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Fair Credit and Investments

For 45 years, Rural Coalition has advocated for the modernization of credit for all farmers who operate in the United States. We recommend the following statutory changes:

Part I - Modernize Farm Credit

SECTION I - STRENGTHEN FSA LENDING AND MAKE IT A PARTNER TO ALL FARMERS

- **Include in the Farm Bill the following legislative proposals contained in the President's 2024 Budget (We support language from that budget quoted as follows:**
 - ***Eliminate the cap on the number of times a borrower can receive a Direct Operating or Direct Farm Ownership Loan.*** Each year, agricultural producers exhaust their loan eligibility due to statutory caps on the number of years an agricultural producer may receive direct loan funds from the Secretary. Removing this requirement will assist various types of borrowers, including borrowers who live in credit deserts and borrowers who have continued need for loan assistance beyond the current limits.
 - ***Remove Emergency Loan program requirements for written credit denial and adjusting the production loss percent threshold from 30% to an amount to be determined by the Secretary.*** Agricultural producers impacted by a disaster who wish to use emergency loan funding must provide one or more written declinations from a commercial lender. Removing this requirement will better align emergency loan eligibility requirements with farm ownership and operating loan eligibility requirements and improve producer access to emergency funding in the wake of disasters.
 - ***Reducing the Direct Farm Ownership Loan experience eligibility requirement from three years down to one year.*** Reducing experience requirements will lower existing barriers to entry into this loan program, allowing for greater program participation.
 - ***Increasing the Direct Beginning Farmer Down Payment Loan Program loan limit to match the regular Farm Ownership loan limit.*** Direct farm ownership loan limits have increased over time, while the limit for the down payment loan program has

remained the same, resulting in a decrease in utilization of that program over time. Aligning the down payment loan limit with the limit for other direct farm ownership loans will increase program utilization relative to other direct farm ownership loans.

- ***Increasing the Microloan limit from \$50,000 to \$100,000.*** *The microloan program is essential for many beginning farmers and ranchers and non-traditional farm operations with limited experience or assets, but the current loan limit reduces the effectiveness of the program. Increasing the limit will improve utilization of the microloan program, which will reduce loan processing times and help more customers establish experience and eligibility required for other loan options.*
- ***Revise the beginning farmer definition to include entities comprised of non-related individuals.*** *The current language defining “qualified beginning farmer or rancher” requires in the case of a cooperative, corporation, partnership, joint operation, or such other legal entity that all members of such entity be related to one another by blood or marriage. Removing this requirement will expand program eligibility to entities whose members are not related by blood or marriage, but otherwise qualify as beginning farmers or ranchers.*
- ***Expand Mediation Services to tribes and territories.*** *Currently, borrowers operating on federally recognized tribal land and in U.S. territories must participate in programs maintained by a nearby State, which may disenfranchise customers with unique cultural and technical backgrounds. This provision expands additional mediation services directly to tribes and territories.*

Additional Recommendations under this Section

- Secure authority and maintain funding to waive taxes on 22006 loan payments and modifications and 22007 Discrimination Relief payments in any finance/tax bill moving forward
- Increase loan limits for direct farm operating loans to \$600,000 and direct farm ownership loans to \$1 million (with inflation adjustment)
- Set the maximum level of collateral for direct farm ownership and operating loans at 110% of loan amount
- Make loan programs more accessible for farmworkers seeking to farm.
- Make disaster/emergency loan modifications mandatory and automatic in times of natural disasters, national emergencies, and in the case of farm operators who become unable to farm due to injury, illness, or death.
- Provide new lending/forgivable loan authority to support immediate equipment and

infrastructure investments and improvements by beginning, transitional and/or underserved producers, and farm cooperatives, to establish, enhance and make their enterprise more profitable or successful.

SECTION II – ASSURE FAIR CREDIT SERVICE TO UNDERSERVED, SOCIALLY DISADVANTAGED AND OTHER FARMERS AND RANCHERS

- Fair Lending Improvement and Farmer Protection in Loan Servicing and Appeals (see detail in Attachment 1)
- Establish strict conflict of interest and ethics policies with penalties (see detail in Attachment 2)
- Authorize interest rate reductions for each category of underserved producers.
- Improve Language access for all producers including
 - Require USDA agencies serving farmers and rural residents to provide announcements and forms translated to the languages needed in each area
 - Require USDA agencies serving farmers to connect producers directly to existing staff fluent in language of the producer, even if this is a virtual connection.
 - In Technical Assistance programs, add eligibility and preferences for groups able to provide services in the language of the producers
- Make entities with demonstrated experience in providing technical assistance to farmworkers seeking to farm eligible entities in existing TA programs.

SECTION III - STRENGTHEN TRANSPARENCY AND ACCOUNTABILITY WITH DATA COLLECTION AND PUBLICATION

- Improve data collection requirements to provide:
 - Data on the following by race, gender and ethnicity by county and state:
 - Loan Applications, Approvals and Denials
 - Range and average of the date loans are funded
 - Loans Accelerated Foreclosed
- Improve data disclosure requirements on rates of participation in additional FSA and NRCS programs that may enhance or hinder cash flow ability including data by race, gender and ethnicity to the county and state level on:
 - Maximum and range number of FSA and NRCS programs any single producer participates in
 - Median number of FSA and NRCS programs per producer
 - Maximum and median level of benefits per producer
- Publish above data on an annual basis on a state by state and county by county level

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Part II- Enhancing Fair Access to Credit with Accountability and Borrower Protections

SECTION I. National Appeals Division – Credit Review Implementation and Improvements.

Section I amends the base statutory authority of NAD to expand definition of adverse actions.

SECTION II. Farmer Protection Loan Servicing Protection Against Dual Tracking of Foreclosure and Civil Rights Investigation

Section II amends the Farm Credit Act to adopt, as near as possible, the protections found in the Anti Dual Tracking protections of 12 U.S.C. 2605. (f) – Farm bill legislation to adopt Dodd Frank prohibition against “dual tracking”. The RESPA process is different, but farmer could benefit from prohibitions against foreclosures within 35 days after the end of all loan servicing options. **(Expanded Servicing Options – Foreclosure only after farmer has ample opportunity to sell parts of farm and/or enter into economic equipment or land leases designed to increase income for farm loan servicing workouts with USDA)** Farmers should have an added benefit of 60 after end of modification, workout. We attempt to adopt the principles of “dual tracking” into FSA loan servicing. Our strategy is to take 12 CFR 1024.41(g) and tailor applicable provisions to comport with 7 CFR 766 (Farm Loan Servicing) Prohibition against dual tracking is

SECTION III. Circumstantial (Undisclosed Employee Misconduct) Tolling of Commencement of Civil Rights 180 Filing Deadline

Section III requires the Secretary to amend the USDA Civil Rights regulations in order to toll 180 filing deadline with the right of the farmer to commence the civil rights complaint within 180 after knowledge of the following:

- (A) Employee Conflict of Interest
- (B) Federal employee engagement in private racketeering activity against the farm or farm related business interest of farmers;
- (C) Actions of federal USDA employee cannot be supported by law or regulation and is a clear violation of law or regulation;
- (D) Failure to adequately complete substantive receipt for service;
- (E) 60 days after the Consumer Financial Protection Bureau closes a farmer consumer lending complaint without a resolution favorable to the farmer, petitioner;
- (F) Secretary’s interests in fair and efficient program management and implementation would be advanced by tolling statute of limitation for 180 after the farmers learns of the original, connected adverse action.

SECTION IV. Expanded Use of Comparator Analysis Within the Civil Rights Complaint Process

Section IV requires the Secretary to amend the civil rights complaint process in a manner that requires civil rights investigators to improve and expand comparator analysis. Requiring Investigators and Adjudicators to consider comparator data from sources other than the farmer / civil rights complainant should not be applicable within agricultural program

complaints. The investigation and adjudication in agriculture cases should focus on whether a law or regulation was violated under ECOA. If there is an ECOA violation, then the farmer has accomplished her burden of presentment and then the Agency must show that at least 10 similarly situated white farmers were treated the same. The 10 white farmers can be accumulated from 10 different states.

This new adjudications policy will develop the Farmer's Cannon of Statutory Interpretations. The new policy will also place limitations on the burden of requiring the Farmer Complainant to search the USDA white farmer comparator data. Under current practice, if a law or regulation was violated within the civil rights context, the farmer fails to achieve a remedy since she can not put forth comparator data. Such data is private and a farmer would never gain access to prove a civil rights claim.

Legislative Language: The secretary shall implement a civil rights program processing rule that includes the following investigative techniques:

- (i) Independent review of the alleged discriminatory adverse action by a third party organization that consists of retired FSA loan officers;
- (ii) Evaluation and examination of whether the alleged discriminatory adverse action contravenes a right, privilege, or opportunity clearly identified in the text of statutes or regulations;
- (iii) Utilization of comparator data from other sources such as FSA offices in other counties, states or regions.

SECTION V. Mandatory Use of Equal Credit Opportunity Act concepts and principles within the USDA civil rights investigations process.

Section V requires the Secretary of Agriculture to amend civil rights complaints process and procedures to adopt and utilize Equal Credit Opportunity Act (ECOA) laws and regulations as a major component of USDA investigation and adjudication processes.

The amendment requires the USDA civil rights Investigators and Adjudicators to attached to an investigative report and written adjudication a statement indicating that ECOA was adequately used in the process.

AMENDMENT TO USDA CIVIL RIGHTS PROCESSES ON INVESTIGATIONS AND ADJUDICATIONS CERTIFICATION OF ECOA COMPLIANCE

Within 180 days after the enactment of this section, the Secretary of Agriculture shall enter into notice and comments in order to amend 7 CFR 15.60 to include Equal Credit Opportunity Act (ECOA) laws and regulations in the Agency's civil rights investigations and adjudications:

- (a) **Assurance of ECOA Analysis** Prior to the acceptance of any USDA farm loan Report of written Investigation or adjudication related to a farm loan complaint of discrimination, the USDA must attached a written statement indicating how the investigation and adjudication included an analysis of applicable Equal Credit Opportunity Act law and regulations.
- (b) **Non Compliance Penalty. The Secretary shall make an automatic finding of discrimination if any report submitted subparagraph (a) excludes an ECOA written certification of compliance.**

**SECTION VI. - Loan Servicing and use of Private Insurance Indemnity Proceeds
(7 U.S.C. 2001) (7 C.F.R. 766.101 TO 766-150)**

Section VI amends Farm Credit Act to require a new loan servicing rule designed to allow expanded use of farm insurance indemnity proceeds.

Source of Policy or Legislative Idea. Litigation of a claim of loan servicing discrimination revealed FSA's denial of request to use insurance indemnity to rebuild chicken house infrastructure. FSA required payoff of ownership loan rather than rebuilding the farm building infrastructure. This loan servicing denial effectively placed the farmer out of business. FSA informed the producer to apply for a new loan. The producer did not apply for a new loan because at the time of the tornado the producer was not delinquent. The sale of birds in December of the same year was sufficient to pay the annual loan amount that did not become due until January of the next year. The new loan, suggested by USDA, would not have been sufficient to rebuild poultry house infrastructure.

Narrative: Catastrophic weather, pandemic, or economic events have devastating consequences on minority farm operations. With respect to insurance indemnity payments loan servicing requests, whether primary loan servicing or verbal loan servicing, the USDA should be flexible so to allow the producer to use the insurance indemnity payments to rebuild the business rather than payoff the existing loan. *The Secretary shall promulgate a rule that allows the farmer, within the context of a loan servicing transaction, to use some or all of specific insurance indemnity proceeds, to rebuild essential farm facilities and replacement of farm equipment.*

Explanation of Legislative Language: When a farmer pays off the existing loan using insurance indemnity payments, the farmer most likely will not have funds to replace or rebuild destroyed structures that are essential to the agricultural operations. This is so because of the current escalation in materials, equipment and industry required farm technologies. A new loan after a disaster may not always be the solution to continued operations. However, the use of insurance indemnity payment can serve as the perfect risk management tool design to maintain farm operations after a natural disaster. The new language is designed to include insurance indemnity payments in the core definition of loan servicing transaction. Such a request from a farmer shall not be denied by a farm loan officer except when fraud is present and the farmer is not in default. An insurance indemnity request shall be considered a priority servicing request to be decided by the Administrator of the Farm Service Agency in Washington, DC and appealable to the National Appeals Division.

Agricultural operations cannot continue to function as a result of loss of equipment, buildings and processing facilities.

Policy Development: USDA allows the individual producer or eligible farm operator to use the insurance indemnity payments to repair and replace rather than pay off the existing mortgage. The new language is designed to maintain or improve the security position of USDA while allowing the producer to continue operation at the same or near financial status before the catastrophic event.

7 U.S.C. 2001 amended as follows:

- (a) The Secretary shall allow a producer to use insurance indemnity proceeds to rebuild farm operations when the following conditions are satisfied:

1. At time of catastrophic weather related event, the farm loan borrower is current or not more than 90 delinquent;
 2. Borrower is a borrower in good faith;
 3. Replacement of buildings, equipment, and structures will improve farmers ability to become current or maintain current payments.
 4. USDA has other cash or crop collateral that protects the government's security interests.
- (b) A denial of rights of this new section must be in writing and justified by the appropriate FSA State Executive Director.

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Part III – Equitable Relief and Base Acres Improvement Act

1. Equitable Relief Improvement Act

Act to overturn National Appeals Decisions in Stovall, Abeyta, and Alston. See 7 CFR § § 11.10(a)(b)(c). (Basis for substantive determinations)

- (a) Enhanced and improved Definition of mistake;
- (b) Enhanced and improved Definition of reliance;
- (c) Definition of Adverse Action; (NAD jurisdiction is limited to determining whether the agency’s adverse decision is consistent with the laws and regulations of an agency and with generally applicable interpretations of such laws and regulations. **See 7 CFR § 11.10 (b).** (Basis for substantive determinations)
- (d) The Secretary shall require Civil Rights Adjudicators to offer remedies Considerations in Civil Rights Adjudication;
- (e) Publish a list of redacted grants of farm loan equitable relief.
- (f) The Secretary shall publish redacted list of redacted descriptions of farm loan equitable relief.

2. Improved Base Acre Analysis

Act to guarantee base acre allocation and fairness.

7 USCA 2279a.(a) – Fair and equitable treatment of socially disadvantaged producers.

7 USCA 9012. Base Acres, generally.

- 1. The Secretary of Agriculture shall ensure that the implementation of 7 USCA 2279a.(a) is aligned with 7 USCA 9012 in order to ensure minority farm land:
 - a. Retention;
 - b. Timely and appropriate adjustment of base acres;
 - c. Prevention of excess base acre expansion to the detriment of certain producers.
- 2. Reduction in base acres – (4) The Secretary shall ensure that producers on a farm do not reconstitute the farm to void or change the treatment of base acres under this section.

- (a) Fair crop acreage bases and farm program payment yields.
- (b) Fair application of Consolidated Farm and Rural Development Act.
- (c) Report on treatment of socially disadvantaged producers.

3. Increased Penalties for Farm Service Agency Loan Officer Engagement in Conflict of Interests

See 42 U.S.C 1986. See 7 USC 1986

A. Improved and Expanded Definition of Conflict of Interest. “This section is amended as follows: “Per Se Conflict of Interest. A farm loan officer shall be deemed to have a financial interest in a producer’s loan application, loan disbursement, any aspect of loan servicing if any of the FSA farm loan officer gains value in the form of – **(i)** farm labor contract; **(ii)** equipment purchase or rental; **(iii)** land purchase; **(iv)** land rental; **(v)** crop harvesting contract; **(vi)** production marketing contract; **(vii)** crop input contracts such as seed and fertilizer; **(viii)** unsecured loan; **(ix)** of anything of value derived from the farm loan customer.”

B. Disclosure, Recusal, Reporting. If a farm loan officer discovers a conflict of interests as described under sub paragraph A, the Loan Officer shall engage in the following mandatory actions within 48 hours: **(i)** disclosure, in writing, such conflict of interest to the **(a)** County Executive Director, **(b)** State Executive Director, **(c)** Administrator of Farm Service Agency, and **(d)** USDA Commission on Racial Equity within 48 hours of learning of the conflict of interest; **(ii)** cease further engagement in loan processing or loan servicing; **(iii)** provide written notice of conflict of interest’s impact or harm caused to the producers program participation; and **(iv)** xxxxxxxx RESERVED xxxxxxxxxxxxxxxx.

C. Increased Penalties. The Secretary of Agriculture shall, within 90 days of enactment of this section, establish increased penalties for any USDA farm loan officer who is determined to not be in compliance with paragraph **A and B** of this section.

D. Legal Effect of Violation of Conflict of Interests. Upon a finding of proof of a conflict of interest under this section, **(i)** the conflict of interest shall be deemed an adverse action pursuant to the NAD jurisdictional definition of Adverse Actions; **(ii)** NAD statute of definition shall be expanded to 360 days after the discovery of a conflict of interest as defined under this section; **(iii)** Prima Facie evidence of prohibited **(A)** discrimination under 42 USC 1981 or **(B)** evidence of disparate impact discrimination.

E. Remedy. Upon a finding of a violation under this section, the Secretary shall fashion a financial or equitable relief remedy as appropriate under the circumstances.