY SIZE							
1 to 9 acres	26.2%	29.6%	33.8%	15.5%	38.7%	12.9%	19.1%
10 to 49 acres	35.9%	23.5%	33.9%	36.2%	31.6%	28.5%	32.0%
50 to 179 acres	19.5%	19.0%	21.2%	34.0%	16.1%	27.8%	26.4%
180 to 499 acres	9.4%	11.0%	6.7%	10.7%	7.8%	15.6%	13.1%
500 acres or more	8.9%	14.5%	4.4%	3.6%	5.8%	15.2%	9.4%
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD AND GOVERNMENT PAYMENTS							
Total	100%	100%	100%	100%	100%	100%	100%
Market value of agricultural products sold	99.1%	97.5%	99.7%	95.0%	99.4%	97.7%	97.4%
Crops, including nursery and greenhouse crops	63.3%	35.2%	54.5%	52.3%	52.4%	48.7%	53.9%
Livestock, poultry, and their products	35.9%	62.3%	45.3%	42.7%	47.0%	49.0%	43.5%
Government payments	0.9%	2.5%	0.3%	5.0%	0.6%	2.3%	2.6%
FARMS BY ECONOMIC CLASS							
Less than \$2,500	47.6%	57.9%	26.1%	44.0%	38.3%	33.1%	41.2%
\$2,500 to \$4,999	11.3%	9.6%	7.8%	13.5%	10.8%	10.3%	11.6%
\$5,000 to \$9,999	11.1%	10.1%	10.3%	14.9%	13.4%	11.5%	12.7%
\$10,000 to \$24,999	10.0%	9.3%	12.8%	14.7%	13.1%	12.4%	13.8%
\$25,000 to \$49,999	5.4%	4.7%	8.2%	6.1%	8.9%	7.7%	7.1%
\$50,000 or more	14.6%	8.4%	34.9%	6.9%	15.4%	25.0%	13.6%
FARMS BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)							
Oilseed and grain farming (1111)	3.8%	2.5%	2.2%	7.1%	2.8%	16.4%	5.3%
Vegetable and melon farming (1112)	3.2%	3.4%	13.8%	6.6%	8.6%	2.0%	3.6%
Fruit and tree nut farming (1113)	13.2%	2.7%	33.9%	2.7%	19.3%	4.5%	7.9%
Greenhouse, nursery, and floriculture production (1114)	3.4%	0.8%	10.5%	1.2%	8.5%	2.2%	3.1%
Other crop farming (1119)	15.4%	11.2%	9.2%	17.7%	13.2%	22.7%	17.4%
Tobacco farming (11191)	0.04%	0.02%	0.04%	0.2%	0.0%	0.2%	0.02%
Cotton farming (11192)	0.4%	0.1%	0.1%	0.4%	0.2%	0.4%	0.2%
Sugarcane farming, hay farming, and all other crop farming (11193, 11194, 11199)	15.0%	11.1%	9.1%	17.0%	13.0%	22.1%	17.2%
Beef cattle ranching and farming (112111)	36.6%	41.9%	11.8%	49.9%	25.2%	31.1%	36.4%
Cattle feedlots (112112)	0.2%	0.1%	0.1%	0.0%	0.1%	0.7%	0.2%
Dairy cattle and milk production (11212)	0.8%	0.3%	0.2%	0.2%	0.6%	1.9%	0.7%
Hog and pig farming (1122)	0.8%	0.7%	0.5%	1.2%	1.3%	1.1%	1.3%
Poultry and egg production (1123)	2.2%	1.5%	9.2%	1.3%	2.2%	2.1%	2.9%
Sheep and goat farming (1124)	8.9%	19.8%	3.8%	3.8%	7.6%	4.3%	6.5%
Aquaculture and other animal production (1125, 1129)	11.6%	14.9%	4.9%	8.2%	10.5%	10.9%	14.6%

Source: 2017 Census of Agriculture

State-level data are consistent with the nationwide averages. Even in states with the highest percentage of minority farmers, minority farms tend to be smaller—and in some cases significantly smaller—on average than white farms. For instance, as Table 7 below illustrates, white farms are between 129% and 336% larger than Asian farms in the top five states where Asian principal producers are most heavily concentrated; and they are between 103% and 347% larger than Black farms in the five states where Black principal producers are most heavily concentrated. The only exceptions to this rule are American Indian/Alaskan Native farms in Arizona and Montana and Native Hawaiian/Pacific Islander farms in California. But even with these minor exceptions, the data continue to show that farmers in these racial groups are at a disadvantage relative to their non-minority peers. As to Native Hawaiians and Pacific Islander farmers, while their farms are slightly larger than white farms in California, in every other state where they are most heavily concentrated their farms are significantly smaller—they are less than one sixth the size of white farms in both Florida and Oregon.¹⁶³

And, as discussed below, AI/AN farms are generally less lucrative than non-minority farms notwithstanding their average larger size¹⁶⁴—indeed, the net cash income of AI/AN farms is the lowest of any group other than Blacks. Moreover, a 2019 GAO study concluded that while only a quarter of farms on 76 Indian reservations were operated by non-AI/AN farmers, those farms comprised nearly 40% of the total acreage and 90% of the revenues.¹⁶⁵

¹⁶³ Moreover, given the very small number of Native Hawaiian or Pacific Islander farms—there are only 314 farms with Native Hawaiian or Pacific Islander producers in California—state averages can be easily skewed by even one or two outliers.

¹⁶⁴ Recall, though, that state-level data suggest that large farms in a small number of states are driving up the overall averages. (See Table 7 below and Table 5 in Appendix C.)

¹⁶⁵ See *infra* at pp. 70-71.

Table 7. Top Five States by % of Farms by Race/Ethnicity, 2017: Average Farm Size (acres)			
	Average farm size for Hispanic principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	336	431	28%
States			
Texas	252	528	110%
California	225	360	60%
New Mexico	654	1758	169%
Florida	103	209	104%
Colorado	368	807	119%
	Average farm size for American Indian or Alaskan Native principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	1289	431	-67%
States			
Arizona	1740	854	-51%
Oklahoma	259	457	77%
New Mexico	1237	1758	42%
Texas	272	528	94%
Montana	3533	2082	-41%
	Average farm size for Asian principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	132	431	227%
States			
California	157	360	129%
Hawaii	80	195	143%
Texas	121	528	336%
Florida	76	209	176%
Washington	127	339	168%
	Average farm size for Black or African American principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	121	431	258%
States			
Texas	118	528	347%
Mississippi	121	327	171%
Alabama	109	221	103%
Louisiana	90	311	244%
Georgia	114	241	113%
	Average farm size for Native Hawaiian or Other Pacific Islander principal producers (acres)	Average farm size for white farmers (acres)	% difference
United States	204	431	112%
States			
Hawaii	90	195	117%
California	573	360	-37%
Texas	121	528	337%
Florida	27	209	678%
Oregon	56	407	624%

Source: 2017 U.S. Census of Agriculture and 2010 Decennial Census.

The data above likewise show that minority farmers tend to generate less income as compared to white farmers. In terms of the **market value of agricultural products sold**, white farms produced the vast majority, or 97.7%, of the market value of agriculture products sold (*See* Table 5). The share of market value of production by all of the minority groups except Asians was less than their corresponding share of farms. AI/AN farms produced only 0.5% of the market value of agricultural products sold, despite being 1.9% of farms. (*See id.*) And Blacks produced only 0.2% of the market value of agricultural products sold despite being 1.6% of farms. (*See id.*)

In terms of **government payments**, while white farms made up 95.8% of farms and generated 97.7% of the market value of agriculture products sold, they received 98.6% of government payments. (*See* Table 5.) By contrast, all of the minority groups of farmers received government payments that were well below their share of farms. Hispanics received 1.4%, American Indians/Alaskan Natives received 0.6%, Asians received 0.2%, Blacks received 0.6%, and Native Hawaiian and Pacific Islanders received less than 0.05%.

In terms of farms by **economic class**,¹⁶⁶ about 58% of American Indian farms, nearly 48% of Hispanic farms, 44% of Black farms, and 38% of Native Hawaiian and Pacific Islander farms generated less than \$2,500 in revenue, compared with less than one-third of white farms. (*See* Table 6.) Indeed, Asians were the only minority group that generated higher revenues than white farmers, with about 43% of Asian farms generating more than \$25,000. Thus, in terms of revenue, white farmers had greater per-farm revenues than all of the minority groups except Asians.

While American Indians/Alaskan Natives had the highest average farm size by acreage—at 1,374 acres, compared with 431 acres for whites—they averaged only \$52,553 in market value

¹⁶⁶ The Agricultural Census defines “economic class” data as “the classification of farms by the sum of market value of agricultural products sold and Federal farm program payments.” *See* 2017 Ag. Census appendix B, B-7.

of the agricultural products they sold, compared with \$194,010 for white farmers. (*See* Table 4.) As mentioned above, a high proportion of American Indian farms are concentrated in cattle ranching, which is less profitable than other kinds of animal husbandry and crop farming.¹⁶⁷ The average income per acre for American Indian and Alaskan Native Farms was \$41, compared to more than ten times that for white farmers (\$450). (*See ibid.*) Tenure systems dating back to the Dawes Act of 1887 and the Indian Reorganization Act of 1934 have tended to increase the costs of land use for modern agriculture, making it difficult to move Indian land to higher valued alternative uses.¹⁶⁸

One USDA study showed how having a large farm (as measured by acreage) does not guarantee having high sales. In that study, USDA found that less than half of farms with at least 2,000 acres of farmland also generated sales of at least \$1 million, and many actually had sales of less than \$10,000.¹⁶⁹ USDA noted that farmland in arid areas, with little vegetation and poor soil, is not suitable for cropping and will thus often be used for livestock grazing, which generates low sales per acre of land.¹⁷⁰ In contrast, USDA found that the acreage of harvested cropland is more closely tied to sales: nearly 80% of farms that harvested 2,000 acres of cropland also realized at least \$1 million in Gross Cash Flow Income.¹⁷¹ Given the high number of AI/AN farms devoted to cattle ranching, this suggests that their comparatively large acreage is concentrated in less

¹⁶⁷ *See* Table 6 in Appendix C for average income per farm by kind of farming, which shows substantially lower average revenues for cattle ranching, as compared with crops, dairy, and poultry operations.

¹⁶⁸ *See* Anderson & Lueck (1992).

¹⁶⁹ James MacDonald, Robert Hoppe, & Doris Newton, USDA, Three Decades of Consolidation in U.S. Agriculture, EIB-189 (March 2018), at 8, <https://perma.cc/XZ6R-XZVN>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

productive land or they have not had sufficient financial capital to transition to more profitable farming sectors.

Net income also varied dramatically by racial group, with Black farms and American Indian/Alaskan Native farms having the lowest net incomes at \$3,509 and \$8,577, respectively. (See Table 8.) White farmers received 97.9% of net cash farm income, even though they made up 96.6% of farms. Their share of the government payments (99%, or \$8.85 billion, of the \$8.94 billion) was higher than their shares of revenues, expenses, or net income.

Although farms with Asian producers have the highest net income, at \$111,319, a closer look at the data shows that relatively small number of Asian farms drive up the overall average and thus skew the data. The majority of farms with Asian principal producers (57%) had revenues of less than \$25,000 (See Table 6). The NASS report on race, ethnicity, and gender noted that there were 4,437 Asian farms generating \$100,000 or more. Because there are so few Asian farms—only about 18,000 total, which is less than 1% of all farms—the few thousand of them that generate \$100,000 or more in revenue drive up the overall average of this group.

[Continued on next page]

Table 8. Farms, Acreage, Income, and Expenses by Producer Race/Ethnicity (2017)

	Farms with one or more producers who are:						
	Hispanic, Latino, or Spanish origin	American Indian or Alaskan Native	Asian	Black or African American	Native Hawaiian or Other Pacific Islander	White	All
Number of farms	86,278	60,083	18,338	35,470	4,341	1,973,006	2,042,220
Land in farms (acres)	32,079,910	58,749,543	2,931,365	4,673,140	1,043,936	849,816,725	900,217,576
Average size of farm (acres)	372	978	160	132	240	431	441
Total							
Market value of products sold	\$ 21,765,056,000	\$ 3,537,975,000	\$ 7,457,497,000	\$ 1,416,256,000	\$ 710,952,000	\$ 381,050,061,000	\$ 388,522,695,000
Government payments	\$ 158,488,000	\$ 102,783,000	\$ 27,272,000	\$ 58,807,000	\$ 7,470,000	\$ 8,851,913,000	\$ 8,943,574,000
Farm-related income	\$ 596,161,000	\$ 237,027,000	\$ 160,975,000	\$ 87,042,000	\$ 25,644,000	\$ 16,592,565,000	\$ 16,847,824,000
Total farm production expenses	\$ 18,617,667,000	\$ 3,362,431,000	\$ 5,604,383,000	\$ 1,437,647,000	\$ 636,119,000	\$ 320,456,555,000	\$ 326,390,640,000
Net cash farm income	\$ 3,902,039,000	\$ 515,355,000	\$ 2,041,362,000	\$ 124,459,000	\$ 107,947,000	\$ 86,037,984,000	\$ 87,923,453,000
Per farm average							
Market value of products sold	\$ 252,267	\$ 58,885	\$ 406,669	\$ 39,928	\$ 163,776	\$ 193,132	\$ 190,245
Government payments							
(average per farm receiving)	\$ 15,492	\$ 12,601	\$ 14,000	\$ 7,108	\$ 12,704	\$ 14,004	\$ 13,906
Farm-related income	\$ 27,656	\$ 20,309	\$ 29,722	\$ 9,872	\$ 21,696	\$ 21,530	\$ 21,478
Total farm production expenses	\$ 215,787	\$ 55,963	\$ 305,616	\$ 40,531	\$ 146,537	\$ 162,420	\$ 159,821
Net cash farm income	\$ 45,226	\$ 8,577	\$ 111,319	\$ 3,509	\$ 24,867	\$ 43,608	\$ 43,053
Percent of All							
Number of farms	4.2%	2.9%	0.9%	1.7%	0.2%	96.6%	102.4%
Land in farms (acres)	3.6%	6.5%	0.3%	0.5%	0.1%	94.4%	101.9%
Market value of products sold	5.6%	0.9%	1.9%	0.4%	0.2%	98.1%	101.5%
Government payments	1.8%	1.1%	0.3%	0.7%	0.1%	99.0%	101.2%
Farm-related income	3.5%	1.4%	1.0%	0.5%	0.2%	98.5%	101.5%
Total farm production expenses	5.7%	1.0%	1.7%	0.4%	0.2%	98.2%	101.6%
Net cash farm income	4.4%	0.6%	2.3%	0.1%	0.1%	97.9%	101.0%

Source: Race, Ethnicity, Gender Profile, 2017, USDA. www.nass.usda.gov/AgCensus.
Uses data for any producer.

Some small farms, especially those under 10 acres or with less than \$10,000 in revenue, may be better viewed as “hobby” farms—that is, farms that are operated not primarily as a business but at least in large part for recreational reasons. If “hobby” farms are unequally distributed among race and ethnicity groups, they might skew the data one way or another. But excluding these farms from the analysis only underscores white farmers’ disproportionate dominance of the agricultural sector. Excluding farms under 10 acres, white principal farms make up 96.3% of farms, while Hispanic farms make up 3.2% of farms. American Indian/Alaskan Native farms and Black farms each make up just 1.5% of farms. Native Hawaiian/other Pacific Islander farms make up less than 0.1% of farms. (See Table 9). The pattern is similar when considering only farms with more than \$10,000 in revenue. Farms with white principal producers made up 97.2% of farms with more than \$10,000 in revenue. (See *ibid.*)

Table 9. Selected Farm Characteristics by Principal Producer Race/Ethnicity: 2017

Characteristics	Any principal producer reporting race as -							Total
	Hispanic, Latino, or Spanish origin	American Indian or Alaska Native only	Asian only	Black or African American only	Native Hawaiian or Other Pacific Islander only	White only	More than one race reported	
Number of farms	77,416	39,632	13,904	32,052	2,092	1,955,737	19,773	2,042,220
Share of all farms	3.8%	1.9%	0.68%	1.6%	0.10%	95.8%	1.0%	100%
Farms by Acreage								
Share of farms with 10+ acres within group	73.8%	67.9%	66.2%	84.5%	61.3%	87.1%	80.9%	86.6%
Share of farms with 10+ acres	3.2%	1.5%	0.52%	1.5%	0.07%	96.3%	0.9%	100%
Share of farms with <10 acres	7.4%	4.3%	1.72%	1.8%	0.30%	92.1%	1.4%	100%
Farms by economic class								
Share of farms with <\$10K revenue within group	30.0%	22.4%	55.9%	27.6%	37.5%	45.1%	34.5%	44.5%
Share of farms with \$10K+ revenue	2.6%	1.0%	0.86%	1.0%	0.09%	97.2%	0.8%	100%
Share of farms with <\$10K revenue	4.8%	2.7%	0.54%	2.0%	0.12%	94.7%	1.1%	100%

Source: 2017 Census of Agriculture

To summarize the findings above, the nationwide data shows that, on average, farms held by minorities tend to be smaller, have lower revenues, and have lower net incomes than non-minority farms.

The GAO, also drawing on the 2017 Census of Agriculture, reached similar conclusions in its 2019 report on credit and outreach to SDFRs.¹⁷² Looking at the aggregate, the GAO reported that “[o]n average, farms for which an SDFR was the primary producer (SDFR farms) were smaller and brought in less revenue than non-SDFR farms in 2017.”¹⁷³ Although SDFR farms represented 30% of all farms, they operated only 21% of all farm land and accounted for only 13% of the market value of agricultural products sold in 2017.¹⁷⁴ The GAO further noted that “[a]bout 55

¹⁷² As noted above, SDFR is short for socially disadvantaged farmer or rancher. In this GAO report, GAO included female farmers, in addition to minorities, within its definition of SDFR.

¹⁷³ GAO-19-539, Agric. Lending: Info. on Credit & Outreach to [SDFRs] Is Limited (2019), at 7, <https://perma.cc/5RD6-24VH>.

¹⁷⁴ *Id.*

percent of SDFR farms had fewer than 50 acres, and 88 percent had less than \$50,000 in total sales and government payments.”¹⁷⁵

A 2019 GAO study that investigated the credit needs and barriers to lending on tribal lands found similar results with respect to Native Americans. Using data from the 2012 Census of Agriculture, GAO looked at 76 Indian reservations (containing 23,000 farms and ranches) by primary farm or ranch operator. It found that the 25% of those farms and ranches that were non-Indian operated made up 39% of the overall acreage and 90% of the overall market value of agricultural products sold. The average size of AI/AN farms on these 76 reservations was just under 1600 acres, whereas farms with non-AI/AN principal producers were, on average, over 3000 acres. The 75% of farms and ranches that were Indian-operated made up only 61% of the overall acreage and generated just 10% of the market value of agriculture products sold. (*See* Table 10.)¹⁷⁶

Table 10. Agricultural Activity on 76 Selected Indian Reservations, by Primary Farm Operator (2012)						
	Total number of farms	Total Share of farms (%)	Total Acreage of farms	Total share of acreage of farms (%)	Total market value of agricultural products sold	Total share of market value of agricultural products sold (%)
Indian-operated	17,948	75	28,560,057	61	\$ 361,145,000	10
Non-Indian operated	5,980	25	18,449,341	39	\$ 3,079,386,000	90
Total	23,800	100	47,009,398	100	\$ 3,440,531,000	100
Average farm size	Acres	Market Value				
Indian-operated	1,591	\$ 20,122				
Non-Indian operated	3,085	\$ 514,947				
Total	1,975	\$ 144,560				
Source: GAO-19-464, INDIAN ISSUES: Agricultural Credit Needs and Barriers to Lending on Tribal Lands, Table 2.						
Primary farm operator is a term previously used by the USDA Census of Agriculture and is roughly equivalent to “principal producer.”						

¹⁷⁵ *Id.* These numbers are greater than discussed elsewhere in the report because GAO’s statistics and analysis included female farmers within its definition of SDFR.

¹⁷⁶ *See* GAO-19-464, Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands.

3. *Lower net worth of minority farmers*

Additionally, as one would expect given that minority farms are on average smaller and bring in less farm revenue and income, the data also show that minority farmers have lower net worth overall. The USDA's Economic Research Service provided the two tables below, which show the overall farm and household characteristics of SDFRs¹⁷⁷ (*i.e.*, minorities) and non-SDFRs (*i.e.*, non-Hispanic whites) from the 2017-2019 Agricultural Resource Management Surveys. These tables illustrate that, overall, minorities have lower mean and median levels of net worth, acreage, value of production, farm income, farm assets, and debt-to-asset ratio (Table 11), as well as lower average and median household income and non-farm assets than non-SDFRs (Table 12).

[Continued on next page]

¹⁷⁷ For these two tables, the term "SDFR" did not include women.

Table 11. Average farm and household characteristics by SDFR status		
	Mean	
	Non-SDFR	SDFR
	(CV %)	
Farm characteristics		
Farm net worth (\$)	1,058,970	802,657
	(1.04)	(5.26)
Acres owned	261	181
	(2.46)	(7.52)
Acres operated	413	306
	(1.92)	(10.55)
Total value of production (\$)	173,612	162,817
	(1.88)	(8.40)
Farm income to the household (\$)	21,265	13,851
	(4.26)	(16.49)
Farm assets (\$)	1,163,613	877,111
	(0.93)	(4.86)
Debt-to-asset ratio	0.09	0.07
	(3.05)	(11.13)
Total current and non-current liabilities (\$)	122,486	90,569
	(1.55)	(6.99)
Household characteristics		
Total household income ¹ (\$)	116,782	103,400
	(2.57)	(4.99)
Non-farm assets	677,939	509,136
	(2.53)	(3.94)
Total number of farms	1,860,436	162,801

¹ Includes farm and non-farm sources.

Source: USDA, National Agricultural Statistics, Service and Economic Research Service, Agricultural Resource Management Survey 2017-2019

SDFR here indicates only racially and ethnically disadvantaged (minority farmers). It does not include white female farmers.

Table 12. Median farm and household characteristics by SDFR status		
	Non-SDFR	SDFR
Farm characteristics		
Farm net worth (\$)	464,414	298,252
Acres owned	67	27
Acres operated	85	40
Total value of production	7,140	2,625
Farm income to the household (\$)	-660	-2,680
Farm assets (\$)	510,100	313,499
Debt-to-asset ratio	0.00212	0.00208
Total current and non-current liabilities (\$)	1,010	550
Household characteristics		
Total household income ¹ (\$)	76,905	67,165
Non-farm assets (\$)	366,701	312,081
¹ Includes farm and non-farm sources.		
Source: USDA, National Agricultural Statistics, Service and Economic Research Service, Agricultural Resource Management Survey 2017-2019		
SDFR here indicates only racially and ethnically disadvantaged (minority farmers). It does not include white female farmers.		

4. *The differences between minority and non-minority farmers are not primarily attributable to race-neutral factors*

The above disparities are expected consequences of past discrimination in USDA farm loan programs, which, the evidence shows, has restricted minority farmers' access to the credit needed to sustain and develop their farms. And as shown by the state-specific data above, these disparities are not largely explainable by other race-neutral factors such as geography or agricultural product sold. A possible response to all of this is that the observed disparate outcomes between minorities and non-minorities are attributable to race-neutral characteristics of farmers, such as prior experience in farming or number of annual days devoted to farming versus other pursuits, that might influence their success in farming. But data across these and other demographic metrics, included in Table 13 below, show that minority and non-minority farmer characteristics are actually quite similar.

For instance, one possible explanation for the disparities we observe is that minority farmers might be disproportionately new entrants to the agricultural field as historic barriers to entry (including past USDA discrimination) are lifted, and that the more limited experience of these farmers leads to poorer outcomes. But the data show no clear delineation in new farmers between minorities in general versus white farmers. Black and AI/AN farmers are new or beginning farmers in roughly the same proportion as white farmers. Hispanic, Asian, and Native Hawaiian/Pacific Islander producers are new and beginning farmers at somewhat higher rates. But these comparatively high rates for new and beginning farmers are consistent with both historical discrimination and the present-day elimination of barriers to entry for minorities. If there is pent-up demand for entering the agricultural industry among minority groups that had been held back by historical discrimination, then we would expect a surge in new farmers from those groups when obstacles are removed. Moreover, even if the poorer outcomes for minorities could be explained

in part by a comparatively larger share of new and beginning farmers, it would still likely be an artifact of prior discrimination that prevented these groups from entering farming at comparable rates to white farmers in earlier eras. And because growing any business depends on compounding returns over time, the delayed entry into farming will put minorities in a worse position even if there is no current, ongoing discrimination by USDA.

Additionally, when we look at the share of new and beginning farmers compared with the share of all producers, we see that they are also quite similar. (*See* Table 14.) For instance, white farmers made up 94.8% of new and beginning farmers and 95.4% of farmers overall; Black farmers made up 1.4% of all new and beginning farmers and 1.3% of farmers overall; AI/AN farmers made up 1.7% of new and beginning farmers and 1.7% of farmers overall. While Hispanics and Asians are a slightly higher share of new and beginning farmers, their share is not so much higher as to explain significant disparities in other metrics such as farm revenues. Thus, the racial and ethnic differences we are seeing in terms of size, revenue, and net income are most likely not being driven by a disproportionately large influx of new and beginning farmers from the minority groups. In fact, previous research has shown that the share of farmers with less than five years of experience has fallen from 18% in 1978 to 13% in 2017.¹⁷⁸ Because the share of new and beginning farmers has been declining over time, their significance in driving overall averages has also been declining. And to the extent that differences in experience between minority groups and white farmers can explain differences in outcomes, any experience gap may well itself be a result of past discrimination.

¹⁷⁸ Rafter Ferguson, *Losing Ground Farmland Consolidation and Threats to New and Black Farmers and the Future of Farming* (2021), <https://perma.cc/SL2C-MTCQ>.

Another possible explanation for the observed disparities between minority and non-minority farmers is that minority farmers may be more likely to engage in farming as a secondary occupation or hobby, especially given the average smaller size of minority farms. But the data show otherwise. As Table 13 illustrates, American Indian and Alaskan Native, Asian, and Black producers were actually *more* likely to be engaged in farming as a primary occupation than whites. And Hispanic and Native Hawaiian/Pacific Islander producers were just slightly less likely to have farming as their primary occupation. Moreover, around 40% of farmers in any group worked 200+ days off the farm—and Black producers were the least likely to work that many days off the farm, with only 34.9% of Black farms having a producer engaged in extra-farm work for 200+ days out of the year. Indeed, recall from above that excluding from the analysis all farms under 10 acres or all farms with less than \$10,000 in revenue did not eliminate disparities.

[Continued on next page]

Table 13: Additional Producer Characteristics, 2017

	Farms with Hispanic Producers	Farms with American Indian/Alaska Native Producers	Farms with Asian Producers	Farms with Black Producers	Farms with Native Hawaiian/ Pacific Islander Producers	Farms with White Producers
Sex						
Male	65.1%	56.2%	55.2%	70.9%	57.4%	64.0%
Female	34.9%	43.8%	44.8%	29.1%	42.6%	36.0%
Age						
<35	9.4%	9.5%	9.4%	5.4%	11.0%	8.4%
35-64	64.4%	58.8%	64.8%	6.0%	60.4%	57.7%
65 and older	26.4%	31.7%	25.8%	43.4%	28.6%	33.9%
Primary occupation						
Farming	39.9%	46.6%	47.9%	44.1%	38.8%	41.5%
Other	60.1%	53.4%	52.1%	55.9%	61.2%	58.5%
Days worked off farm						
None	30.7%	36.6%	31.7%	39.7%	28.3%	38.6%
1 to 199	27.9%	24.6%	30.0%	25.4%	28.5%	21.0%
200 +	41.4%	38.8%	38.3%	34.9%	43.2%	40.4%
Other characteristics						
With military service	10.7%	11.0%	6.6%	19.3%	13.2%	10.8%
New and beginning farmers	36.3%	27.5%	40.2%	28.9%	35.1%	26.6%
<i>Average age (years)</i>	55	56.6	54.9	60.8	54.9	57.5
Source: Census of Agriculture, 2017						
Uses data for any producers.						

Table 14. Share of New and Beginning Farmers versus All Producers by Race/Ethnicity, 2017

	New and Beginning Farmers	Share	All Producers	Share
American Indian/Alaska Native	15,347	1.7%	58,199	1.7%
Black or African American	12,884	1.4%	45,508	1.3%
Asian	8,683	1.0%	22,016	0.6%
Pacific Islander/Native Hawaiian	1,007	0.1%	3,018	0.1%
Hispanic	40,858	4.5%	112,451	3.3%
White	861,491	94.8%	3,244,344	95.4%
Two or More Races	8,141	0.9%	26,749	0.8%
Total	908,274	100.0%	3,399,834	100%
Source: 2017 U.S. Census of Agriculture				
Uses data for any producer.				

Other factors similarly do not provide a robust alternative explanation for the disparities observed. As discussed above, disparities were observed when considering only rural populations—every minority group had a smaller share of producers than their share of nationwide

rural population.¹⁷⁹ Even when confining the analysis to individual states, disparities were observed for most minority groups.¹⁸⁰ In Texas, for example, Hispanics make up nearly 40% of the statewide population, and over 30% of the rural population, but only 11.3% of Texas farms had a Hispanic principal producer. In Mississippi, Blacks make up nearly 40% of the rural population, but only 14% of the farms had Black principal producers. By contrast, whites make up less than 60% of the rural population in Texas, but over 95% of the farms in Texas have a white principal producer. And even within a single sector, like cattle ranching, disparities persist: The average revenues for most minority groups in the cattle ranching sector were lower—and sometimes substantially lower—than revenues for white cattle ranchers.¹⁸¹

C. Existing Disparities are Consistent with the Expected Effects of Past Discrimination in USDA Loan Programs

The disparities between minority and non-minority farmers today cannot be explained solely by differences in factors untainted by discrimination. These disparities are instead consistent with what one would expect given historical discrimination against minority farmers in USDA's loan programs and the nature of agricultural credit markets.

One recognized technique used in disparity studies to establish the linkage between statistical disparities and discrimination is to compare minority participation in a given activity, such as farming or a lending program, to a benchmark that expresses the level of participation that would reasonably have been expected absent discrimination.¹⁸² As discussed above, and shown in

¹⁷⁹ See *supra* Section VII.B.1.ii.

¹⁸⁰ See *supra* Section VII.B.1.iii.

¹⁸¹ See *infra* Section VII.C.

¹⁸² This is often used to defend the use of set asides in government contracting for minority businesses owners. For a detailed discussion, see Jon Wainwright & Collette Holt, Transportation

Table 15 below, as of 2010, there were substantial disparities between the share of minorities in the general population and their corresponding shares of the 2017 farm producer population:

- Although Blacks comprised 12.2% of the population, they accounted for only 1.3% of producers;
- Although Hispanics comprised 16.3% of the population, they accounted for only 3.3% of producers;
- Although Asians comprised 4.7% of the population, they accounted for only 0.6% of producers;
- Although Native Hawaiian and Pacific Islanders comprised 0.2% of the population, they accounted only for 0.1% of producers.
- Non-minorities (white non-Hispanics) made up 63.7% of the population but accounted for 90.1% of producers.

Table 15. Number of U.S. Producers by Race/Ethnicity, 2017 versus 2010 Population			
	Number	Share of Producers	Share of Population
American Indian/Alaska Native	58,199	1.7%	0.7%
Black or African American	45,508	1.3%	12.2%
Asian	22,016	0.6%	4.7%
Pacific Islander/Native Hawaiian	3,018	0.1%	0.2%
Hispanic	112,451	3.3%	16.3%
White	3,244,344	95.4%	72.4%
Non-minority (White Non-Hispanic) **	3,063,170	90.1%	63.7%
Some other race (alone)			0.2%
Two or More Races	26,749	0.8%	1.9%
Total	3,399,834		100%
Note: Hispanic producers may be of any race, but most Hispanics identify as white. The population estimates represent shares of non-hispanics in the race categories.			
** Note: Provided by a special tabulation from USDA.			
Source: 2017 U.S. Census of Agriculture. Uses data for any producer.			

These disparities are especially telling when considering that the proportion of minority farms in all but one group (American Indian/Alaskan Natives) has been decreasing while the proportion of

minorities in the general population have been increasing (and, as discussed above, the increase in AI/AN farms is likely due, in part, to better census coverage). And, as shown above in Figure 6, American Indians/Alaskan Natives made up 2% of the rural population overall, so even this group was underrepresented in terms of their share of farms when compared to their share of the population in rural areas. Moreover, as discussed above, minority farms are generally smaller by acreage, by shares of the market value of products sold, and by net income, compared with non-minority farms.

In terms of the **market value of agricultural products sold**, most minority groups had an even smaller share of market value than they had of farms in 2017. (*See* Table 4.) For instance,

- Blacks had 1.6% of the farms but only 0.2% of the market value of agricultural products sold; and
- American Indians and Alaskan Natives had 1.9% of farms and only 0.5% of the market value of products sold.

In contrast, whites had 95.8% of farms and 97.7% of the market value of agricultural products sold. This was consistent across the different types of crops and animal products. As shown in the table below,¹⁸³ farms with white producers produced more than 96% of the market value of agriculture products sold except for two cases (fruits, tree nuts and berries (94.9%) and poultry and eggs (93.8%)) and had more than 95% of the farms except for three cases (vegetables, melons, potatoes, and sweet potatoes (92.2%); fruits, tree nuts, and berries (94.9%); and sheep, goats, wool, mohair, and milk (94.2%)). Farms with white producers also had the vast majority of livestock

¹⁸³ Some of the totals listed in Table 16 may be greater than 100% because each farm has up to four producers. If a farm has multiple producers who do not all belong to the same racial group, that farm is counted once in each column corresponding to the racial groups to which the producers belong. For example, if a farm has two producers, one white and one Black, the farm is counted twice—once in the column for “white only” and once in the column for “Black or African American only”; but if a farm has two or more white producers, the farm is counted only once in the “white only” column.

inventory. As of December 31, 2017, inventory on white farms constituted more than 95% of almost every type of livestock, with goats (94.5%) being the sole exception.

	Farms with Hispanic Producers	Farms with American Indian/Alaska Native Producers	Farms with Asian Producers	Farms with Black Producers	Farms with Native Hawaiian/Pacific Islander Producers	Farms with White Producers	Total
Share of Market Value of Agriculture Products Sold							
Crops	6.6%	0.7%	2.2%	0.4%	0.2%	98.2%	102%
Grains, oilseeds, dry beans, dry peas	1.2%	0.5%	0.2%	0.3%	0.0%	99.6%	101%
Tobacco	0.7%	0.3%	0.1%	1.1%	0.0%	98.9%	100%
Cotton and cottonseed	3.6%	1.2%	0.2%	0.8%	0.1%	98.9%	101%
Vegetables, melons, potatoes, sweet potatoes	15.5%	0.7%	4.4%	0.6%	0.4%	96.3%	102%
Fruits, tree nuts, berries	17.6%	1.3%	7.7%	0.5%	0.6%	94.9%	105%
Nursery, greenhouse, floriculture, sod	14.5%	0.7%	6.0%	0.7%	0.6%	96.6%	104%
Cultivated Christmas trees, short rotation woody crops	4.0%	1.9%	0.8%	0.1%	0.3%	99.9%	103%
Other crops and hay	5.9%	1.7%	0.5%	0.7%	0.4%	98.8%	102%
Livestock, poultry, and products	4.6%	1.1%	1.6%	0.3%	0.1%	97.9%	101%
Poultry and eggs	3.7%	1.3%	5.8%	0.5%	0.2%	93.8%	102%
Cattle and calves	4.4%	1.4%	0.1%	0.3%	0.1%	99.0%	101%
Milk from cows	8.0%	0.5%	0.2%	0.1%	0.2%	99.7%	101%
Hogs and pigs	2.1%	0.2%	0.1%	0.3%	0.0%	99.8%	100%
Sheep, goats, wool, mohair, milk	10.3%	4.9%	0.5%	0.4%	0.1%	98.9%	105%
Horses, ponies, mules, burros, donkeys	5.0%	2.1%	0.6%	0.5%	0.2%	99.0%	102%
Aquaculture	4.1%	1.2%	2.4%	0.4%	2.7%	97.4%	104%
Other animals and animal products	3.8%	1.3%	3.0%	0.5%	0.6%	99.1%	105%
All Market Value of Agriculture Products Sold	5.6%	0.9%	1.9%	0.4%	0.2%	98.1%	101%
Share of Farms by Type of Agriculture Products Sold							
Crops	3.4%	1.8%	1.2%	1.3%	0.2%	97.6%	102%
Grains, oilseeds, dry beans, dry peas	1.3%	1.1%	0.2%	0.7%	0.1%	98.7%	101%
Tobacco	0.9%	0.2%	0.1%	1.6%	0.0%	98.5%	100%
Cotton and cottonseed	3.4%	0.9%	0.2%	1.7%	0.1%	98.2%	101%
Vegetables, melons, potatoes, sweet potatoes	5.6%	3.5%	3.8%	3.9%	0.5%	92.2%	104%
Fruits, tree nuts, berries	11.1%	2.5%	5.4%	1.4%	0.9%	94.9%	105%
Nursery, greenhouse, floriculture, sod	7.3%	1.9%	4.4%	1.5%	0.8%	96.1%	105%
Cultivated Christmas trees, short rotation woody crops	2.9%	1.2%	1.0%	0.6%	0.2%	99.4%	102%
Other crops and hay	2.8%	2.0%	0.4%	1.2%	0.1%	98.3%	102%
Livestock, poultry, and products	4.1%	3.4%	0.6%	1.8%	0.2%	96.7%	103%
Poultry and eggs	5.3%	3.2%	1.6%	1.3%	0.3%	97.7%	104%
Cattle and calves	3.5%	2.9%	0.3%	2.0%	0.1%	97.0%	102%
Milk from cows	1.7%	0.6%	0.2%	0.2%	0.1%	99.8%	101%
Hogs and pigs	3.8%	2.8%	0.7%	1.9%	0.3%	97.6%	103%
Sheep, goats, wool, mohair, milk	6.7%	6.8%	0.8%	1.4%	0.4%	94.2%	103%
Horses, ponies, mules, burros, donkeys	4.5%	4.4%	0.5%	1.5%	0.2%	97.2%	104%
Aquaculture	4.5%	2.2%	2.2%	1.4%	0.5%	97.4%	104%
Other animals and animal products	4.5%	3.1%	1.1%	1.1%	0.4%	98.1%	104%
Total Number of Farms	4.2%	2.9%	0.9%	1.7%	0.2%	96.6%	102%
Livestock Inventory (Dec 31, 2017)							
Broilers and other meat-type chickens	3.8%	2.0%	9.2%	0.7%	0.1%	97.6%	110%
Cattle and calves	4.0%	2.0%	0.2%	0.7%	0.1%	98.5%	102%
Goats	8.8%	5.4%	1.1%	1.7%	0.4%	94.8%	103%
Hogs and pigs	1.8%	0.2%	0.1%	0.3%	0.0%	99.8%	100%
Horses and ponies	4.2%	5.3%	0.4%	1.3%	0.2%	95.9%	103%
Layers	3.5%	0.3%	1.4%	0.1%	0.1%	98.7%	101%
Pullets	2.7%	0.5%	0.8%	(D)	(D)	99.3%	101%
Sheep and lambs	8.1%	6.8%	0.9%	0.4%	0.2%	95.7%	104%
Turkeys	3.2%	0.4%	1.5%	(D)	(D)	98.7%	101%
Number of farms	86,278	60,083	18,338	35,740	4,341	1,973,006	2,042,220

Source: 2017 Census of Agriculture. Uses data for any producer.

The totals column may not sum to 100% because producers can be of more than one race. The Hispanic column is not included in the total column because Hispanics can be of any race and are thus already counted in the race columns.

In terms of **Net Cash Farm Income** (*see* Table 8), whites received 97.97% of the Net Cash Farm Income even though they had just 95.8% of the farms. By contrast, Blacks had 1.6% of the farms but only 0.1% of the Net Cash Farm Income, and American Indians and Alaskan Natives had 1.9% of farms but only 0.6% of the Net Cash Farm Income.

In terms of the **per-acre market value of agricultural products sold**, white farmers averaged \$450 per acre. (*See* Table 4.) AI/AN farmers averaged the lowest by far at \$41/acre. And Black farmers averaged the second lowest at \$243/acre. These metrics are especially notable because the 1974 Report on the Status of Minority Farms in the United States reported similar numbers for AI/AN farmers but found that Black farms actually had higher income from farm and farm-related sources per acre than white farmers at that time.

The value of land and buildings per acre and the value of total assets per acre are both typically greater for black farms. By two measures of efficiency — net farm and farm-related income per acre and per dollar of asset — black farms are of equal or greater efficiency. However, overall, as well as in each tenure class, the average size of black farms in acres is considerably smaller than for all farms. While black operators appear to do well with the resources they control, the small quantity of resources controlled places a serious upper limit on farm income.¹⁸⁴

Less than 10 years later, the 1982 Civil Rights Report about the decline in the number of Black farmers noted:

The adverse conditions which historically affected black farmers still exist to some extent today. Most significant is the competitive disadvantage faced by black farmers due to the relatively small size of their landholdings. While the average commercial black-operated farm in the south is 128 acres, the average white-operated farm is more than three times that size—428 acres...Economies of scale, research and technology, tax benefits, government price and income supports, and commercial lending all militate against the survival of black-operated small farms.

¹⁸⁴ Allen R. Thompson & Michael Green, USDA, ESS Staff Report, NRED 80-4, The Status of Minority Farms in the United States, (“1974 Rep.”) at 49.

Disadvantageous economies of scale prevent black farmers from reaping the benefits of many technological advancements. The cost of basic equipment minimally necessary to run a commercial farm is much greater in proportion to the number of acres of land help by the average black farmer than it is for white farmers. Because of their small landholdings, black commercial farmers invest in less machinery and earn smaller profits per farm than do white farm operators.¹⁸⁵

Thus, after less than a decade, the profitability of Black farms had diminished substantially. And this disparity persists into the present day.

Another example is comparing income across sector. Cattle farming and ranching was the predominant industry sector for all farmers in the U.S. for all groups except Asians, where it was the third most predominant industry. Although half of Black farms were in cattle ranching, their earnings (\$14,213) were just a small fraction of the sales by white cattle ranches (\$110,740). (*See* Table 17.) Similarly, American Indian/Alaskan Natives, Asians, and Native Hawaiian/Pacific Islander farms all had revenues that were less than half of the revenues of white farms.

	Farms with Hispanic Producers	Farms with American Indian/ Alaskan Native Producers	Farms with Asian Producers	Farms with Black Producers	Farms with Native Hawaiian/ Pacific Islander Producers	Farms with White Producers
Share of Farms	36.6%	41.9%	11.8%	49.9%	25.2%	31.1%
Ave Sales (\$)	\$ 135,675	\$ 53,017	\$ 46,068	\$ 14,213	\$ 47,196	\$ 110,740
Source: Census of Agriculture, 2017. Uses data for any producer.						

The disparities between the size of the minority population and their relative shares of the farming market across a number of metrics are large. These outcomes can be influenced by multiple factors, but one way the linkage between statistical disparities and discrimination is

¹⁸⁵ 1982 Rep. at. 50-51. The 1982 report also noted that federally funded research resulted in technology that has been geared towards large scale farming and the economies of scale were not inherent in nature but a result of a bias towards large scale farming in federally funded research and development of technology. *Id.* at 51-52.

shown is through the introduction of anecdotal or qualitative evidence. If the thrust of the qualitative evidence is consistent with the statistical disparities observed, the case for the linkage is strengthened accordingly.

As set forth above, there are vast numbers of anecdotal accounts of discrimination against minority farmers in USDA loan programs, including thousands of civil rights complaints filed as part of lawsuits by Black, Native American, and Hispanic farmers, as well as administrative complaints at USDA. The disparities set forth above are consistent with the types of complaints that have been made, and they are consistent with some of the results that we see. For instance, at the same time minority farms were diminishing, leading to the underrepresentation of minority farmers in the United States today, hundreds, if not thousands, of complaints were made, including allegations that:

- USDA did not provide the same levels of outreach to minority farmers, such that minority farmers were not aware of existing loan programs and eligibility;
- When minority farmers did apply for USDA loans, USDA officials did not provide the same levels of assistance to minority farmers in completing their loan applications, at times withholding or providing false or misleading information to them;
- USDA denied minority farmers' loan applications at higher rates, arbitrarily, and sometimes without explanation;
- When minority farmers did obtain USDA loans, they were often in lower amounts, on less favorable terms, with additional requirements not imposed on white farmers, arbitrarily reduced, and so untimely as to be useless;
- USDA did not provide the same levels of education and technical assistance to minority farmers,¹⁸⁶ such that minority farmers did not diversify their crops, invest in technologies that could increase productivity, or adopt mechanization at the same rates as non-minority farmers;
- USDA did not inform minority farmers of loan servicing options or provide the same levels of loan servicing to minority farmers, at times even accelerating minority

¹⁸⁶ For instance, reporting indicates that there was a lack of assistance for farm business planning; a lack of targeted training on farm business management and credit acquisition issues; and that the Agricultural Extension Service was funded through land-grant universities and not Historically Black Colleges and Universities or Tribal Colleges.

farmers' loan repayment schedules, with the result that minority farms were more often subject to foreclosure.

Discriminatory actions like these deprived generations of minority farmers of needed credit, payments, and technical assistance and are entirely consistent with the results we see today, namely that minority farmers are disadvantaged in terms of acreage, revenue, net income, and other metrics vis-à-vis non-minority farmers and are a smaller (and in the case of Black farmers, dramatically smaller) proportion of the U.S. farming population today.

Numerous reports over the years provide supportive evidence. As discussed above, the evidence compiled and reviewed by Jackson Lewis in 2011 “substantiated claims [by focus group participants and community based organizations] of denial of equal program access and continuing institutional discrimination,”¹⁸⁷ which it said had “a broad and longstanding negative impact on ... SDGs—including the loss of scarce or irreplaceable farm lands.”¹⁸⁸ As just one example, the report explained that because of delays in the distribution of USDA funds, farmers often did not receive approved funds until after the planting season was half-finished, thus contributing to their losses.¹⁸⁹ Given their historic lack of access to USDA funds and services, minority farmers' corresponding lower farm incomes and wealth levels understandably hampered their ability to weather financial hardships, leading to the diminution of minority farms. And discriminatory actions, such as accelerating the payment schedules of minority farmers and failing to provide them with information and services about loan servicing options led to disproportionate numbers of minorities losing their farms to foreclosure.

¹⁸⁷ JL Rep. at viii.

¹⁸⁸ *Id.* at 64.

¹⁸⁹ *Id.* at 81-82.

Another way that the linkage between statistical disparities and discrimination can be shown is to consider the size of the observed disparities.¹⁹⁰ The larger the disparity, the less likely it is that non-discriminatory factors account for the entire difference. As discussed above, there are significant disparities between the acreage of minority farms and non-minority farms; between the market value of products sold by minority farmers and non-minority farmers; and between the net income of minority farmers and non-minority farmers. These large disparities, across several relevant metrics, strongly suggest that discrimination in agricultural lending markets, including by USDA, is a primary explanation.

A further reason to attribute the disadvantaged position of minority farmers today to prior discrimination in USDA's loan programs is to consider the longevity and timing of the discriminatory conduct. As discussed, there have been complaints of discrimination against minorities in USDA lending programs since the inception of those programs. As early as 1965, the USCCR reported wide-ranging complaints of discrimination, and in 2011, Jackson Lewis reported many of the same issues, concluding that discrimination in FSA lending was systematic and ingrained. In light of the longstanding discrimination against minority farmers in USDA loan programs, over at least a fifty-year period and documented as late as 2011, it is reasonable to expect that minority farmers would continue to suffer the lingering effects of that discrimination only

¹⁹⁰ See, e.g., Justus Veenman, "Measuring labor market discrimination: An overview of methods and their characteristics," *American Behavioral Scientist* 53.12: 1806-1823 (2010), <https://perma.cc/36X8-E24N>; George R. La Noue, "Standards for the second generation of Croson-inspired disparity studies," *The Urban Lawyer*: 485-540 (1994), <https://perma.cc/JB83-44VF>; The Equal Opportunity Commission Uniform Guidelines (29 C.F.R. § 1607(D)) provide a threshold of 80% (or the four-fifths rule), which that guides Federal enforcement agencies in carrying out their obligations in promoting equal employment opportunity.

about a decade later.¹⁹¹ This is especially true in light of the capital-intensive nature of agriculture, which requires significant up-front investment in land, equipment, and supplies, with returns measured in decades.

Once a disparity has been shown, one common way to rebut the implication that the disparity is a result of discrimination would be to show that any disparities substantially shrink in size, statistical significance, or both once other factors that are unlikely to be correlated with discrimination have been accounted for. But other factors that one might expect to negate the disparities above do not do so. For instance, the diminution of minority farms is not due to a shrinking minority population. Instead, minority farms have mostly been vanishing, not increasing, with consistent *increases* in minority populations. At the same time, the share of acreage attributed to minority farms has been stagnant: About 94% of farm acreage has been farmed by white farmers consistently over the 1978-2017 period even though the white population share has been decreasing over the same period. (See Table 3 in Appendix C.) Even compared to their proportion of the rural population or to the population of the states in which they are most heavily concentrated, minority producers are underrepresented (in some areas, significantly underrepresented). Moreover, a relative lack of experience among minority farmers cannot account for their diminished revenue or smaller size farms, as the proportion of new farmers in several

¹⁹¹ See, e.g., Peter A. Morrison, “‘Lingering effects’ of discrimination: tracing persistence over time in local populations”, *Population Research and Policy Review*, 25.2 (2006): 127-139, <https://perma.cc/5KD6-KG27>; Jeremy R. Porter, “Plantation economics, violence, and social well-being: The lingering effects of racialized group oppression on contemporary human development in the American South,” *Journal of Human Development and Capabilities* 12.3 (2011): 339-366, <https://perma.cc/EZ5M-HDYV>; Lindsey M. Burke & Jude Schwalbach, “Housing Redlining and Its Lingering Effects on Education Opportunity, Background. No. 3594,” *Heritage Foundation* (2021), <https://perma.cc/8FXN-XL49>.

minority groups is roughly equivalent to the proportion of new white farmers and, in any event, a comparative lack of experience is not an independent factor but instead one expected effect of a lengthy period of exclusion from farming. And time spent working off the farm does not explain those same disparities, as minority farmers, in many instances, spend less time off the farm than non-minority producers—and, as compared to whites, most minority groups have a higher percentage of producers engaged in farming as their primary occupation.¹⁹²

Nor is it likely that minority underrepresentation is simply the result of minorities choosing not to enter or stay in the business of farming, or not to expand farming operations, for reasons unrelated to discrimination. Rather, there is substantial evidence that historical discrimination in USDA loan programs has caused minority farmers to become “discouraged borrowers” who may be less likely to seek future USDA assistance precisely because of past USDA discrimination and a resultant lack of trust. Data provided by USDA on loan applications and application withdrawal rates, which are discussed in greater detail below, show that minority groups had much lower than expected loan application rates and higher loan application withdrawal rates than did white farmers—in other words, minority farmers were less likely to apply for USDA loans in the first place and their loan applications were more likely to be withdrawn if they did apply. This provides evidence that minority farmers expect unfair treatment by USDA and are more likely to be discouraged borrowers.

Furthermore, other factors are themselves strongly correlated with other effects of discrimination. For instance, many government programs tend to favor large farms, such as

¹⁹² See Table 13 and accompanying text above (discussing various farmer characteristics by race/ethnicity).

programs for certain crops that are economically feasible only at large scale.¹⁹³ Large farms are disproportionately farmed by whites, who therefore receive a disproportionate share of the benefits of those programs. As discussed above, however, the smaller size of minority farms in terms of acreage and revenue is likely due in no small part to historical discrimination in USDA loan programs that have deprived minority farmers of necessary credit and services.¹⁹⁴ That, in turn, has impeded minority farmers' ability to access the credit and collateral necessary to expand their farms, leaving them smaller and less profitable.

Another point to consider is the effect of various countermeasures taken over the years that would be expected to offset the discriminatory conduct and its effects and improve the relative position of minority farmers. But as discussed, although Congress and USDA have made various efforts over the years to remedy the problem of USDA discrimination, and the situation of some minority farmers may have improved, the data show disparities—some of them quite significant—that persist today. These ongoing disparities confirm that past efforts to remedy discriminatory effects and improve minority farmers' position have been inadequate. Many such efforts have aimed at increasing minority participation in USDA loan programs while failing to address borrower discouragement and lack of trust among minority farmers due to historic discrimination in USDA loan programs.

Perhaps the most well-known remedial effort relates to payments to minority farmers made as a result of litigation based on race discrimination. As explained elsewhere, though, those

¹⁹³ See USDA, National Commission on Small Farms, *A Time to Act*, at 10-11 (Jan. 1998) <https://perma.cc/NZY6-PPFW>.

¹⁹⁴ It also caused farmers to lose their land (and stop farming) and prohibit potential farmers from buying or starting a farm in the first place.

payments were inadequate for numerous reasons; and they provide no remedy to minority farmers who have encountered discrimination after the late 1990s, and who necessarily were not beneficiaries of those payment,¹⁹⁵ or to minority farmers not directly discriminated against but nonetheless experiencing the lingering effects of longstanding discrimination in USDA loan programs. In addition, one factor correlating the current adversities faced by minority farmers and discrimination in USDA lending is the historical lack of an effective and timely process for resolving the various complaints of discrimination in USDA's loan programs; resolution often came too late to fully redress compound effects of earlier discrimination. In a similar manner, remedial efforts taken to-date have failed to address the cyclical effects of discrimination that have largely hampered minority farmers' ability to accrue the capital necessary to maintain or expand their farming operations at the same rate as non-minority farmers.

D. Cyclical Effects of Past Discrimination in USDA Loan Programs

The negative effects of past discrimination in USDA's loan programs themselves have follow-on effects that make it more difficult for minority farmers to flourish today. In part because of USDA's discrimination, minority farmers have lower farm incomes and wealth levels, which in turn leads to higher rates of default and foreclosure and less access to other government funds, as well as private lending. In these areas, even where there is not ongoing intentional discrimination against minority farmers, the negative effects of prior discrimination in USDA loan programs continue to inhibit them. Minority farmers, given their experiences of prior discrimination in USDA loan programs, may have developed distrust of USDA and continue to expect unfair treatment, which makes them more likely to be discouraged borrowers. Thus, in addition to the

¹⁹⁵ The *Pigford* litigation covered Black farmers who encountered discrimination in USDA loan or other credit programs between 1981 and 1996; the *Keepseagle* litigation covered the years between 1981 and 1999; and the *Garcia* litigation covered the years between 1981 and 2000.

more direct long-term consequences inherent to the denial of needed credit—such as the inability to make timely investments to grow one’s business—there are indirect effects that reverberate across decades. The existence of these causal mechanisms, and their documented effects, provide a sound basis to conclude that existing disparities are the result of historic discrimination.

1. Higher rates of delinquency, default, and foreclosure among minority farmers

Because minority farms are smaller and less profitable, and minority farmers have corresponding less wealth and income to draw from, they are more vulnerable to adverse conditions, such as natural disasters, poor weather conditions, and economic downturns. They are less able to weather these negative shocks, which results in their having higher rates of delinquency on their loans and foreclosure on their farms. And due to the lack of trust and relationships with USDA officials as a result of longstanding USDA discrimination, they are less likely to seek and obtain access to loan servicing options to avoid default and foreclosure even when they are aware of servicing options.¹⁹⁶

The USDA data shows that the minority farmers who would be eligible for debt relief under Section 1005 have much higher levels of loan delinquency, bankruptcy, and foreclosure than non-minority farmers. Table 12 below is based on USDA data and shows the minority borrowers and direct and guaranteed loans eligible for debt relief under Section 1005, as well as the corresponding

¹⁹⁶ See, e.g., GAO-19-539 at 29. As will be discussed below, the small business financing literature has consistently shown that minority business owners are more likely to be discouraged borrowers than white business owners. Research using a number of different data sources on small business financing all show a greater proportion of minority business owners being discouraged borrowers than white business owners. That includes data from the Survey of Small Business Finances by the Federal Reserve Board of Governors, various years of the Small Business Credit Survey by various banks in the Federal Reserve System, and the Kauffman Firm Survey, which tracked firms over 2004-2011 period, by the Kauffman Foundation. Joseph Farhat & Alicia Robb, *Applied Survey Data Analysis Using Stata: The Kauffman Firm Survey Data*, (2014), <https://perma.cc/9KBU-HUG7>.

breakout for non-minority borrowers in terms of the number of borrowers, loans that were current versus not current as of January 1, 2021, and the status of non-current loans (*e.g.*, foreclosure, bankruptcy, delinquent). In terms of both borrowers and loans, the data shows that minority farmers have higher rates of delinquency, bankruptcy, and foreclosure.

Table 18. Farm Loan Programs Direct and Guaranteed Loans Unpaid Debt Balances of Minority and Non-Minority Borrowers				
	Minority		Non-Minority	
Direct Loans - Borrowers Current on All Debt - As of January 1, 2021				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Nbr of Loans
Current	11,609	19,955	63,360	98,084
Direct Loans - Borrowers Not Current on All Debt - As of January 1, 2021				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Nbr of Loans
Currently Not Collectible	755	1,494	1,371	2,803
Foreclosure	373	1,073	181	654
Bankruptcy	325	998	900	2,257
Litigation	67	212	286	687
Delinquent	3,408	7,928	7,441	15,353
Contingent Liability	2	2	3	3
Sub-Total	4,930	11,707	10,182	21,757
Total	16,539	31,662	73,542	119,841
% Not Current	29.8%	37.0%	13.8%	18.2%
Guaranteed Loans - Borrowers Current on All Debt - As of December 31, 2020				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Total Nbr of Loans
Current	2,313	3,442	35,446	51,830
Guaranteed Loans - Borrowers Not Current on All Debt - As of December 31, 2020				
Category	Nbr of Borrowers	Nbr of Loans	Nbr of Borrowers	Total Nbr of Loans
Liquidation/Foreclosure	37	69	191	339
Bankruptcy	17	28	194	362
Delinquent	211	309	1534	2433
Sub-Total	265	406	1,919	3,134
Total	2,578	3,848	37,365	54,964
% Not Current	10.3%	10.6%	5.1%	5.7%
Grand Total (DL+GL)	19,117	35,510	110,907	174,805
- Race and Ethnic designations of borrowers is as of July 14, 2021.				
- Some borrowers have both Direct and Guaranteed Loans.				
- Guaranteed Loan unpaid balances are estimated as of December 31, 2020, the most recent semi-annual data available from lenders.				
- Direct Loans category Contingent Liability represents equity recapture on borrowers' future commodity sales.				
Source: USDA				

In terms of **direct loans**, Table 18 shows that 29.8% of minority borrowers were not current on their loans as of January 1, 2021, versus 13.8% of non-minority borrowers. This means that 37% of all direct loans held by minority borrowers were not current, while only 18.2% of direct

loans held by non-SDA borrowers were not current. For the minorities' direct loans that were not current, more than two-thirds were classified as delinquent, 18% were in foreclosure or bankruptcy, and another 13% were classified as "Not Collectable," meaning that there were no underlying assets or collateral to collect on the loan.¹⁹⁷

In terms of **guaranteed loans**, 10.3% of minority borrowers were not current on their loans as of December 31, 2020, versus 5.1% of non-minority borrowers. In terms of loans (as opposed to borrowers), 10.6% of all guaranteed loans held by minority borrowers were not current, while only 5.7% of guaranteed loans held by white borrowers were not current. Thus, minority borrowers and minorities' loans were much more often not current on their direct and guaranteed loans covered by Section 1005 than their white counterparts.

In fact, while minority farmers made up 18.4% of all direct loan borrowers, they made up nearly one-third of the borrowers who were not current on their direct loans and 35% of the direct loans that were not current. (*See* Table 13.) They also made up two-thirds of the direct loan borrowers who were in foreclosure. Minority farmers made up just 6.5% of the guaranteed borrowers, but more than 12% of the guaranteed borrowers that were delinquent on their loans and more than 16% of the guaranteed borrowers in liquidation or foreclosure.

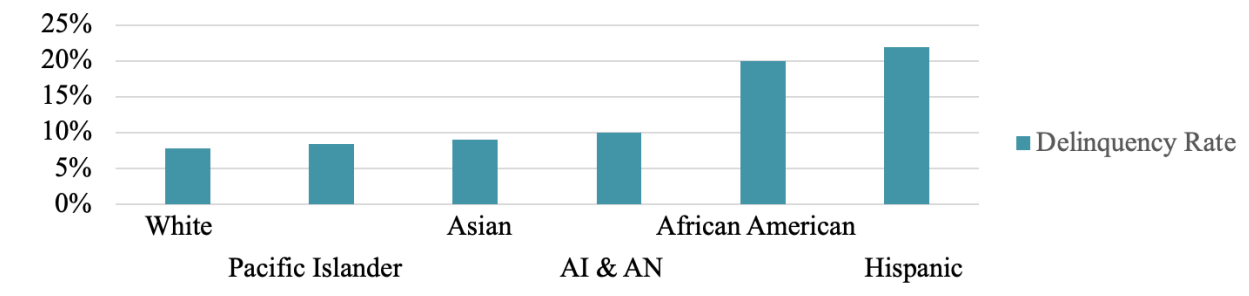
¹⁹⁷ For loan servicing purposes, a "delinquent borrower" is "a borrower who has failed to make all scheduled payments by the due date." *See* 7 C.F.R. § 761.2(b) (definition of "delinquent borrower"). If a delinquent borrower is unable to restructure or buyout the debt under Farm Loan Programs' primary loan servicing options, or fails to request loan serving, FSA is required to proceed with foreclosure.

Table 19. Farm Loan Programs Direct and Guaranteed Loans Unpaid Debt Balances of Minority Borrowers						
Direct Loans - Borrowers Current on All Debt - As of January 1, 2021				Minority Share		
Category	Nbr of Borrowers	Nbr of Loans	Total P&I	of Borrowers	of Loans	Total P&I
Current	11,609	19,955	\$1,738,425,084	15.5%	16.9%	15.1%
Direct Loans - Borrowers Not Current on All Debt - As of January 1, 2021						
Category	Nbr of Borrowers	Nbr of Loans	Total P&I			
Currently Not Collectible	755	1,494	\$54,614,022	35.5%	34.8%	32.5%
Foreclosure	373	1,073	\$105,624,587	67.3%	62.1%	72.4%
Bankruptcy	325	998	\$63,116,829	26.5%	30.7%	27.3%
Litigation	67	212	\$11,007,720	19.0%	23.6%	21.7%
Delinquent	3,408	7,928	\$571,384,683	31.4%	34.1%	34.7%
Contingent Liability	2	2	\$22,250	40.0%	40.0%	19.6%
Sub-Total Not Current	4,930	11,707	\$805,770,091	32.6%	35.0%	35.9%
Total	16,539	31,662	\$2,544,195,175	18.4%	20.9%	18.5%
% Not Current	29.8%	37.0%	31.7%			
Guaranteed Loans - Borrowers Current on All Debt - As of December 31, 2020						
Category	Nbr of Borrowers	Nbr of Loans	Total P&I			
Current	2,313	3,442	\$1,345,773,614	6.1%	6.2%	7.2%
Guaranteed Loans - Borrowers Not Current on All Debt - As of December 31, 2020						
Category	Nbr of Borrowers	Nbr of Loans	Total P&I			
Liquidation/Foreclosure	37	69	\$22,027,000	16.2%	16.9%	15.9%
Bankruptcy	17	28	\$11,060,405	8.1%	7.2%	7.2%
Delinquent	211	309	\$72,725,968	12.1%	11.3%	11.9%
Sub-Total Not Current	265	406	\$105,813,373	12.1%	11.5%	11.7%
Total	2,578	3,848	\$1,451,586,987	6.5%	6.5%	7.4%
% Not Current	10.3%	10.6%	7.3%			
Grand Total (DL+GL)	19,117	35,510	\$ 3,995,782,162	14.7%	16.9%	12.0%
- Race and Ethnic designations of borrowers is as of July 14, 2021.						
- Some borrowers have both Direct and Guaranteed Loans.						
- Guaranteed Loan unpaid balances are estimated as of December 31, 2020, the most recent semi-annual data available from lenders.						
- Direct Loans category Contingent Liability represents equity recapture on borrowers' future commodity sales.						
Source: USDA						

In terms of **loans** (as opposed to borrowers), the data shows that minorities' loans were much more often delinquent, in foreclosure, or in bankruptcy than non-minorities' loans as of January 1, 2021. (See Table 19.) While minority farmers held 20.9% of direct loans, they held only 16.9% of direct loans that were current, and 35% of direct loans that were not current. Minorities' loans made up 62.1% of the direct loans in foreclosure, more than 30% of the direct loans in bankruptcy, and nearly 35% of the direct loans designated as not collectible. The pattern was similar for guaranteed loans. Minority farmers held 6.5% of guaranteed loans, but only 6.2% of guaranteed loans that were current, 11.5% of guaranteed loans that were not, and 16.9% of guaranteed loans in liquidation or foreclosure.

Direct loan data from a July 23, 2021, USDA Internal Report on Farm Loan Programs on delinquency rates also shows that minority farmers in each racial or ethnic category have higher delinquency rates for direct loans than white farmers.¹⁹⁸ Hispanic borrowers had the highest delinquency rate of direct loans (22%),¹⁹⁹ followed by Blacks (20%), American Indians and Alaskan Natives (10%), and then Asians (9%). White borrowers had the lowest delinquency rate.

Figure 8: Delinquency Rates for Direct Loans by Race/Ethnicity



Source: USDA Internal Report on Farm Loan Programs (2021)

2. *Less access to government payments by minority farmers*

Given that minority farmers are in an economically disadvantaged position vis-à-vis white farmers, one would expect to see government payments going disproportionately to minority farmers. Instead, we see the opposite. As was shown in Table 4, in 2017, white farmers received nearly all (98.6%) of **government payments**, while farmers in each of the minority groups received less in government payments than their corresponding share of farms.

¹⁹⁸ This report used direct closed data from 2020 and 2021 and loan application data from 2016-2021.

¹⁹⁹ Without Puerto Rico (“PR”) included in the average, the Hispanic delinquency rate went down to 16% (PR is 99% Hispanic, and the delinquency rate is 70%).

- Hispanic farmers received 1.4% of government payments, even though they made up 3.8% of farms;
- American Indian and Alaskan Native farmers received 0.6% of government payments, even though they made up 1.9% of farms;
- Asian farmers received 0.2% of government payments, even though they made up 0.7% of farms;
- Black farmers received 0.6% of government payments, even though they made up 1.6% of farms; and
- Native Hawaiian and other Pacific Islander farmers received less than 0.1% of government payments, even though they made up 0.1% of farms.

The disproportionate allocation of government payments to white farmers was repeated recently through the Market Facilitation Program (“MFP”)²⁰⁰ and the Coronavirus Food Assistance Program (“CFAP”).²⁰¹ A 2021 report to Congress, comparing transfers and subsidies to minority and non-minority producers, indicated that minority status was unknown for more than 5% of payees²⁰² and 7% of payments.²⁰³

²⁰⁰ In 2018 and 2019, the FSA was authorized to distribute up to \$25.1 billion through the MFP to assist producers directly affected by retaliatory tariffs by China. *See* USDA, Market Facilitation Program, <https://perma.cc/947S-7JCX>.

²⁰¹ CFAP was created in 2020 in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to assist producers who faced market disruptions due to COVID-19. It consisted of \$16 billion in direct support to producers and \$3 billion to buy agricultural products and re-distribute them to Americans in need. *See USDA Announces [CFAP]*, USDA (Apr. 17, 2021), <https://perma.cc/B7N9-PTRE>.

²⁰² Many producers received separate payments under both phases of MFP and CFAP, so the total number of payees in Tables 20 and 21 below include those who received multiple payments over each year of the programs.

²⁰³ *See* Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs (Aug. 5, 2021). The report was produced in response to a request from Congress that USDA provide to the House Committee on Appropriations “a report on the distribution of farm subsidies, low-interest loans, and cost-share conservation programs and its impact on minority-owned farms.” *See id.* at 2; *id.* at 2; Agriculture, Rural Development, Food & Drug Administration, & Related Agencies Appropriations Bill, 2020, H. Rep. 116-107 (2019).

However, two rough estimates indicate that the majority of payments went to white farmers even accounting for the unknowns. For the first estimate, I considered only those payment recipients whose minority and non-minority status was known.²⁰⁴ For the second estimate, I allocated the unknown shares of payees and payments in the same proportions as the original shares.²⁰⁵ Both estimates indicate that more than 95% of CFAP payees and more than 98% of MFP payees were white farmers and that a similar proportion of payments went to white farmers.²⁰⁶

Reporting indicates that these disparities are attributable to the fact that agricultural funding tends to favor large farms.²⁰⁷ Thus, although likely not intentional, the disproportionate allocation of these funds from recent programs to non-minority farmers exacerbates the disparities discussed above. And given the magnitude of these programs—more than \$23 billion over two years under the MFP, and nearly \$24 billion under the CFAP—compared to the total amount of minority

²⁰⁴ In other words, I determined the total number of known minority and non-minority payees by subtracting the unknown payees from the total number of payees. I then divided the total number of known non-minority payees by the total number of known minority and non-minority payees (*e.g.*, for MFP non-minority payees: $1,165,038 / (1,248,692 - 66,189)$; and for CFAP non-minority payees: $1,413,221 / (1,545,390 - 71,347)$).

²⁰⁵ To the known minority and non-minority payee totals, I added the unknown payees in the same proportion as the known payee percentages calculated above. I then divided each of the estimated totals of non-minority and minority payees by the total number of payees (*e.g.*, for MFP non-minority payees: $1,165,038 + (.933 \times 66,189) / 1,248,692$; and for CFAP non-minority payees: $1,413,221 + (.914 \times 71,347) / 1,545,390$).

²⁰⁶ A third estimate, assigning the unknown shares a somewhat implausible 50/50 minority/non-minority status, shows similarly disproportionate payments—94% of CFAP payments and 96% of MFP payments—went to white farmers.

²⁰⁷ *See* USDA, National Commission on Small Farms, *A Time to Act*, at 10-11 (Jan. 1998).

farmers’ direct and guaranteed loan balances—only about \$4 billion (*see* Table 18)—one can expect the impact of these disparate payments to be significant.²⁰⁸

Table 20. Market Facilitation Program (MFP) Data, Program Years 2018-2019								
	Non-Minorities		Minorities		Minority Status Unknown		Total	
	Payees	Payments	Payees	Payments	Payees	Payments	Payees	Payments
2018								
Number	552,828	7,941,683,376	7,191	64,897,740	30,651	619,175,657	590,670	8,625,756,773
Percentage	93.6%	92.1%	1.2%	0.8%	5.2%	7.2%	100%	100%
2019								
Number	612,210	13,153,507,091	10,274	168,101,106	35,538	1,176,855,183	658,022	14,498,463,380
Percentage	93.0%	90.7%	1.6%	1.2%	5.4%	8.1%	100%	100%
Total								
Number	1,165,038	21,095,190,467	17,465	232,998,846	66,189	1,796,030,840	1,248,692	23,124,220,153
Percentage	93.3%	91.2%	1.4%	1.0%	5.3%	7.8%	100%	100%
Total (% of known)	98.52%	98.91%	1.48%	1.09%			100%	100%
Total (allocating unknown w/same share as the original shares)	98.25%	98.31%	1.47%	1.09%			99.7%	99.4%
Total (allocating unknown 50/50 to minorities and non-minorities)	95.95%	95.11%	4.05%	4.89%			100.0%	100.0%

Source: Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs, August 2021, Table 5 and author’s calculations.

[Continued on next page]

²⁰⁸ Also, as Table 6 shows, each minority group except for Hispanics received a lower average amount of general government payments according to the 2017 Census of Agriculture. Indeed, despite their disproportionate need, the average amount of government payments received by Black farmers (\$7,108) was only half of that received by white farmers (\$14,004), while American Indian and Alaskan Native, Asian, and Native Hawaiian and other Pacific Islander farmers all had lower than average government payments than white farmers.

Table 21. Coronavirus Food Assistance Program (CFAP) Data, through January 27, 2021

	Non-Minorities		Minorities		Minority Status Unknown		Total	
	Payees	Payments	Payees	Payments	Payees	Payments	Payees	Payments
CFAP 1	595,302	9,047,821,024	28,962	375,755,073	27,609	1,172,717,079	651,873	10,596,293,176
CFAP 2	817,919	11,442,486,251	31,860	348,928,936	43,738	1,539,200,507	893,517	13,330,615,694
Total	1,413,221	20,490,307,275	60,822	724,684,009	71,347	2,711,917,586	1,545,390	23,926,908,870
%								
CFAP 1	91.3%	85.4%	4.4%	3.5%	4.24%	11.1%	100%	100%
CFAP 2	91.5%	85.8%	3.6%	2.6%	4.90%	11.5%	100%	100%
Total	91.4%	85.6%	3.9%	3.03%	4.62%	11.3%	100%	100%
Total (% of known)	95.9%	96.6%	4.1%	3.42%			100%	100%
Total (allocating unknown w/same share as the original shares)	95.7%	95.3%	4.1%	3.37%			99.79%	98.72%
Total (allocating unknown 50/50 to minority/non-minority)	93.8%	91.3%	6.2%	8.7%			100%	100%

Source: Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs, August 2021, Table 6 and author's calculations.

3. *Less access to private credit by minority farmers*

The historic inability of minority farmers to obtain FSA funds and services on par with white farmers also inhibits them from obtaining access to private credit today. In the Agriculture Improvement Act of 2018, Congress asked GAO to study agricultural credit services provided to SDFRs.²⁰⁹ Based on numerous interviews, as well as its review of statutes, regulations, government and academic literature, and data from multiple sources, GAO reported in 2019 that SDFRs “received proportionately fewer loans and less agricultural credit overall than non-

²⁰⁹ See Pub. L. No. 115-334, § 5416, 132 Stat. 4490, 4725 (2018). As used in this discussion, SDFR includes both minority and women farmers.

SDFRs.”²¹⁰ And it explained how “historical discrimination in agricultural lending adversely affects SDFRs’ current ability to obtain private credit in several ways.”²¹¹

First, “SDFRs who were unfairly denied USDA loans and other program benefits in the past have not been able to develop their farms in the same ways as farmers and ranchers who did receive loans.”²¹² Indeed, as discussed above, discrimination in USDA’s loan programs not only impeded minority farmers from “expand[ing] [their] operations and ... purchas[ing] land and equipment that c[ould] later be used as collateral,”²¹³ it also actively contributed to the diminution of minority farm lands. Consistent with the data and conclusions above, GAO thus reported that in 2017, “[o]n average,” SDFR farms continued to be “smaller and br[ing] in less revenue than non-SDFR farms.”²¹⁴

All three factors—collateral, farm size, and farm revenue—affect a farmer’s ability to obtain private credit.²¹⁵ As the GAO explained, “[m]any long-term agricultural loans require the borrower to pledge land as collateral to secure the transaction.”²¹⁶ It is both easier and less risky to lend to larger farms.²¹⁷ And “farm revenue is critical to demonstrating a borrower’s capacity to

²¹⁰ GAO-19-539 at 16.

²¹¹ *Id.* at 29.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 17.

²¹⁵ *See id.* at 24-27.

²¹⁶ *Id.* at 27.

²¹⁷ *See id.* at 24. As the GAO report explained, lenders have several incentives to lend to larger farms, including that (i) operators of smaller farms typically need smaller loans, and making many small loans is more time- and resource-intensive than making fewer, larger loans, (ii) large farms often produce major commodities such as corn, soybeans, and beef cattle, while small farms often produce specialty crops, and underwriting loans to large farms that produce major commodities is

repay an agricultural loan.”²¹⁸ Minority farmers’ unequal access to USDA funds and technical assistance historically, which negatively affected them with respect to all three factors, has consequently impeded their ability “to get subsequent and larger loans”—or even private loans at all.²¹⁹

Second, “historical exclusion from credit markets and farm programs has limited SDFRs’ familiarity with lending standards and resulted in less formal recordkeeping, which impairs their ability to obtain private-sector credit.”²²⁰ And third, “historical discrimination has led generations of SDFRs to distrust institutional lenders, making them less likely to apply for credit.”²²¹ In all of these ways, historic discrimination in USDA’s loan programs is impeding SDFRs from accessing private credit today.

A 2021 GAO report likewise noted that the fact that minority farmers are more likely to operate smaller, lower-revenue farms contributes to racial disparities in access to private capital and commercial loans by minority farmers.²²²

easier and less risky because more data are available on the market for those products, and (iii) programs such as crop insurance, which mitigate repayment risk, are geared toward large, major-commodity farmers, such that lenders are more likely to approve a loan or provide more favorable terms, such as lower interest rates.

²¹⁸ *Id.* at 25.

²¹⁹ *Id.* at 29.

²²⁰ *Id.*

²²¹ *Id.*

²²² See GAO-21-399T, Stmt. on the Record to the Subcomm. on Oversight & Investigations, Comm. on Fin. Servs. of the House of Representatives, *Financial Services: Fair Lending, Access, and Retirement Security*, (Feb. 2021), <https://perma.cc/P6R9-6UQG>.

4. *Borrower discouragement and distrust of USDA*

Additional data provided by USDA strongly suggest that a history of discrimination in the agency's farm loan programs has fostered distrust among minority borrowers and discouraged them from seeking farm loans from USDA. In other words, another cyclical effect of historic discrimination at USDA is that minority farmers have become "discouraged borrowers."

Substantial economic literature has described the prevalence of "discouraged borrowers." Discouraged borrowers are those who need credit, and would likely obtain credit if sought, but do not pursue credit opportunities because of the expectation of being denied.²²³ In small business finance literature it has also been observed that Black businesses apply for loans less often than white businesses largely because they expect to be denied credit, even when they have a good credit history and even in settings where strong local banks favor new business development.²²⁴ There is evidence of this in other areas of the economy as well, such as a lower level of

²²³ See, e.g., Mark Freel, Sara Carter, Stephen Tagg, & Colin Mason, Small Business Economics, The Latent Demand for Bank Debt: Characterizing "Discouraged Borrowers," 38 399-412 (2012), <https://link.springer.com/content/pdf/10.1007/s11187-010-9283-6.pdf>; Timothy Bates & Alicia Robb, Economic Development Quarterly, Impacts of Owner Race and Geographic Context on Access to Small-Business Financing (2015), <https://perma.cc/8XXF-Z74N>.

²²⁴ David Blanchflower, Phillip Levine, and David Zimmerman, "Discrimination in the small business credit market," Review of Economics and Statistics, November, 85(4), pp. 930-943 (2003), <https://perma.cc/C3GQ-DNRQ>; Cavalluzzo, Ken and John Wolken, "Small Business Loan Turndowns, Personal Wealth and Discrimination," Journal of Business, 78(6): 2153-2177 (2005), <https://www.jstor.org/stable/pdf/10.1086/497045.pdf?refreqid=excelsior%3A41a388781bd663cb4608712d7aa94987>; Rebel A. Cole, Credit Scores and Credit Market Outcomes: Evidence from the Survey of Small Business Finances and the Kauffman Firm Survey (2014); U.S. Small Business Administration Report, Washington, D.C.; Robert Fairlie, Alicia Robb, and David Robinson, "Black and White: Access to Capital Among Minority-Owned Startups," Management Science (2020), <https://doi.org/10.1287/mnsc.2021.3998>; Alicia Robb, Brett Barkley, and Mels de Zeeuw "Mind the Gap: How Do Credit Market Experiences and Borrowing Patterns Differ for Minority-Owned Firms?" (2018), <https://perma.cc/4LQE-KLZT>.

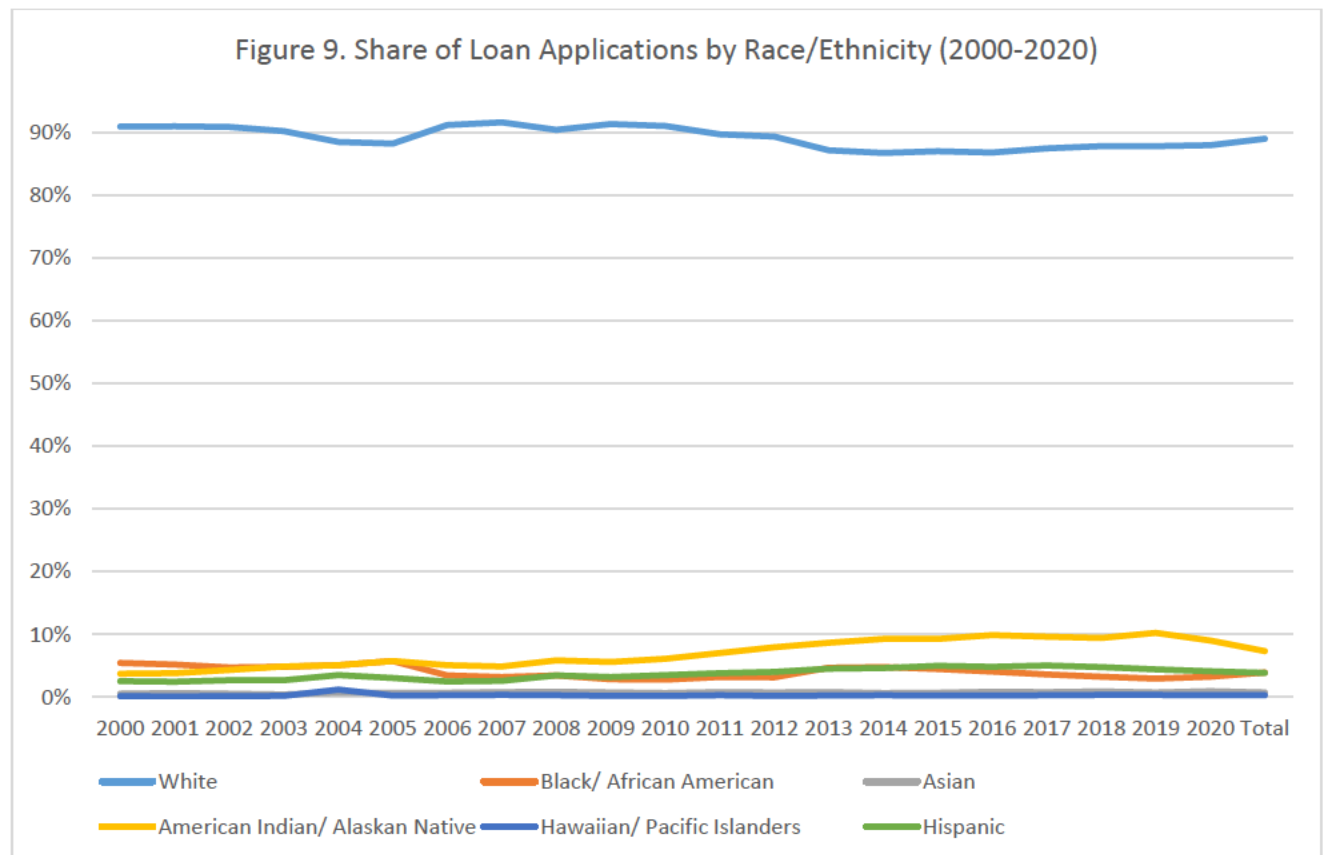
participation in government assistance programs by minorities.²²⁵ Past personal experience, or expectations derived from the experience of others, can cause wide discouragement among particular groups. Thus, although the data cannot establish the specific reason for an application's withdrawal, certain trends in the data—including lower application submission rates and higher application withdrawal rates—may support the conclusion that there are large numbers of discouraged borrowers, especially when considered alongside other anecdotal and statistical evidence of past discrimination.

To assess whether minorities are discouraged borrowers when it comes to USDA farm loan programs, I received direct loan application data from USDA for the years 2000-2020. I used these data to calculate the share of application submission and withdrawal rates for the various racial and ethnic groups of applicants, which can be found in the tables and figures below. The data provided by USDA, together with the documented history of discrimination against minority groups, strongly suggest that at least some minority farmers are discouraged borrowers who either do not apply for credit when needed or whose applications are withdrawn on the assumption that their applications will be denied.

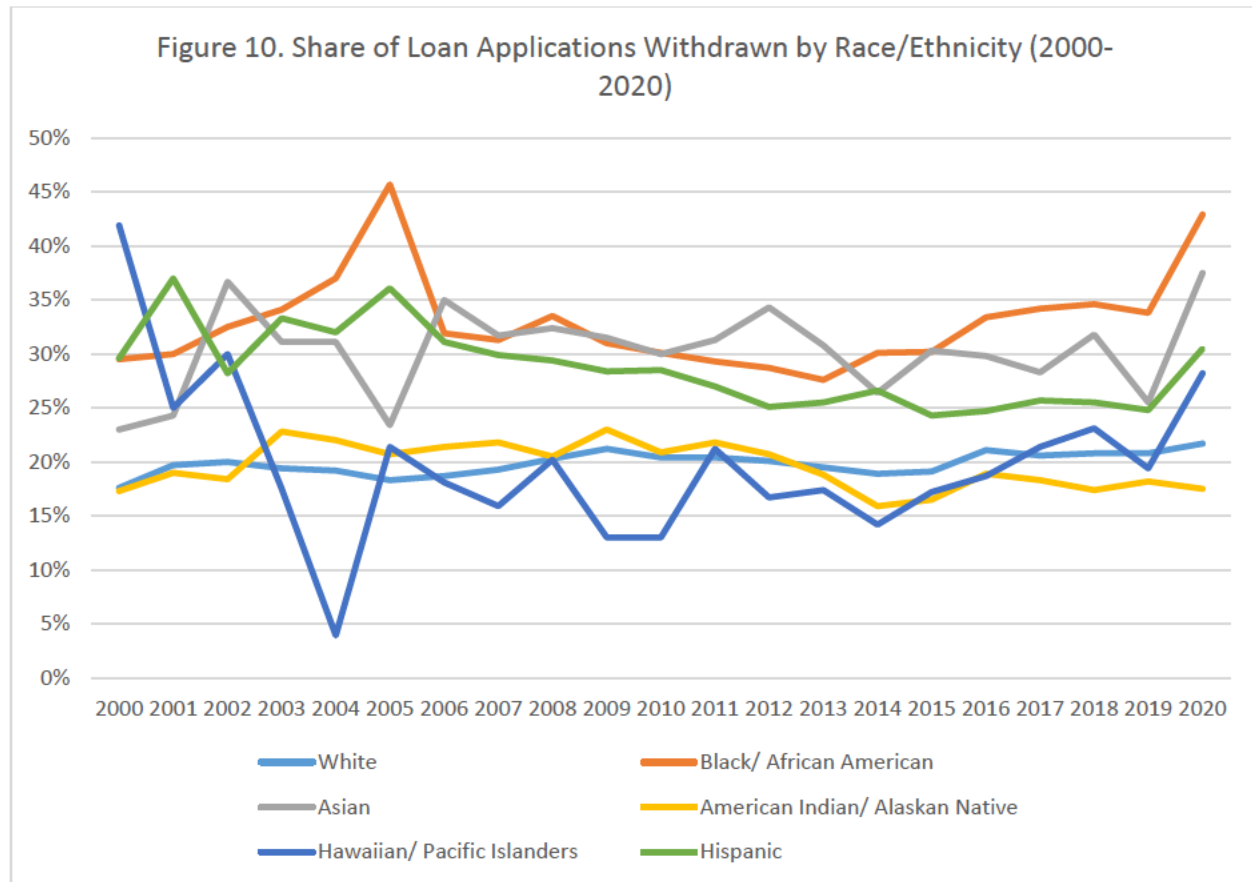
First, looking to application rates among the various racial groups, the data show a lower share of applicants by minority farmers than would be expected given their historical disadvantage in credit markets and USDA's position as the lender of last resort. Almost every minority group constituted well below 10% of USDA loan applicants. American Indians/Alaskan Natives are the highest percentage of minority applicants, but they are still an exceedingly small share of applicants overall, hovering around the 10% range. White farmers, on the other hand, made up

²²⁵ Elira Kuka & Bryan Stuart, Nat'l Bureau of Economic Rsch., Racial Inequality in Unemployment Insurance Receipt and Take-Up, https://www.nber.org/system/files/working_papers/w29595/w29595.pdf

around 90% of the loan applicants over the period from 2000-2020. More detail can be found at Table 7 in Appendix C.



Additionally, the data generally show higher application withdrawal rates among minorities as compared to white farmers. Overall, Blacks, Asians, and Hispanics had much higher rates of loan application withdrawals, compared with white farmers. Applications from American Indians and Alaskan Natives were withdrawn at higher rates than white farmers in every year over the period 2003-2011, although their withdrawal rates apparently decline after that year. There were so few Native Hawaiian and Pacific Islander applicants that there was no clear pattern that emerged over the period; in some years their withdrawal rate exceeded that of whites, while in other years it did not. More detail can be found at Table 8 in Appendix C.



The difference in application withdrawal rates between minorities and non-minorities is not likely explained by race-neutral factors such as low credit score. USDA provided me with additional data in the form of a credit risk assessment number for applicants for direct loans. The credit risk assessment is a number that takes on a value from 1 (being the lowest, or best, credit risk) to 4 (being the highest, or worst, credit risk). Table 22 presents the credit risk assessment of applicants by race and ethnicity and the outcome of their loan application (approved, withdrawn, or rejected). It shows that the applicants whose applications were withdrawn generally did not have the worst credit assessments. To help understand differences that might drive different outcomes, I compared credit risk assessments by outcome within each group.

In general, withdrawn applications had credit assessments that fell somewhere in between the credit assessments of approved and rejected applications.²²⁶ This provides evidence that at least some minority borrowers' applications were likely withdrawn because they expected their applications to be denied due to distrust fostered by historic discrimination at USDA and not due to having poor credit.

Table 22. Credit Risk Assessment by Race/Ethnicity (2000-2020)						
	White	Black/ African American	Asian	American Indian/ Alaskan Native	Hawaiian/ Pacific Islanders	Hispanic
All Applications	2.63	2.94	2.63	2.76	2.76	2.52
Standard Error	0.904	0.867	0.906	0.867	0.901	0.932
Sample Size	180856	7345	1206	17226	440	6321
Approved	2.62	2.91	2.60	2.75	2.80	2.51
Standard Error	0.9	0.868	0.893	0.864	0.896	0.918
Sample Size	150244	5333	930	14298	373	4675
Withdrawn	2.66	2.98	2.71	2.83	2.55	2.50
Standard Error	0.917	0.855	0.951	0.872	0.921	0.952
Sample Size	24573	1395	219	2387	58	1262
Rejected	2.80	3.03	2.80	2.76	2.56	2.65
Standard Error	0.922	0.878	0.903	0.903	0.882	1.033
Sample Size	5990	614	56	537	9	383
Diff b/n approved and withdrawn	-0.041	-0.064	-0.110	-0.080	0.244	0.008
As a % of Approved Credit Score	-1.6%	-2.2%	-4.2%	-2.9%	8.7%	0.3%
Diff b/n rejected and withdrawn	0.136	0.056	0.096	-0.068	0.004	0.147
As a % of Rejected Credit Score	4.9%	1.8%	3.4%	-2.5%	0.2%	5.6%
Source: USDA Direct Loan Application Data 2000-2020						

Instead, other evidence supports the conclusion that minorities have lower application submission rates and higher withdrawal rates because lack of trust and borrower discouragement

²²⁶ There are two exceptions. First, for Native Hawaiian/Pacific Islander farmers, the mean credit risk assessment for both withdrawn and rejected applications and was actually *better* than for approved applications. However, the sample size for this group was very small. Second, for AI/AN farmers, the mean credit risk assessment for withdrawn applications was worse than both rejected and approved applications.

due to past discrimination in USDA farm loan programs. As mentioned earlier in the report, there are myriad anecdotal accounts of discrimination against minority farmers in USDA loan programs, including allegations that USDA officials did not provide the same levels of assistance to minority farmers in completing their loan applications, including:

- USDA denying minority farmers' loan applications at higher rates, arbitrarily, and sometimes without explanation;
- Minority farmers receiving USDA loans that were smaller, on less favorable terms, arriving too late to be useful for that year's operations, and/or with additional requirements not imposed on white farmers,
- Minority farmers receiving USDA loans and then having their loans arbitrarily reduced;
- USDA not informing minority farmers of loan servicing options or providing the same levels of loan servicing to minority farmers

It is likely that these discriminatory actions over generations created a lack of trust in USDA by minority farmers. Indeed, multiple reports, including a 2019 GAO report, have noted that “historical discrimination has led generations of SDFRs to distrust institutional lenders, making them less likely to apply for credit.”²²⁷ This type of “learned distrust” of USDA loan programs is another cyclical effect of prior discrimination at USDA that keeps minorities from seeking needed credit that may allow them the same opportunities as white farmers to enter into the business of farming and expand their farming operations.²²⁸

²²⁷ GAO-19-539 at 29.

²²⁸ Cocciarelli, S., Knox, R., Melone, B., Robinson, A., Larson, R., Godfrey-Smith, H. (2015). The CDFI-Farmer of Color Capital Access National Project. MSU Center for Regional Food Systems. https://www.canr.msu.edu/foodsystems/uploads/files/cdfi-foc_capital_access_final_report_formatted.pdf.

VIII. Conclusion

The fact that USDA has discriminated against minority farmers and ranchers in USDA farm loan programs has been demonstrated through ample evidence in numerous reports issued by the U.S. Commission on Civil Rights, the GAO, and the USDA OIG; as well other reports funded by the USDA itself, including the CRAT and Jackson Lewis reports; and in numerous lawsuits that have been settled and awarded damages to thousands of minority farmers to the tune of several billion dollars.

We see the lingering effects of this discrimination in the data from the most recent Census of Agriculture, which shows that minorities are underrepresented in farming and that, when they do farm, minority farms are generally smaller and less profitable than white farms along a number of metrics: acreage, market value of production sold, net income, and per-acre productivity. In turn, without the requisite collateral and creditworthiness, minority farmers have higher rates of delinquency and foreclosure, have more difficulty obtaining government funding as well as private credit, and are more likely to be discouraged borrowers. These adverse consequences are the direct result of the disadvantaged economic position of minority farmers. And that position is due in no small part to decades of discrimination in the lending programs that were supposed to aid and support them.

The debt relief provided in Section 1005 addresses those effects, including by increasing minority farmers' available capital to permit reinvestment in their farm operations, helping to ensure that minority farmers who have higher rates of delinquency and foreclosure do not lose their farms during a time of national distress, and focusing targeted relief on those groups that have been disproportionately left out of previous government funding. While this relief may not fully remedy the effects of USDA's past discrimination against minority farmers, it is an important step towards leveling the playing field for minority farmers going forward, and an intervention is

necessary to ensure that they do not continue to suffer the cyclical effects of prior discrimination in USDA's loan programs.

Dated: January 7, 2022

/s/ Alicia M. Robb

Alicia M. Robb, PhD

List of Appendices

- A. CV of Alicia Robb
- B. List of materials reviewed
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Appendix A: CV of Alicia Robb

Alicia M. Robb

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Education:

Ph.D. in Economics; University of North Carolina at Chapel Hill

Dissertation: "The Role of Race, Gender, and Discrimination in Business Survival"

Fields: Econometrics and Economic Development

M.S. in Economics; University of North Carolina at Chapel Hill

Thesis: "The Financial Systems Approach to Microfinance"

B.A. in Economics; Summa cum laude, St. Mary's University, San Antonio, TX

Experience:

Next Wave Impact

Founder and CEO: 2015-present

Designed and launched a learning by doing angel training program and investment fund in the United States in 2015-2016, bringing together nearly 100 women to make 10 seed stage investments over 12 months. Recruited investment team of nine women for the fund who were successful experienced angel investors that drove deal flow, lead due diligence, and recommended investments, as well as mentored 90 other women that were new and emerging angel investors who made up the rest of the fund members. Coordinated the education and training materials for the programs that became part of the public domain and freely available to everyone. Brought investment opportunities to the fund and helped to coordinate syndication with other angel groups. Supported similar efforts for a Europe program in 2015-2016. In 2017 launched a second fund focused on US impact companies following the same model: 99 women, 25 minorities, with an investment committee of 10. Completed investments in an initial portfolio of 15 companies, all led by women and people of color.

www.nextwaveimpact.com. As part of Next Wave Impact, conduct angel investor training and investor readiness training workshops around the globe.

Principal, Marin Economic Consulting/Robb Consulting; 2003-present

Small business and economic research; data analyses; report writing and review. Current and past clients include: Reveal Global Consulting, Facebook, United States Census Bureau, National Women's Business Council, Securities and Exchange Commission, Department of Justice, World Bank, Small Business Administration, United Nations Conference on Trade and Development, Minority Business Development Agency, Startup Genome, City of Chicago, Chicago Transit Authority, Wayne State University, Kauffman Foundation, Sage Foundation, Foundation for Sustainable Development, Rogers Family Coffee Company, Equator Coffees and Teas, and Beacon Economics.

Ewing Marion Kauffman Foundation

Senior Fellow: January 2013-December 2016

Senior Research Fellow: 2008-2013

Principal Investigator-Kauffman Firm Survey: 2006-2016

Principal Investigator for the Kauffman Firm Survey; Research on firm dynamics, entrepreneurial finance, and entrepreneurship by minorities and women; Organize conferences on entrepreneurship and entrepreneurial finance; Provide research support for entrepreneurship initiatives of the Foundation; Present research and data at academic conferences, workshops, and trainings.

Visiting Scholar: University of Colorado Boulder, 2014-present; Federal Reserve Bank of Atlanta, 2011-2013 & 2017-2019; University of California, Berkeley, 2013-2017; Basque Institute for Competitiveness, San Sebastian, 2012-2014; University of California, Santa Cruz: 2004-2014

Research topics including entrepreneurial finance, crowdfunding, women's entrepreneurship, minority entrepreneurship, firm performance, discrimination in lending, federal procurement, community development, and intergenerational links in self-employment. Write journal articles, book chapters, books, and reports.

Founder and Executive Director, Foundation for Sustainable Development; 1995-2006

Directed a non-profit 501(c)(3) organization that supports sustainable development initiatives in Latin America, Africa, and Asia; developed and coordinated international programs for university students and professionals; developed and managed budget; managed eleven staff and seven fellows in the United States and abroad; managed international grant programs and fundraising efforts; wrote grant proposals and reported on program activities.

Adjunct Professor, University of San Francisco, St. Mary's College and St. Mary's University; 2003-2007

Taught three week graduate and undergraduate travel courses in economic development during summer break and January term. Taught undergraduate courses in economic development, the global economy, and contemporary issues in economics.

Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System; 2000-2003

Worked on all aspects of the Survey of Small Business Finances, a survey conducted by the Board every five years, including: survey development, data evaluation, research, and presentations to the Board of Governors and Board staff, as well as at academic conferences; researched issues related to small business finances, women- and minority-owned businesses, entrepreneurship, and microfinance; prepared briefings, presentations, and content for governors' speeches.

Adjunct Professor, George Washington University; 2002

Taught Survey of Economic Development (Econ250), a graduate economics class joint with the Elliot School of International Affairs/Economic Department.

Economist, Office of Economic Research, U.S. SBA; 1998- 2000

Researched issues related to small business. Prepared written reports, presented at academic conferences, answered questions from the public, Congress, and media. Research included: small business' contribution to net job growth, women and minority-owned businesses, and the role of race and gender in firm survival.

Research Assistant/Instructor/Teaching Assistant, UNC, Chapel Hill; 1995-1998

Assisted professors with research and administration, including web design and maintenance; Instructed summer class in Principles of Economics; Assisted professors with semester classes in Principles of Economics, taught recitation classes, graded homework, quizzes, and exams.

Consultant, World Bank; Nicaragua; Summer 1997

Adapted and translated microfinance sustainability manual and software for Latin American market; field-tested manual and software with microfinance organizations in Nicaragua; provided technical assistance.

iv. ILAS/Tinker Foundation Research Grant; Nicaragua; Summer 1997

Researched informal credit markets, NGO loan funds, and the financial sustainability of microfinance programs in Nicaragua; surveyed many microcredit programs; interviewed loan fund managers; analyzed loan portfolios; estimated credit risks; provided technical assistance.

v. ILAS/Tinker Foundation Research Grant; Honduras; Summer 1996

Researched informal credit markets and NGO loan funds in Honduras; surveyed microcredit programs; interviewed loan fund managers; provided technical assistance.

Project Director, Farmer to Farmer/Partners of the Americas; Nicaragua; Summer 1995

Designed and implemented a Women in Development project funded by USAID; Provided technical assistance to a women's cooperative in rural Nicaragua in order to improve the efficiency of their herb production, marketing, and distribution methods.

Staff Economist, Christensen Associates; Madison, WI; 1994-1995

Estimated price indices, inflation factors, costs, and volumes for various projects; conducted productivity studies; calculated annual and quarterly data; performed regression analyses; managed databases.

Publications and Working Papers**Books**

Coleman, Susan and Alicia Robb (2016). The Next Wave: Financing Women's Growth-Oriented Firms (Stanford University Press).

Robb, Alicia, Alexandria Valerio, and Brent Barton, eds. (2014). Entrepreneurship Education and Training: Insights from Ghana, Kenya, and Mozambique. (World Bank Publications).

Valerio, Alexandria, Brent Parton, and Alicia Robb (2014). Entrepreneurship Education and Training Programs around the World: Dimensions for Success (World Bank Publications).

Farhat, Joseph and Alicia Robb (2014). Applied Survey Data Analysis Using Stata: The Kauffman Firm Survey Data. Available at SSRN: <http://ssrn.com/>

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Articles

Hadar Gafni, Dan Marom, Alicia Robb, Orly Sade, Gender Dynamics in Crowdfunding (Kickstarter): Evidence on Entrepreneurs, Backers, and Taste-Based Discrimination, *Review of Finance*, December 2020. <https://doi.org/10.1093/rof/rfaa041>

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- Mollick, Ethan, and Alicia Robb. “Democratizing Innovation and Capital Access: The Role of Crowdfunding,” *California Management Review*, Vol. 58, No. 2. February 2016.
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- Robb, Alicia and Robert Seamans, “The Role of R&D in Entrepreneurial Finance and Performance,” *Advances in Strategic Management*, Volume 31, 341-373 (2014).
- Bates, Timothy and Alicia Robb, “Small-Business Viability in America's Urban Minority Communities”, *Urban Studies*, Vol. 51(13) 2844–2862 (2014).
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- Robb, Alicia and John Watson, “Gender Differences in Firm Performance: Evidence from New Ventures in the United States,” *Journal of Business Venturing*. [Volume 27, Issue 5](#), September 2012, 544–558.
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- Robb, Alicia M. and John Watson. ["Comparing the Performance of Female- and Male-Controlled SMEs: Evidence from the United States and Australia."](#) *Frontiers of Entrepreneurship Research* 30, no. 8 (2010).
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Bitler, Marianne, Alicia Robb, and John Wolken. "Financial Services Used by Small Businesses: Evidence from the 1998 Survey of Small Business Finances" *Federal Reserve Bulletin*, Vol. 87, April 2001.

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Reynolds, Paul and Alicia Robb, "The PSED II and the Kauffman Firm Survey," in Paul Reynolds and Richard Curtin, editors, New Firm Creation in the United States: Initial Explorations with the PSED II Data Set (2009).

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Acs, Zoltan, Catherine Armington, and Alicia Robb, 1999, "Measuring Job Flow Dynamics in the U.S. Economy," Center for Economic Studies, U.S. Bureau of the Census, CES Discussion Paper 99-1.

Headd, Brian, and Alicia Robb, "Characteristics of Small Business Owners and Employees," in the State of Small Business 1999, Office of Advocacy, U.S. Small Business Administration.

Robb, Alicia, 1999. "Minorities in Business," Office of Advocacy, U.S. SBA, Washington, D.C.

Alicia Robb, "New Data for Analysis of Small Business Job Creation," in the *State of Small Business 1998*, U.S. Small Business Administration, Office of Advocacy.

Robb, Alicia, 1998. "Women in Business," Office of Advocacy, U.S. SBA, Washington, D.C.

Other Activities:

Board of Directors, Kachuwa Impact Fund (2020-present)
 Board of Directors, Deming Center Venture Fund (2015-present)
 Board of Directors, Next Wave Foundation (2017-present)
 Committee Member, Angel Capital Association Summit, Impact Track Lead (2018-present)
 Advisory Board, Good Food Institute (2016-2021)
 National Advisory Council for Global Entrepreneurship Week (2013-2017)
 Visiting Scholar, University of California, Berkeley (2013-2017)
 Visiting Scholar, University of Colorado, Boulder (2014-present)
 Visiting Scholar, Federal Reserve Bank of Atlanta (2010- 2013; 2017-2019)
 National Advisory Council for Minority Business Enterprise (2011-2014)
 Member, OECD Pilot Scoreboard on SME Financing (2009-2011)
 Member, G20 Working Group on SME Financing (2009-2011)

Reviewer for journals such as *Management Science*, *Journal of Labor Economics*, *Journal of Business Venturing*, *Entrepreneurship Theory & Practice*, *Small Business Economics*, and *Journal of Economics and Management Strategy*, *Economics of Innovation and New Technology*, and Expert Reviewer of proposals for groups such as the National Science Foundation and the Center for Economic Studies, U.S. Census Bureau.

Work cited in publications such as the *Economist*, *Wall Street Journal*, *New York Times*, Inc. Magazine, *Washington Post*, *Business Week*, *CNNMoney.com*, *Forbes*, *Boston Globe*, *Christian Science Monitor*, *Independent Banker*, and *Huffington Post*.

Appendix B: Reports, Audits, and Other Documents that were reviewed

- A. Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture: U.S. Commission on Civil Rights, 1965
- B. Civil Rights Under Federal Programs: An Analysis of Title IV of the Civil Rights Act of 1964, A Report of the U.S. Commission on Civil Rights, 1968
- C. Federal Civil Rights Enforcement Effort, US Commission on Civil Rights, 1970
- D. The Decline of Black Farming in America: A Report of the United States Commission on Civil Rights, February 1982
- E. Information on Agricultural Credit Provided to Indians on 14 Reservations, GAO, 1987
- F. Hearing on the Decline of Minority Farmers in the US, Committee on Government Operations, US House of Representatives, 1990
- G. 1997 Report: Civil Rights at the United States Department of Agriculture, A Report by the Civil Rights Action Team (CRAT Report), February 1997.
- H. Evaluation Report on Civil Rights Issues — Phase I, Report No. 50801-2-Hq(1), dated February 27, 1997
- I. Minority Participation in Farm Service Agency's Farm Loan Programs — Phase II, Report No. 50801-3-Hq, dated September 29, 1997.
- J. Implementation of OIG's Recommendations — Department's Civil Rights Complaint System and the Direct Farm Loan Program: Evaluation Report No. 50801-5-Hq March 1998
- K. A Qualitative Study of Civil Rights Implications in Farm Loan Program Administration: Perceptions and Vulnerabilities, 1998.
- L. "Civil Rights at the United States Department of Agriculture: One Year of Change" Prepared by the Civil Rights Implementation Team (CRIT): CRIT Report (March, 1998)
- M. 1998 USDA National Commission on Small Farms
- N. Lawsuits dealing with USDA discrimination against minority farmers (Pigford, Pigford II, Keepseagle, and Garcia)
- O. Audit Report No. 60801-03-Hq, Office of Civil Rights Management of EEO complaints, issued March 2000
- P. Audit Report: Office of Civil Rights Status of the Implementation of Recommendations Made in Prior Evaluations of Program Complaints. Audit Report No. 60801-4-Hq, March 2000
- Q. Dispossession (Book)
- R. 2005 OIG Audit: Audit Report: Minority Participation in Farm Service Agency's Programs, Report No. 03601-11-AT, November 2005
- S. Farm Service Agency Direct Loan Program Effectiveness Study, University of Arkansas, June 2005

- T. Lending on Native American Lands: A Guide for Rural Development Staff (June 2006)
- U. USDA OIG Northeast Region, Audit Report, “Review of the U.S. Department of Agriculture’s Accountability for Actions Taken on Civil Rights Complaints,” (May 2007)
- V. Recommendations and Options to Address Management Deficiencies in the Office of the Assistant Secretary for Civil Rights, October 2008, GAO-09-62
- W. Management of Civil Rights Efforts Continues to Be Deficient Despite Years of Attention. May 2008, GAO-08-755T
- X. Hearing Before The Subcommittee on Government Management, Organization, & Procurement of the Committee on Oversight & Government Reform House of Representatives 110th Congress Second Session May 14, 2008 Serial No. 110–137
- Y. USDA OIG Southwest Region, Audit Report, “Farm Service Agency, Socially Disadvantaged Borrower Foreclosures—Farm Program Loans” (June 2009)
- Z. Jackson-Lewis—Independent Assessment of the Delivery of Technical and Financial Assistance, Contract AG-3142-C-09-0049, Civil Rights Assessment, March 31, 2011
- AA. Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case, February 2013.
- BB. 2019 GAO Report: Information on Credit and Outreach to Socially Disadvantaged Farmers and Ranchers Is Limited, July, 2019, GAO-19-539
- CC. INDIAN ISSUES Agricultural Credit Needs and Barriers to Lending on Tribal Lands. May 2019, GAO-19-464
- DD. Report to Congress: A Comparison of Transfers and Subsidies to Minority and Non-Minority Producers Associated with Key Farm and Conservation Programs, August 2021
- EE. Congressional Record, March 5, 2021, Testimony for Section 1005, 167 Cong. Rec. S1264
- FF. Decennial Census conducted by the U.S. Census Bureau (1920-2020)
- GG. Census of Agriculture conducted by the USDA (1920-2017)
- HH. Allen R. Thompson & Michael Green, USDA, ESS Staff Report, NRED 80-4, The Status of Minority Farms in the United States, (“1974 Rep.”)
- II. Charles Dodson & Steven Koenig, *Evaluating the relative cost effectiveness of the Farm Service Agency’s farm loan programs*, USDA FSA Report to Congress (August 2006) (“Dodson & Koenig 2006”), available at <https://perma.cc/HNT2-BNCV>
- JJ. Cong. Rsch. Serv. (“CRS”), *Agricultural Credit: Institutions and Issues*, R-46768 (April 21, 2021)
- KK. GAO-21-399T, Stmt. On the Record to the Subcomm. On Oversight & Investigations,
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Appendix C: Additional Tables

Table 1. Population by Race and Ethnicity (1940-2020)

	White	Black or African American	American Indian/Alaska Native	Asian, Native Hawaiian / Pacific Islander	Some Other Race	Two or more races	Hispanic	Total
1940	89.8	9.8			0.4			100.0
1950	89.5	10.0			0.5			100.0
1960	88.6	10.5			0.9			100.0
1970	87.5	11.1			1.4		4.5	100.0
1980	83.0	11.7	0.7	1.5	3.0		6.4	99.9
1990	80.3	12.1		2.9	3.9		9.0	99.2
2000	75.1	12.3	0.9	3.8	5.5	2.4	12.5	100.0
2010	72.4	12.6	0.9	5.0	6.2	2.9	16.3	100.0

Source: U.S. Census Bureau, Decennial Census of Population, 1940-2010

Table 2. Share of U.S. Farms Owned by Whites, Blacks and Other Race (Census of Agriculture 1920-2017)

	White	Black	Other	Total	White	Black	Other
1920	5,499,707	925,710	28,574	6,453,991	85.2%	14.3%	0.4%
1930	5,373,703	882,852	38,548	6,295,103	85.4%	14.0%	0.6%
1940	5,378,913	681,790	41,714	6,102,417	88.1%	11.2%	0.7%
1950	4,802,520	559,980	25,937	5,388,437	89.1%	10.4%	0.5%
1959	3,419,672	272,541	18,290	3,710,503	92.2%	7.3%	0.5%
1964	2,957,905	184,004	15,948	3,157,857	93.7%	5.8%	0.5%
1969	2,626,403	87,393	16,454	2,730,250	96.2%	3.2%	0.6%
1978	2,199,787	37,351	20,637	2,257,775	97.4%	1.7%	0.9%
1982	2,186,609	33,250	21,117	2,240,976	97.6%	1.5%	0.9%
1987	2,043,119	22,954	21,686	2,087,759	97.9%	1.1%	1.0%
1992	1,881,813	18,816	24,671	1,925,300	97.7%	1.0%	1.3%
1997	1,864,201	18,451	29,207	1,911,859	97.5%	1.0%	1.5%
2002	2,067,379	29,090	32,513	2,128,982	97.1%	1.4%	1.5%
2007	2,114,325	30,599	59,868	2,204,792	95.9%	1.4%	2.7%
2012	2,012,652	33,371	63,280	2,109,303	95.4%	1.6%	3.0%
2017	1,955,737	32,052	54,431	2,042,220	95.8%	1.6%	2.7%

Source: Census of Agriculture, 1920-2017

State	Hispanic or Latino	Black or African American alone	American Indian and Alaska Native alone	Asian alone	Native Hawaiian and Other Pacific Islander alone	Some Other Race alone	Two or More Races	White alone
Alabama	3.9%	26.2%	0.6%	1.1%	0.1%	2.0%	1.5%	68.5%
Alaska	5.5%	3.3%	14.8%	5.4%	1.0%	1.6%	7.3%	66.7%
Arizona	29.6%	4.1%	4.6%	2.8%	0.2%	11.9%	3.4%	73.0%
Arkansas	6.4%	15.4%	0.8%	1.2%	0.2%	3.4%	2.0%	77.0%
California	37.6%	6.2%	1.0%	13.0%	0.4%	17.0%	4.9%	57.6%
Colorado	20.7%	4.0%	1.1%	2.8%	0.1%	7.2%	3.4%	81.3%
Connecticut	13.4%	10.1%	0.3%	3.8%	0.0%	5.6%	2.6%	77.6%
Delaware	8.2%	21.4%	0.5%	3.2%	0.0%	3.4%	2.7%	68.9%
District of Columbia	9.1%	50.7%	0.3%	3.5%	0.1%	4.1%	2.9%	38.5%
Florida	22.5%	16.0%	0.4%	2.4%	0.1%	3.6%	2.5%	75.0%
Georgia	8.8%	30.5%	0.3%	3.2%	0.1%	4.0%	2.1%	59.7%
Hawaii	8.9%	1.6%	0.3%	38.6%	10.0%	1.2%	23.6%	24.7%
Idaho	11.2%	0.6%	1.4%	1.2%	0.1%	5.1%	2.5%	89.1%
Illinois	15.8%	14.5%	0.3%	4.6%	0.0%	6.7%	2.3%	71.5%
Indiana	6.0%	9.1%	0.3%	1.6%	0.0%	2.7%	2.0%	84.3%
Iowa	5.0%	2.9%	0.4%	1.7%	0.1%	1.8%	1.8%	91.3%
Kansas	10.5%	5.9%	1.0%	2.4%	0.1%	3.9%	3.0%	83.8%
Kentucky	3.1%	7.8%	0.2%	1.1%	0.1%	1.3%	1.7%	87.8%
Louisiana	4.2%	32.0%	0.7%	1.5%	0.0%	1.5%	1.6%	62.6%
Maine	1.3%	1.2%	0.6%	1.0%	0.0%	0.3%	1.6%	95.2%
Maryland	8.2%	29.4%	0.4%	5.5%	0.1%	3.6%	2.9%	58.2%
Massachusetts	9.6%	6.6%	0.3%	5.3%	0.0%	4.7%	2.6%	80.4%
Michigan	4.4%	14.2%	0.6%	2.4%	0.0%	1.5%	2.3%	78.9%
Minnesota	4.7%	5.2%	1.1%	4.0%	0.0%	1.9%	2.4%	85.3%
Mississippi	2.7%	37.0%	0.5%	0.9%	0.0%	1.3%	1.1%	59.1%
Missouri	3.5%	11.6%	0.5%	1.6%	0.1%	1.3%	2.1%	82.8%
Montana	2.9%	0.4%	6.3%	0.6%	0.1%	0.6%	2.5%	89.4%
Nebraska	9.2%	4.5%	1.0%	1.8%	0.1%	4.3%	2.2%	86.1%
Nevada	26.5%	8.1%	1.2%	7.2%	0.6%	12.0%	4.7%	66.2%
New Hampshire	2.8%	1.1%	0.2%	2.2%	0.0%	0.9%	1.6%	93.9%
New Jersey	17.7%	13.7%	0.3%	8.3%	0.0%	6.4%	2.7%	68.6%
New Mexico	46.3%	2.1%	9.4%	1.4%	0.1%	15.0%	3.7%	68.4%
New York	17.6%	15.9%	0.6%	7.3%	0.0%	7.4%	3.0%	65.7%
North Carolina	8.4%	21.5%	1.3%	2.2%	0.1%	4.3%	2.2%	68.5%
North Dakota	2.0%	1.2%	5.4%	1.0%	0.0%	0.5%	1.8%	90.0%
Ohio	3.1%	12.2%	0.2%	1.7%	0.0%	1.1%	2.1%	82.7%
Oklahoma	8.9%	7.4%	8.6%	1.7%	0.1%	4.1%	5.9%	72.2%
Oregon	11.7%	1.8%	1.4%	3.7%	0.3%	5.3%	3.8%	83.6%
Pennsylvania	5.7%	10.8%	0.2%	2.7%	0.0%	2.4%	1.9%	81.9%
Rhode Island	12.4%	5.7%	0.6%	2.9%	0.1%	6.0%	3.3%	81.4%
South Carolina	5.1%	27.9%	0.4%	1.3%	0.1%	2.5%	1.7%	66.2%
South Dakota	2.7%	1.3%	8.8%	0.9%	0.0%	0.9%	2.1%	85.9%
Tennessee	4.6%	16.7%	0.3%	1.4%	0.1%	2.2%	1.7%	77.6%
Texas	37.6%	11.8%	0.7%	3.8%	0.1%	10.5%	2.7%	70.4%
Utah	13.0%	1.1%	1.2%	2.0%	0.9%	6.0%	2.7%	86.1%
Vermont	1.5%	1.0%	0.4%	1.3%	0.0%	0.3%	1.7%	95.3%
Virginia	7.9%	19.4%	0.4%	5.5%	0.1%	3.2%	2.9%	68.6%
Washington	11.2%	3.6%	1.5%	7.2%	0.6%	5.2%	4.7%	77.3%
West Virginia	1.2%	3.4%	0.2%	0.7%	0.0%	0.3%	1.5%	93.9%
Wisconsin	5.9%	6.3%	1.0%	2.3%	0.0%	2.4%	1.8%	86.2%
Wyoming	8.9%	0.8%	2.4%	0.8%	0.1%	3.0%	2.2%	90.7%
Puerto Rico	99.0%	12.4%	0.5%	0.2%	0.0%	7.8%	3.3%	75.8%
Total	17.3%	12.6%	0.9%	4.7%	0.2%	6.2%	2.9%	72.4%

Source: 2010 Decennial Census.

Table 4. Top Five States by % of Farms by Race/Ethnicity, 2017		
	Farms	Land in farms (acres)
Farms with a Hispanic, Latino, or Spanish principal producer		
United States	77,416	26,041,600
States		
Texas	36.4%	27.2%
California	12.3%	8.2%
New Mexico	10.6%	20.6%
Florida	6.3%	1.9%
Colorado	3.6%	3.9%
Total for top five states:	69.1%	61.9%
Farms with an American Indian or Alaskan Native principal producer		
United States	39,632	51,095,994
States		
Arizona	29.2%	39.4%
Oklahoma	21.8%	4.4%
New Mexico	14.9%	14.3%
Texas	5.6%	1.2%
Montana	3.3%	9.1%
Total for top five states:	74.7%	68.3%
Farms with an Asian principal producer		
United States	13,904	1,831,229
States		
California	29.3%	34.9%
Hawaii	16.6%	10.1%
Texas	7.7%	7.1%
Florida	6.3%	3.6%
Washington	3.5%	3.4%
Total for top five states:	63.4%	59.1%
Farms with a Black or African American principal producer		
United States	32,052	3,862,936
States		
Texas	25.0%	24.5%
Mississippi	15.2%	15.2%
Alabama	9.1%	8.2%
Louisiana	6.8%	5.1%
Georgia	6.0%	5.7%
Total for top five states:	62.1%	58.7%
Farms with a Native Hawaiian or Other Pacific Islander principal producer		
United States	2,092	426,068
States		
Hawaii	36.9%	16.3%
California	14.6%	41.1%
Texas	6.1%	3.6%
Florida	3.8%	0.5%
Oregon	3.2%	0.9%
Total for top five states:	64.6%	62.4%
Farms with a white principal producer		
United States	1,955,737	843,497,615
States		
Texas	12.1%	14.9%
Missouri	4.8%	3.3%
Iowa	4.4%	3.6%
Ohio	4.0%	1.7%
Kentucky	3.8%	1.5%
Total for top five states:	29.1%	24.9%
Source: 2017 U.S. Census of Agriculture		

Table 5. Distribution of farms and acreage by State, Race, and Ethnicity, 2017

Geographic area	Farms with an Hispanic, Latino, or Spanish principal producer		Farms with an American Indian or Alaska Native principal producer		Farms with an Asian principal producer		Farms with a Black or African American principal producer		Farms with a Native Hawaiian or Other Pacific Islander principal producer		Farms with a White principal producer	
	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)	Farms	Land in farms (acres)
United States	3.8%	2.9%	1.9%	5.7%	0.7%	0.2%	1.6%	0.4%	0.1%	0.0%	95.8%	93.7%
States												
Alabama	1.0%	0.8%	1.4%	0.8%	0.2%	0.1%	7.2%	3.7%	0.0%	0.0%	91.0%	95.2%
Alaska	2.5%	0.2%	4.4%	37.9%	0.6%	0.0%	0.5%	(D)	0.0%	0.0%	95.4%	62.3%
Arizona	5.2%	5.2%	60.6%	77.0%	0.4%	0.1%	0.2%	0.0%	0.2%	0.0%	38.8%	24.2%
Arkansas	1.8%	1.0%	1.0%	0.6%	0.8%	0.2%	2.4%	1.1%	0.0%	0.0%	95.6%	97.5%
California	13.5%	8.7%	1.5%	1.5%	5.8%	2.6%	0.4%	0.3%	0.4%	0.7%	92.5%	95.8%
Colorado	7.1%	3.2%	1.0%	2.9%	0.6%	0.2%	0.2%	0.0%	0.1%	0.1%	98.3%	96.9%
Connecticut	1.8%	0.8%	0.2%	0.2%	0.5%	0.2%	0.3%	0.1%	0.0%	(D)	99.0%	99.6%
Delaware	1.3%	0.4%	0.0%	(D)	1.4%	0.2%	0.8%	0.2%	0.0%	0.0%	97.7%	99.2%
Florida	10.2%	5.1%	0.9%	1.7%	1.8%	0.7%	3.2%	0.9%	0.2%	0.0%	94.1%	96.1%
Georgia	1.6%	1.0%	0.4%	0.3%	0.6%	0.2%	4.5%	2.2%	0.0%	0.0%	94.3%	97.1%
Hawaii	7.6%	4.3%	0.5%	0.3%	31.5%	16.3%	0.3%	0.0%	10.5%	6.1%	54.2%	68.1%
Idaho	3.5%	3.2%	0.7%	3.5%	0.3%	0.3%	0.0%	0.0%	0.1%	0.0%	98.9%	96.6%
Illinois	0.9%	0.7%	0.1%	0.0%	0.1%	0.1%	0.2%	0.1%	0.0%	0.0%	99.4%	99.7%
Indiana	1.0%	0.7%	0.2%	0.1%	0.1%	0.0%	0.2%	0.1%	0.0%	0.0%	99.5%	99.8%
Iowa	0.6%	0.6%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	99.8%	99.9%
Kansas	1.6%	1.1%	0.7%	0.4%	0.1%	0.1%	0.3%	0.1%	0.0%	0.0%	98.9%	99.3%
Kentucky	0.7%	0.4%	0.2%	0.1%	0.1%	0.1%	0.5%	0.3%	0.0%	0.0%	99.0%	99.4%
Louisiana	2.4%	2.0%	0.7%	0.5%	0.2%	0.1%	8.0%	2.5%	0.1%	0.0%	90.9%	96.8%
Maine	1.3%	0.6%	0.3%	(D)	0.4%	0.1%	1.7%	(D)	0.1%	0.0%	97.7%	99.4%
Maryland	1.6%	0.5%	0.3%	(D)	1.3%	0.3%	1.4%	0.4%	0.1%	(D)	96.7%	99.2%
Massachusetts	2.0%	1.8%	0.2%	(D)	0.8%	0.4%	1.8%	0.1%	0.1%	0.0%	96.9%	99.3%
Michigan	1.5%	0.7%	0.5%	0.4%	0.2%	0.1%	0.5%	0.1%	0.0%	0.0%	98.7%	99.3%
Minnesota	0.7%	0.9%	0.2%	0.2%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	99.4%	99.6%
Mississippi	1.2%	1.0%	0.3%	0.2%	0.2%	0.1%	14.0%	5.7%	0.1%	0.1%	85.4%	93.8%
Missouri	1.1%	0.7%	0.6%	0.3%	0.3%	0.1%	0.2%	0.1%	0.0%	0.0%	98.8%	99.3%
Montana	1.2%	1.7%	4.8%	8.0%	0.2%	0.2%	0.1%	0.1%	0.0%	0.0%	95.1%	92.1%
Nebraska	0.8%	1.0%	0.1%	0.2%	0.1%	0.0%	0.0%	(D)	0.0%	0.0%	99.7%	99.6%
Nevada	6.0%	3.7%	6.2%	22.2%	0.5%	0.1%	0.3%	0.1%	0.0%	0.0%	93.6%	78.1%
New Hampshire	1.1%	0.7%	0.3%	(D)	0.3%	0.0%	0.9%	0.0%	0.0%	0.0%	98.2%	99.5%
New Jersey	3.3%	2.1%	0.2%	0.2%	1.5%	1.7%	0.6%	0.1%	0.0%	(D)	97.8%	98.1%
New Mexico	32.8%	13.2%	23.6%	18.0%	0.3%	0.1%	0.2%	0.1%	0.1%	0.0%	76.0%	82.3%
New York	1.2%	0.8%	0.3%	0.3%	0.3%	0.2%	0.2%	0.1%	0.1%	0.0%	99.1%	99.5%
North Carolina	1.2%	0.9%	1.2%	1.0%	0.6%	0.2%	3.1%	2.0%	0.0%	0.0%	95.2%	96.8%
North Dakota	0.7%	0.5%	0.9%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%	(D)	99.0%	99.1%
Ohio	0.9%	0.6%	0.2%	0.1%	0.2%	0.1%	0.2%	0.1%	0.0%	0.0%	99.3%	99.7%
Oklahoma	2.5%	1.6%	11.0%	6.5%	0.4%	0.1%	1.6%	0.8%	0.1%	0.0%	88.1%	92.5%
Oregon	3.9%	1.4%	1.3%	4.1%	1.2%	0.3%	0.1%	0.1%	0.2%	0.0%	97.8%	93.9%
Pennsylvania	1.0%	0.6%	0.2%	0.2%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	99.4%	99.6%
Rhode Island	0.8%	0.6%	0.0%	0.0%	0.9%	0.5%	1.2%	(D)	0.0%	0.0%	98.5%	100.0%
South Carolina	1.4%	0.8%	0.5%	0.2%	0.3%	0.2%	7.3%	4.0%	0.1%	0.0%	91.8%	95.6%
South Dakota	0.7%	0.8%	2.5%	7.8%	0.1%	0.0%	0.0%	0.0%	0.0%	(D)	97.7%	92.7%
Tennessee	1.3%	0.7%	0.4%	0.3%	0.2%	0.1%	1.4%	1.0%	0.0%	0.1%	98.0%	98.5%
Texas	11.3%	5.6%	0.9%	0.5%	0.4%	0.1%	3.2%	0.7%	0.1%	0.0%	95.5%	98.6%
Utah	2.3%	1.6%	3.9%	37.0%	0.4%	0.2%	0.0%	0.0%	0.1%	0.0%	95.8%	63.0%
Vermont	1.4%	1.2%	0.3%	0.2%	0.1%	0.0%	0.2%	0.3%	0.0%	0.0%	99.2%	99.0%
Virginia	1.4%	1.3%	0.3%	0.2%	0.4%	0.2%	2.9%	1.8%	0.1%	0.0%	96.4%	97.8%
Washington	5.4%	10.9%	1.2%	19.2%	1.4%	0.4%	0.2%	0.0%	0.2%	0.0%	97.1%	80.3%
West Virginia	1.2%	1.2%	0.2%	0.2%	0.2%	0.1%	0.1%	0.0%	0.0%	(D)	99.2%	99.3%
Wisconsin	0.7%	0.5%	0.2%	0.2%	0.5%	0.1%	0.1%	0.0%	0.0%	0.0%	99.4%	99.8%
Wyoming	2.6%	2.2%	1.3%	1.7%	0.1%	0.0%	0.1%	(D)	0.0%	(D)	98.5%	98.2%

Source: 2017 U.S. Census of Agriculture

Table 6. Average Income by Farm by Farming Activity and Race/Ethnicity (2017)

	AIAN		Asian		Black		NHPI		Hispanic		White	
	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$	% of farms	Ave \$
All		\$ 58,885		\$ 406,669		\$ 39,928		\$ 163,776		\$ 252,267		\$ 193,132
Crops	29.8%	\$ 79,956	63.8%	\$ 367,152	35.9%	\$ 67,297	48.4%	\$ 207,320	40.4%	\$ 367,165	50.3%	\$ 191,478
Livestock, poultry, and products	55.3%	\$ 63,389	14.5%	\$ 1,082,108	51.4%	\$ 30,660	42.8%	\$ 148,288	46.7%	\$ 222,956	48.4%	\$ 200,023
Cattle and calves	34.6%	\$ 53,017	13.1%	\$ 46,068	39.8%	\$ 14,213	23.3%	\$ 47,196	28.9%	\$ 135,675	35.0%	\$ 110,740
Milk from cows	0.4%	\$ 790,752	0.3%	\$ 1,001,825	0.2%	\$ 389,065	0.8%	\$ 2,497,273	0.8%	\$ 4,158,111	2.0%	\$ 909,724
Poultry and Eggs	8.8%	\$ 122,049	14.5%	\$ 1,082,108	6.0%	\$ 112,053	11.4%	\$ 169,395	10.2%	\$ 207,894	8.1%	\$ 287,933

Source: Race, Ethnicity, Gender Profile, 2017, USDA. www.nass.usda.gov/AgCensus.

Table 7. Number of Loan Applications by Year, Race, and Ethnicity (2000-2020)

Year	Number							% Share					
	White	Black/ African	American	American Indian/ Alaskan	Hawaiian/ Pacific	Hispanic	Total	White	Black/ African	Asian	American Indian/ Alaskan	Hawaiian/ Pacific	Hispanic
2000	24548	1472	162	1015	43	693	26972	91.0%	5.5%	0.6%	3.8%	0.2%	2.6%
2001	25010	1432	185	1059	40	682	27460	91.1%	5.2%	0.7%	3.9%	0.1%	2.5%
2002	23903	1247	150	1145	50	714	26284	90.9%	4.7%	0.6%	4.4%	0.2%	2.7%
2003	23611	1277	119	1288	57	706	26157	90.3%	4.9%	0.5%	4.9%	0.2%	2.7%
2004	20148	1161	167	1163	280	804	22758	88.5%	5.1%	0.7%	5.1%	1.2%	3.5%
2005	21654	1420	175	1416	70	753	24526	88.3%	5.8%	0.7%	5.8%	0.3%	3.1%
2006	24840	954	197	1391	83	681	27213	91.3%	3.5%	0.7%	5.1%	0.3%	2.5%
2007	24611	874	218	1319	107	709	26843	91.7%	3.3%	0.8%	4.9%	0.4%	2.6%
2008	26667	1028	262	1729	89	1026	29466	90.5%	3.5%	0.9%	5.9%	0.3%	3.5%
2009	36240	1134	314	2240	92	1284	39650	91.4%	2.9%	0.8%	5.6%	0.2%	3.2%
2010	36077	1115	277	2442	92	1395	39592	91.1%	2.8%	0.7%	6.2%	0.2%	3.5%
2011	31542	1128	300	2472	118	1350	35131	89.8%	3.2%	0.9%	7.0%	0.3%	3.8%
2012	34506	1223	300	3086	78	1572	38585	89.4%	3.2%	0.8%	8.0%	0.2%	4.1%
2013	32116	1733	305	3203	109	1688	36813	87.2%	4.7%	0.8%	8.7%	0.3%	4.6%
2014	34006	1886	276	3644	127	1830	39174	86.8%	4.8%	0.7%	9.3%	0.3%	4.7%
2015	39728	2051	327	4250	134	2301	45612	87.1%	4.5%	0.7%	9.3%	0.3%	5.0%
2016	39254	1844	396	4479	123	2206	45183	86.9%	4.1%	0.9%	9.9%	0.3%	4.9%
2017	37292	1542	360	4126	145	2160	42599	87.5%	3.6%	0.8%	9.7%	0.3%	5.1%
2018	34905	1305	365	3765	156	1914	39724	87.9%	3.3%	0.9%	9.5%	0.4%	4.8%
2019	35254	1204	321	4122	144	1799	40118	87.9%	3.0%	0.8%	10.3%	0.4%	4.5%
2020	37787	1406	416	3895	144	1779	42918	88.0%	3.3%	1.0%	9.1%	0.3%	4.1%
Total	643699	28436	5592	53249	2281	28046	722778	89.1%	3.9%	0.8%	7.4%	0.3%	3.9%

Source: Direct Loan data provided by USDA

							Difference between Whites and Minorities				
	White	Black/ African American	Asian	American Indian/ Alaskan Native	Hawaiian/ Pacific Islanders	Hispanic	Black/ African American	Asian	American Indian/ Alaskan Native	Hawaiian/ Pacific Islanders	Hispanic
2000	17.6%	29.5%	23.0%	17.3%	41.9%	29.6%	11.9%	5.4%	-0.3%	24.3%	12.0%
2001	19.7%	30.0%	24.3%	19.0%	25.0%	37.0%	10.3%	4.6%	-0.7%	5.3%	17.3%
2002	20.0%	32.5%	36.7%	18.4%	30.0%	28.2%	12.5%	16.7%	-1.6%	10.0%	8.2%
2003	19.4%	34.1%	31.1%	22.8%	17.5%	33.3%	14.7%	11.7%	3.4%	-1.9%	13.9%
2004	19.2%	37.0%	31.1%	22.0%	3.9%	32.0%	17.8%	11.9%	2.8%	-15.3%	12.8%
2005	18.3%	45.7%	23.4%	20.7%	21.4%	36.1%	27.4%	5.1%	2.4%	3.1%	17.8%
2006	18.7%	31.9%	35.0%	21.4%	18.1%	31.1%	13.2%	16.3%	2.7%	-0.6%	12.4%
2007	19.3%	31.3%	31.7%	21.8%	15.9%	29.9%	12.0%	12.4%	2.5%	-3.4%	10.6%
2008	20.3%	33.5%	32.4%	20.5%	20.2%	29.4%	13.2%	12.1%	0.2%	-0.1%	9.1%
2009	21.2%	31.0%	31.5%	23.0%	13.0%	28.4%	9.8%	10.3%	1.8%	-8.2%	7.2%
2010	20.4%	30.1%	30.0%	20.9%	13.0%	28.5%	9.7%	9.6%	0.5%	-7.4%	8.1%
2011	20.4%	29.3%	31.3%	21.8%	21.2%	27.0%	8.9%	10.9%	1.4%	0.8%	6.6%
2012	20.1%	28.7%	34.3%	20.7%	16.7%	25.1%	8.6%	14.2%	0.6%	-3.4%	5.0%
2013	19.5%	27.6%	30.8%	18.8%	17.4%	25.5%	8.1%	11.3%	-0.7%	-2.1%	6.0%
2014	18.9%	30.1%	26.4%	15.9%	14.2%	26.6%	11.2%	7.5%	-3.0%	-4.7%	7.7%
2015	19.1%	30.2%	30.3%	16.5%	17.2%	24.3%	11.1%	11.2%	-2.6%	-1.9%	5.2%
2016	21.1%	33.4%	29.8%	18.9%	18.7%	24.7%	12.3%	8.7%	-2.2%	-2.4%	3.6%
2017	20.6%	34.2%	28.3%	18.3%	21.4%	25.7%	13.6%	7.7%	-2.3%	0.8%	5.1%
2018	20.8%	34.6%	31.8%	17.4%	23.1%	25.5%	13.8%	11.0%	-3.4%	2.3%	4.7%
2019	20.8%	33.8%	25.5%	18.2%	19.4%	24.8%	13.0%	4.7%	-2.6%	-1.4%	4.0%
2020	21.7%	42.9%	37.5%	17.5%	28.2%	30.5%	21.2%	15.8%	-4.2%	6.5%	8.8%

Source: Direct Loan data provided by USDA

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P. Mot. for Summ. J./D.J. Miller Study

Court: S.D. Ill. Case No. 3:21cv540-NJR

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D. J. MILLER

DISPARITY STUDY

FINAL

REPORT

3/15/96

PRODUCER PARTICIPATION

Chapter III

Producer Participation

SUMMARY OF FINDINGS

Purpose

The purpose of this chapter is to determine whether or not there are disparities in FSA program participation between White male and minority and female farmers and if so, to make recommendations on how to increase minority and female participation in FSA programs.

Issues and Findings

Are there disparities in participation in specific FSA programs as measured by raw counts of minority and female farmers?

Minority participation in FSA programs is remarkably low. The exceptions are Black farmers in peanuts and tobacco, Hispanic farmers in emergency conservation, and American Indian farmers in mohair and wool. Numerical counts of Asian program participation was very small. Female participation is far more representative.

Are there disparities in disaster payments between White male farmers and minority and female farmers?

White male farmers received 68.6 percent of disaster payments made between 1990 and 1995. Female farmers received 4.9 percent and minority farmers received approximately 2 percent of disaster payments over the study period. The remainder of the disaster payments were made to corporations and other entities.

However, Asian and Hispanic male farmers on small farms received higher average disaster payments than White male farmers. All other groups received smaller average disaster payments.

White male farmers received a disproportionate share of disaster payments as measured by the ratio of proportion of disaster payments to proportion of producers.

When Black and White male farmers in the FSA Southeast Area were matched by county, crop and crop land, White male farmers were still found to have higher average disaster payments than Black male farmers.

There is even less analysis on female participation in FSA programs. A law review article by Susan Cornelius,¹² like the Civil Rights Commission reports, focused on FmHA lending and the Equal Opportunity in Credit Act.

ARE MINORITIES AND FEMALES PARTICIPATING IN FSA PROGRAMS?

Reprinted data from FSA reports on minority participation by specific program indicates levels of minority participation in FSA programs that are relatively low.¹³ Specifically, the only significant minority participation is Black farmers in peanuts (8 percent) and tobacco (5 percent), Hispanic farmers in emergency conservation (4 percent), and American Indian farmers in mohair (50 percent) and wool (9 percent)—the latter two programs are scheduled for termination. This is consistent with the data discussed in Chapter II indicating that minorities were less likely to participate in FSA program crops and more likely to be involved in livestock than White male farmers. Female participation is at a greater rate than minority participation. Female participation never fell below nine percent of the total number of farmers participating.

This picture is confirmed in the survey sample. Only nine minority respondents report receiving benefits from any FSA program. Alternatively, far more White female respondents generally received more program benefits than did White male respondents.

ARE MINORITIES AND FEMALES PARTICIPATING IN DISASTER PAYMENT PROGRAMS?

White males received the bulk of disaster payments, both in numbers and in dollar value during the period 1990-1995. White males received 68.57 percent of the total dollars of disaster payment dollars paid, while White females received 4.91 percent of total disaster payments (refer to Figure 3.1). Minority farmers received approximately two percent of disaster payment dollars over the study period of 1990-1995. Corporations received 18.8 percent of disaster payment dollars.¹⁴

¹²See Susan Cornelius, *An Analysis of Federal Initiatives to Assure Economic Independence for Women*, *Ohio Northern Law Review* 20 (1980). Additional legal analysis was provided in the article on tax marital dissolution and surviving spouse issues as they relate to agricultural issues.

¹³FSA, *Producer Participation Data* (1992). Volume II, Table 3.1.

¹⁴Volume II, Table 3.3A.

PROGRAM

YIELDS

Chapter IV**Program and Nonprogram Yields****SUMMARY OF FINDINGS****Purpose**

The purpose of this chapter is to examine any statistically significant differences in yields for program and selected nonprogram crops (peanuts and tobacco) between White male farmers and minority and female farmers and to provide recommendations to correct any disparate treatment of minority and female producers in the methods, procedures, and decision making processes used in the assignment of program payment yields by the county committees. (During onsite management evaluations, the FSA EEO and CR office found indications of disparities in program yields between White male and minority and female farmers. However, the FSA EEO and CR conclusions were based on a very small sample.)

Issues and Findings

Did minority and female farmers have lower program and nonprogram yields?

- White males often had higher program and nonprogram yields than minority and female farmers. However, in a number of states for a number of crops the yield differences were not statistically significant.¹ Where the differences are statistically significant, it is generally in favor of White males.
- Quite often, Asian farmers had high program and nonprogram yields; however, typically only a small number of Asian farmers had registered yields.

Are the differences in yields between different demographic groups correlated with farm size?

- Statistical tests of differences in program and nonprogram yields between White male farms and minority and female farms indicated that White males often had higher program and nonprogram yields even after controlling for farm size. Again, small numbers of Asian farmers often had higher yields than White male farmers.

¹Volume II, Tables grouped 4.1.T through 4.3.T.

FSA programs.

Disparity in Yield Determinations between White Males and Females and Minorities

During interviews, farmers identified several reasons why yields are different in their communities. Minorities believe that FSA shows some bias toward White males when making program yield determinations.⁸

Other farmers identified lack of up-to-date methodologies utilized on small and family farms as a depressant to small farmer yields. Small farmers acknowledge the impact of their farming techniques on their yields, stating that frequently, they follow traditional, but dated, procedures used by their families.⁹

Yet another reason for the differences in yields was the type of soil on particular farms. Farms in the same area can have different soil types, thereby producing lower yields on farms with lower quality soil. We note that DJMA was unable to obtain statistical information on soil condition and income to determine whether small farmers and land owned by minorities and females had poorer soil conditions than White males.

⁸Volume III, § II-3, II-6, II-7.

⁹Volume III, § II-3, § II-Part 2, VI-4.

Exhibit 9

P. Mot. for Summ. J./ARPA_WYNN2465

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A new era of civil rights? Latino immigrant farmers and exclusion at the United States Department of Agriculture

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Abstract In this article we investigate how Latino immigrant farmers in the Mid-Atlantic region of the United States navigate United States Department of Agriculture (USDA) programs, which necessitate standardizing farming practices and an acceptance of bureaucracy for participation. We show how Latino immigrant farmers' agrarian norms and practices are at odds with the state's requirement for agrarian standardization. This interview-based study builds on existing historical analyses of farmers of color in the United States, and the ways in which their farming practices and racialized identities are often unseen by and illegible to the state. This disjuncture leads to the increased racial exclusion of immigrant farmers from USDA opportunities. Such exclusions impede the transition to a "new era of civil rights," as has been proclaimed by USDA leadership. Although efforts to address institutionalized racism on a national level may be genuine, they have failed to acknowledge this schism between rural Latino immigrants and the state, thereby inhibiting a meaningful transition in the fields, and continuing a legacy of unequal access to agrarian opportunities for non-white immigrant farmers.

Keywords Immigrant farming · Race in agriculture · Latino farmers · United States Department of Agriculture (USDA)

Introduction

Following a United States Department of Agriculture (USDA) staff member in her white sedan with government plates, we drove our own unmarked rental car through a winding country highway. We passed corn and soybean fields, farmhouses, and a small downtown with a few local businesses. We drove up a gravel driveway and parked behind the USDA car. Trailing the staff member, a white female soil conservationist, we walked unannounced onto a farm with a few acres of diverse vegetables, a farmhouse, a shed, and a hoop house. The hoop house had been financed through a grant from the USDA's National Resource Conservation Service (NRCS), giving the staff member rights to visit the property and inspect the structure and property randomly for the first 3 years, to validate that it is up to code and being used properly.

USDA staff in the Northern Neck of Virginia promotes the hoop house, or "high tunnel" installation program to local vegetable farmers. These tunnel-shaped greenhouses allow farmers to start their seeds and get their crops to

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¹ Department of Public Health, Food Studies, and Nutrition,

variety of loans, grants, and crop insurance programs, which vary year to year. Although the USDA targets historically discriminated against populations, including Latinos, as part of their Socially Disadvantaged Applicant Program for guaranteed, direct operating, and direct farm loans, not many Latino farmers take advantage of them. [HYPERLINK \l "_bookmark0"]

The farm we visited is owned and operated by a Mexican immigrant farmer, one of a small number of Latino farmers in Virginia who directly participates in a USDA funded program. Latino farmers have a low rate of inclusion in USDA programs nationally. In 2012, the census recorded 79,807 farm operators of Hispanic/Latino origin. One hundred and sixty-five Commodity Credit Corporation loans, 3244 Conservation Reserve, Wetland Reserve, Farmable Wetlands, or Conservation Reserve Enhancement program payments, and 13,276 other federal farm program payments were awarded to Latino operators. Respectively, that indicates a 0.2, 4, and 17% inclusion rate for each program. Comparatively, the census recorded 2,034,439 white farm operators in 2012. They participated in the same loan programs at a rate of 0.6, 14, and 34% (USDA [HYPERLINK \l "_bookmark29"]). From these numbers, Latino farmers utilized USDA loans and other direct assistance programs at about one-third to a half of the rate of white farmers. This is regardless of the fact that they are a growing presence among new farmers in the United States.

According to official USDA agricultural census data, the number of farms with principal operators of "Spanish, Hispanic, or Latino origin," grew from 50,592 in 2002 to 55,570 in 2007. In 2012, the number increased again, to 67,000 farms, a twenty-one percent increase over 5 years, Latinos making up three percent of all principle operators. [HYPERLINK \l "_bookmark1"] Of those 67,000 Latino farm operators, the vast majority

outreach to all groups deemed socially disadvantaged farmers in recent years, they also agreed that the farmers discussed in this study are still underrepresented in the census. Despite these issues, the census is still the best comprehensive national agricultural data we have to date and provides context for racial and ethnic shifts occurring in US agriculture.

¹ For more information on the Socially Disadvantaged Applicant Program, see [HYPERLINK "http://www.fsa.usda.gov/FSA/webapp?area=home&subject=prod&topic=sfl" \h] [HYPERLINK "http://www.fsa.usda.gov/FSA/webapp?area=home&subject=prod&topic=sfl" \h].

² These numbers do not tell us how many are first generation immigrants. The number of operators that were also owners before 2012 is not available. We would argue Latino immigrants are generally being undercounted in these numbers. Almost none of the farmers we interviewed had heard of the Agricultural Census. Many farm on rented land, often under informal agreements. Even those that own their land rarely live on the farm. Given their histories of immigration, many are resistant to filling out government paperwork. Additionally, Hispanic/Latino is considered an ethnicity, not a race, by the Census, and if they check this box they must also choose a race, such as White, Black, or Native American, none of which are representative of the farmers we interviewed. In discussions with Census of Agriculture Staff who outreach to Hispanic/Latino populations, it was confirmed that although they have increased

A new era of civil rights? Latino immigrant farmers and exclusion at the United States (64,439), were the primary farm business owners as well.

Comparatively, Asian principle operators also grew 21% in that period, although they make up less than 1% of all farmers overall. Black principle operators grew 12%, still making up only one point four percent of all farmers nationally. In contrast, during the same period the population of white principle operators fell 5% and overall the number of farmers dropped four percent (USDA [HYPERLINK \l "_bookmark29"]). As many Latino farmers transition from working as laborers in others' fields to positions as farm owners and operators, they, along with other farmers of color, represent the new face of a flourishing generation of farmers.

In response to a number of civil rights lawsuits against the USDA on behalf of African American, Hispanic, Native American, and female farmers, US Secretary of Agriculture Tomas Vilsack ([HYPERLINK \l "_bookmark32"]) has proclaimed a "new era of civil rights," for the agency.[HYPERLINK \l "_bookmark2"] Despite this proclamation and the fact that their numbers are growing, immigrant farmers are still not extended the same opportunities as other farmers, due to the fact that their practices are often incompatible with the standardization and bureaucracy required to be properly acknowledged and supervised by the USDA. Their direct market approach, planting of diverse crops, reliance on family labor, and lack of record keeping stand in contrast to the dominant model of US industrial agriculture.[HYPERLINK \l "_bookmark3"]

It is not simply the size or scale of their farms that bars them from accessing USDA resources, although that certainly limits what is available to them. The farmers in this study have limited formal education, literacy, and English language skills, and are therefore exceptionally daunted by the paperwork necessary for government grant, loan, and insurance applications. Additionally, it is not routine for Latino immigrant farmers to record and track their own farming progress and decisions in writing. In contrast, their farming knowledge tends to be documented and disseminated through word of mouth. As has been the case for other farmers who do not replicate state-sanctioned or dominant forms of farming, these practices and forms of agrarian knowledge sharing may be interpreted as unscientific, or "illegible" to the state, and therefore not deemed worthy of acknowledgement (Scott [HYPERLINK \l "_bookmark44"]), or in this case,

⁶³³
We are not claiming that family labor is inherently a better system or more equitable, only that it is evidence of a particular form of farming. Hiring family labor by no means ensures labor justice on the farm. In particular, family labor can reinforce patriarchal agrarian relations and patterns (See Feldman and Welsh [HYPERLINK \l "_bookmark18"]; Reed et al. [HYPERLINK \l "_bookmark41"]; Riley [HYPERLINK \l "_bookmark42"]).

³ Lawsuits include the *Pigford v. Glickman* and *Brewington v. Glickman* class action lawsuits for African American farmers, The *Keepseagle v. Vilsack* settlement for Native American farmers, and The Hispanic Farmers and Ranchers and Female Farmers and Ranchers claims processes. More information can be found at [HYPERLINK

"http://www.outreach.usda.gov/settlements.htm" \h].

the land. There's no one paying us \$8 an hour. There's no one paying us." As independent business owners, they are subject to the unpredictability of the market. As farmers, they are additionally vulnerable to uncertain weather and climate conditions. Overwhelmingly, though, the satisfaction that comes with making their own decisions keeps them farming, regardless of the struggles. As one farmer shared, "I feel happy that it's *my* business, that we can make our own decisions." Even in the most difficult times, the desire to maintain control over one's labor and growing practices transcends the daily obstacles of small-scale farming.

On their farms and in their businesses, farmers avoid cultivation systems imposed upon them by outsiders, be they wholesalers who would tell them what to plant and how much (in order to secure a market), or government officials whose programs require particular crops and techniques to qualify for assistance, as described in the cover crop and hoop house program below. All the farmers interviewed plant diverse fruits and vegetables, an important strategy for selling directly to customers at farmers' markets, their primary outlet for sales. Some noted they sold to their extended community as well, as part of a more informal market. Rarely did we hear of them selling to restaurants or local stores, as luxury crop buyers usually go with more socially connected and better-marketed white farmers, and contracts with large grocery chains go through a wholesale purchaser, requiring larger quantities than they grow. Generally, they are able to avoid selling through a middleman or outlets that would require reducing their diversity or standardizing their practices. Growing diverse crops is also often reflective of their previous farming experience in Mexico and Central America, although climates, markets, crop varieties, and other resource availability differs greatly.

One farmer, who grows a diversity of crops, from standard farmers' market produce like kale and heirloom tomatoes to less common products for the region, like peanuts and purple potatoes, told us that growing a variety of crops is an important strategy for attracting customers at the market,

When you bring more to the market, more people come to buy... Because if I just bring melon, or I don't bring squash, people are only going to buy that, and that's it. But if I bring a little bit of everything, people will come buy one thing and then another... The more varieties you plant, the better. That's why we have a little bit of white potatoes, red, yellow, purple, and then white, purple, and red sweet potato. And then when they go to market and there are all the different colors, everything looks pretty. Red

peppers, black peppers, purple peppers, green peppers, white, orange—all the colors.

Like many of the other farmers we interviewed, he also planted Latin American crop varieties, in addition to ones well known to American customers. They grow and sell herbs like *pápalo* and *chipilin*, *pipián* (a squash variety), *tomatillos*, and hot *chiles*, which are hard to find in many parts of the United States. They produce these for their own consumption, as well as for Latino customers, and the occasional US-born or white customers who know how to cook Latin American food or are adventurous chefs.

Yet their choice to cultivate diverse cropping systems, which work well for direct markets and reflect their own experience as farmers pre-immigration, are not supported by the USDA programs made available to them in their local offices. For example, the local office in the Northern Neck region offers a cover crop assistance program, subsidized through state funds. But as the staff from the local NRCS office told us, this program is not tailored to their needs as diversified fruit and vegetable farmers,

I also offer this cover crop program for them. That program is through... it's a state program. But most of them- the cover crop has to stay on the land, between certain planting dates and certain dates that you have to destroy. And that date, the destroyer date is after. Because they start planting around February first: the beginning of February they start discing their land, preparing their land. And that cover crop has to stay on there until the middle of March. And that's not good for vegetable farmers at all because they need that time, they need that land. When it's ready to go, they're ready to go.

So the cover crops work better for the grain farmers?

Yes. I have offered several times. I go out there and just try to push the program. And they say no, it's just not good for them because of the rules and regulations of the cover crop program.

This example of poor seasonal fit with available NRCS programs could be equally true for any fruit or vegetable farmer in the region. Yet for Latino immigrant farmers, who have fewer farming options, due to their limited access to capital investment, land, and markets, this misalignment reinforces an existing inequality for already disenfranchised farmers.

In another example, in order to participate in the hoop house program, in addition to being subject to random visits, providing a detailed log of what is planted, how much was spent, and how much profit was made; farmers must also plant particular crops according to USDA

guidelines. Farmers must prepare and adhere to an operation and maintenance plan, which includes particular instructions as to proper irrigation and planting practices and erosion control. This plan has to be reviewed and approved by a NRCS official. While the few farmers who participate in the program did not express frustration at these requirements, others stayed away from government offices because they did not want to have to answer to outside authorities. One farmer who chose to participate in the hoop house program conveyed both gratitude and frustration,

We were planting tomatoes, because they're very particular. They [the USDA] want certain stuff. You can't go ahead and do anything you want with them [the hoop houses]... And it's good help. I'm not saying it doesn't help, but we've managed to come so far on our own.

While the farmer expressed gratitude for the financial assistance, she also questioned if the planting restrictions are worth the support. The requirement for standardization feels like a relinquishment of some part of her agrarian autonomy, or the ability to make all farming decisions as she wishes. Even for those that succeed in securing state resources, they seem unsure about the decision to work within certain rules and regulations. However, most farmers never looked into USDA programs due to their suspicion of the government and government officials. This discomfort was compounded by their inability to navigate state bureaucracy. In the section below, we discuss the challenges they face as immigrants with limited English abilities and minimal formal education, contending with the paperwork of state-sponsored programs.

Paperwork and standardization

As can be expected from any government institution, the USDA requires extensive paperwork before, during, and after taking advantage of their loans, grants, or insurance options. When farmers were asked what they think the greatest challenge is for Latino farmers accessing USDA programs, most mentioned the paperwork. This discomfort stems from their general distrust of the US government, coupled with the fact that most Latino immigrant farmers have limited English skills, as well as reading and writing abilities, even in their native language. Although white farmers may also be resistant to paperwork and general bureaucracy, the fact that most farmers we interviewed did not have an education past middle school, means they are lacking the literacy skills necessary to fill out the required paperwork in any language. For many, this means they may never enter the door of the USDA to inquire about

opportunities due to intimidation. For others, it may be the ultimate reason they stall in the process and fail to obtain the grant, loan, or insurance package.

Of all the farmers interviewed, only three had successfully used USDA programs- two had grants for hoop houses from the NRCS and one had crop insurance, secured through his local USDA Risk Management Agency office. One farmer also applied for a hoop house and been accepted into the program, but had yet to receive the funds. Local staff are aware of the Latino farmer presence in the area and lacking participation in programs. They discussed with us the ways they tried to conduct outreach, yet were very clear that without a Spanish speaker in the office, their abilities were limited. The local extension agent speaks minimal Spanish and helps Latino farmers access educational materials, but was unable to entice them to apply for USDA funds or programs. A local USDA staff member told us that there must be 10% participation in USDA programs in the region for bilingual forms to be made available. However, it is unlikely there will ever be more than 10% participation if the paperwork is not made available in Spanish in the first place. This catch-22 represents a structural problem within the USDA, which aggravates the already tenuous history of USDA discrimination.

Although some forms are available in Spanish online, finding them is difficult and availability is inconsistent. For example, selected forms for the FSA are available in Spanish on the USDA national site, but not on the Virginia or Maryland state sites specifically (although other states, such as Texas and New York have them on their state sites). For the FSA national site, one must go through an exhaustive search to find the translated forms. To find them, the user must go to the FSA main site, find the link to FSA "Fact Sheets" under the "Newsroom" link, which is listed under the "FSA Home" site. The whole search must be done in English. Then you have to choose from a drop down menu in English to get the translated links. Even then, only a small fraction of all available English forms are available translated. The NRCS national site is somewhat more user friendly for Spanish speakers, with a page specifically dedicated to the forms in Spanish, including Spanish instructions to access the forms.

Without Spanish-speaking outreach abilities, most farmers never hear about the programs available. When asked about the USDA, most farmers interviewed were unaware of opportunities accessible to them. USDA FSA loans are designed for farmers who struggle with traditional bank loans and are meant to be a farmers' first line of credit. Although many farmers interviewed told us they were unable to get access to credit from regular banks, they were unaware that USDA loan programs existed for these

reasons specifically. One farmer relayed this lack of awareness,

The truth is that I don't know what they [the USDA] have... We were told that in Warsaw [Virginia], in the department of environment, where the applications are, that one can fill something out so that they can give you a big greenhouse. However, I only learned about this year. I just didn't know.

Even those who speak nearly perfect English still find the forms intimidating. One immigrant farmer, who has obtained US citizenship, told us,

I tried in the past to get a small operating loan. And I didn't feel confident enough to fill out the application by myself because there were a lot of questions I didn't know.

Since attempting to apply for her first USDA loan, as described above, she has since applied for another loan that she successfully secured with the assistance of the local FSA staff. Yet, the level of confidence needed to walk into a government office where a huge stack of paperwork awaits is unrealistic for most, especially when understood in context of the tense relationship between most rural Latino immigrants and the state, given their histories of immigration. As noted in the methods section, although most of the farmer participants in this study are documented, many of them got their legal paperwork after crossing the border illegally in the early 1980s. They are all part of a local immigrant community, which includes both documented and undocumented individuals.

Another farmer, who has 60 acres in production, a large vegetable farm for the region, was the only farmer interviewed who had crop insurance. He told us that it took three trips to the offices to get the proper paperwork filled out. He does not read nor write in English or Spanish and found the process intimidating and frustrating, as well as time consuming, beyond what he felt he could afford as the owner and manager of a family-run farm.

The fact that paperwork, and the related language barrier, is the greatest impediment to aid for immigrant farmers is well understood by USDA staff in these counties. One local USDA staff member explains,

Most of our [Latino] producers- used to have some come in the office. They don't come in anymore. I think it's English. Because we had one that couldn't speak English, and he would always bring his son in here. And then the forms. We have some forms that are in Spanish, but most of our forms aren't. I think it's...where they're used to dealing with more cash than a lot of paperwork. I think they find the paperwork a little overwhelming.

In addition to noting that the written forms themselves are a technical challenge, she highlights that immigrant farmers are not accustomed to operating in bureaucratic environments. Even if the forms were in Spanish, their limited formal education makes the process of filling out paperwork extremely daunting. They are not accustomed to excessive paperwork from their experience as farmers in Mexico, or as farmworkers in the United States.

Even after the initial application for participation in a program is filed, there can be a large amount of follow up paperwork over a long period of time. For example, to participate in the hoop house program, one farmer told us, "What you have to do is keep a log of how much you spent, what you're getting out of it, and your profit out of it. So that's something that we had to do." Another farmer who participated in the program said, "They were very strict and limited to certain stuff [we could plant]... It's very complicated paperwork." They were both grateful for the program support, but expressed that the paperwork was an extra burden on top of their already busy schedules. Those that did use USDA programs also noted that their children, who are often born and educated in the US, were typically responsible for filing this paperwork. They were most comfortable with the language and the formalities of crop documentation, which their parents struggle to navigate. For those farmers without grown or teenaged children to help with the paperwork, participation in such programs was an even greater barrier.

A former staff member at the USDA's Socially Disadvantaged Farmer and Rancher Program at the federal level expressed that although the administration was making attempts to be more inclusive of immigrants and other farmers of color, the changes being made are equivalent to offering "coffee and donuts," rather than addressing uneven access at the local level. She stated that the outreach to socially disadvantaged farmers such as Latino and Black farmers, as a result of the discrimination claims, does not provide the technical assistance that farmers really need,

'Here have a cookie and some coffee, honest we'll give you a loan.' But then they leave. And actually, 'No honest, we won't give you a loan,' because nobody actually stopped eating the donut and the coffee and figured out how to get financed, because that would be hard work...' Here's information about the USDA. Hey, by the way, the USDA doesn't discriminate anymore. And we really hope that when you come to our office you'll meet someone that looks like you and treats you with respect, and if they don't, here's your civil rights.' But not, 'So let's sit down with your tax return now.'

In her view, despite the genuine intention of creating more inclusive programs at the federal level, in effect, the USDA's claims of making institutional change to combat historic discrimination are merely rhetoric. She argues that to improve opportunities for disadvantaged farmers, they need technical assistance. In our research, we found that sufficient technical assistance would include linguistic training for local staff and outreach and continued support for farmers with discrepancies in language and literacy.

Lengthy paperwork, required initially when a farmer applies for USDA assistance and throughout the process of utilizing the loan or program, proves to be a barrier to Latino immigrant farmers in accessing state support. Language barriers and uneven formal educational experience aggravate their general wariness of government authority even further. When immigrant farmers cannot speak the language and do not feel confident with the procedures required of them to access programs, this can be interpreted as a problem of legibility. Furthermore, their own agricultural practices and ways of sharing knowledge are not easily recorded in USDA forms. Their planting schedules and cultivation cycles tend to not fit the standardized format the state paperwork requires. It is a lack of translation, both linguistic and cultural, that function to keep Latino immigrant farmers away from USDA offices. It is only by recognizing these disjunctures that the USDA can truly move forward and into a new more inclusive era.

Towards a new era of inclusion

Under Vilsack's guidance, the USDA has taken several steps working towards a new vision of equality at the federal level. Since 2009, they have provided civil rights trainings to employees, established the Office of Advocacy and Outreach to aid beginning and socially disadvantaged farmers, and claim to be working towards resolving civil rights lawsuits inherited from previous administrations. The department has also vowed to be an equal opportunity employer and create a workforce, which "represents the full diversity of America" (USDA [[HYPERLINK \l "_bookmark30" \]](#)).

Unfortunately, in our work we have found that despite claims of increased racial equality from the federal offices of the USDA, little on the ground change is being made in local and regional offices to directly help Latino immigrants overcome obstacles in order to transition from the role of farmworker to farmer in the United States. The processes of monitoring and standardization, as currently required by USDA programs, exacerbate the racial exclusion of immigrant farmers from state programs, and ultimately, from the advantages other farmers receive. This uneven rural development must be understood in context of

the historical relationship between Latino immigrants and the state as well as through the lived experiences of those struggling within a system where their practices are not deemed readable. Today's Latino immigrant farmers follow this pattern of racialized others being left out of system where some practices are deemed legible, and therefore legitimate, and others are not.

As previously mentioned, programs that are developed for the specific needs of diversified fruit and vegetable, or specialty crop growers, already exist within the USDA. There are also microloan programs available through the FSA, which are also designed for "nontraditional" farmers and require less paperwork, and could be greatly helpful for Latino immigrants as they transition to farm ownership. Additionally, an office of Minority and Socially Disadvantaged Farmers Assistance (MSDA) has been established within the FSA with the express purpose of assisting farmers such as those who participated in this study. These programs are a great start to making government-supported programs available to immigrant growers. Regrettably, due to social divides and language and educational barriers, these programs are unknown to those most in need of assistance.

Of course, some paperwork and state monitoring are necessary for programs to function and for farmers to be held accountable. We do not suggest that these procedures can or should be simply abolished. Rather, these processes must be streamlined to take account of differences in growing practices, linguistic and literacy capabilities, and the need for farmers to maintain autonomy on multiple levels, if they are to build the trust that is so sorely lacking. Programs should be amended to account for differential growing seasons for diverse crops. Technologies such as camera phones could be better utilized for documentation purposes, in contrast to lengthy written paperwork; an idea suggested to us by an extension worker in New York. In all our discussions with USDA and other outreach staff there was an interest in these changes being made to accommodate "non-traditional" farmers in the US.

We do not claim that the USDA is the only institutional boundary for Latino immigrant farmers, nor the only place improvements can and should be made. Immigrant farmers struggle with access to capital, outreach and access to markets, general business skills, and many other management practices. But the USDA is the only state institution that claims to provide economic opportunities for rural communities and agricultural producers of the United States. While there are many entrepreneurial and non-profit ventures that focus on advancement for and training of small farmers, farmers of color, and immigrant farmers, they are often working on shoestring budgets, with varying levels of accountability to their clients, and have limited access to resources and markets themselves. The USDA

Exhibit 10

P. Mot. for Summ. J./ARPA_WYNN2490

Court: S.D. Ill. Case No. 3:21cv540-NJR

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555 Capitol Mall, Suite 1290
Sacramento CA 95814 – 916.419.7111

FARMERS ARE FIRST RESPONDERS™

YEAR 2020



ANNUAL REPORT

FAMILY FARMERS ARE POSITIONED TO ASSIST
THOSE AFFECTED BY DISASTERS

THE FEDERATION OF SOUTHERN
COOPERATIVES/LAND ASSISTANCE FUND

SUMMARY

Seventy-Eight percent of farmers surveyed said that they had not applied for COVID-19 resources prior to completing the survey. Of that number, the overwhelming majority stated that they were not aware of available COVID-19 resources. This highlighted the needs and led to focused work that enhanced outreach and education efforts.

The Federation has and continues to fill this gap by securing resources for these farmers and cooperatives from our partners and other sources. At the same time, we are working to make sure that there is an equitable distribution of COVID -19 related resources.

The Pandemic has forced us to come together in new ways and to rally around our many strengths. Through all the ups and downs, we are re-emphasizing what is most important: our farmers, landowners, cooperatives, employees and rural communities.

GET TO KNOW OUR NEW & BEGINNING FARMERS!

We are actively developing new resources, trainings, and online tools for young and beginning farmers.

"Isaiah is the one who is up early, even in the rain trying to make sure the goats are okay". - Alicia Jordan

Alicia & her son Isaiah
- Tripple J Farm



Alicia & Eddie Jordan of
Tripple Jay Farm | Eutaw, AL

Alicia Jordan, now in her first year of farming, reached out to our Alabama staff for assistance with fencing a forestry plan, and goats for their 15-acre farm. After attending the Georgia Farmers Conference held in Albany, Georgia, Alicia and Eddie decided to move forward despite being new to the farm business. "I didn't have any experience, but the Federation has been a huge help. Both sides of my family were small farmers. I'm picturing going to the next level."



Disabled Veteran
Ralph Perry tending to
planted squash.



Ralph and Georgia Perry of Perry Farm | Linden, AL

Ralph and Georgia Perry are also new & beginning farmers who have been working with our Alabama staff to begin clearing their 120-acre farmland. Georgia Perry named irrigation, and USDA loan approval among the challenges they are facing as new farmers. They are glad the Federation will remain their go-to resource as they continue to develop their farm. Ralph, a disabled veteran, currently uses the farm as a "strong community resource", allowing locals to glean produce for their families.

Exhibit 11

P. Mot. for Summ. J./ARPA_WYNN3675

Court: S.D. Ill. Case No. 3:21cv540-NJR

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**United States Department of
Agriculture**

**Independent Assessment of the
Delivery of Technical and Financial
Assistance**

Contract AG-3142-C-09-0049

“Civil Rights Assessment”

FINAL REPORT

March 31, 2011

**Prepared By:
Jackson Lewis LLP
Corporate Diversity Counseling
Group
“Assessment Team”**

2. USDA's Customer Base and Inclusion of SDGs: FSA, RD, and NRCS

The Contract required the Assessment Team to “Analyze USDA’s current customer base and constituencies in comparison to the existing population.” At the Assessment Team’s request, FSA, RD, and NRCS each provided information regarding customers for various programs by number of customers and dollars spent with/attributable to such customers, and race/ethnicity and gender data, where available, to enable a comparison with their respective population percentages. (Neither RMA nor the AIPs collect demographic information on applicants or insureds, so no such comparative data was available for RMA. Clearly, USDA should require the collection of this data as soon as authority to authorize it can be secured.)

The Assessment Team analyzed the information provided and compiled aggregate race/ethnicity and gender information for customers nationwide and by State, where data was available, along with associated numbers of transactions and associated dollars, for the 15 USDA-selected States covered in this Assessment. USDA-provided data was compared with appropriate population figures for each SDG; for example, in examining FSA loan data, the 2007 *AgCensus* Principal Operator data (the latest available) was used as the comparison population, because Principal Operators are those producers who apply for loans. The results are presented in this Report in a series of spreadsheet Exhibits for each of the three Agencies, FSA, RD, and NRCS.

Caveat: This Report includes repeated cautionary references to a *caveat* regarding the *unreliability of USDA data*. In addition to numerous past reports critical of the unreliability of USDA data (such as General Accountability Office and Office of Inspector General reports), the Assessment Team identified numerous errors, conflicts, inconsistencies, and omissions in the wide variety of data provided by USDA for this Assessment. Most of those problems were *apparently* corrected by provision of supplemental information, but some of them—such as inherent unreliability of race/ethnicity data collected by “physical observation”—could not be corrected or confirmed. Thus, all of the data analyzed and presented in this Report must be understood as based on questionable data.

Subject to that *caveat*, the following is a brief summary of the customer base comparisons for FSA, RD, and NRCS:

- a. **FSA:** FSA provided customer data for Farm Loans (Direct and Guaranteed Loans, FY 2010 and existing Portfolio), and Farm Programs.
 - 1) Direct Loans: SDG participation reasonably well reflected their respective Principal Operator populations, with the *exception of Female participation*, which was substantially less than the Female Principal Operator population.
 - 2) Guaranteed Loans: With the exception of Asians and Native Hawaiians/Pacific Islanders, SDG participation was less, and *with some SDGs substantially less*, than their respective Principal Operator populations.
 - 3) Farm Programs: *For all Farm Programs* on a nationwide aggregate basis, SDG participation was less, and *with some SDGs substantially less*, than their respective Principal Operator populations.
- b. **RD:** RD provided customer data for its FY 2010 Single Family Housing (“SFH”) Direct and Guaranteed Loans, and listings of “beneficiaries” (tenants) for its Multi-Family Housing Loans (which are made to entities, not individuals).
 - 1) SFH Direct Loans: SDG participation for all groups *exceeded* their respective rural populations, with some by substantial margins.
 - 2) SFH Guaranteed Loans: With the exception of Females and American Indians/Alaskan Natives, *SDG participation exceeded* the respective rural populations.
 - 3) MFH Loan “Beneficiaries”: All SDGs in FY 2010 were beneficiaries in percentages *greater* than their respective rural population percentages.