



DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2025–0070]

Agricultural Disaster Assistance Programs

AGENCY: Farm Service Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice; removal of unconstitutional preferences based on race and sex in response to court ruling.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice to announce that it will no longer employ the race- and sex-based “socially disadvantaged” designation to provide increased benefits based on race and sex set forth in the Notices of Funds Availability (NOFAs) for the following programs: the Emergency Relief Program (ERP) Phase 1, the Emergency Livestock Relief Program (ELRP) Phase 1 and Phase 2, ERP 2022 Track 1 and Track 2, and ELRP 2022.

FOR FURTHER INFORMATION CONTACT: Kathy Sayers; telephone: (202) 720-6870; email: Kathy.Sayers@usda.gov. Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY mode)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

As set forth in the final rule published on July 10, 2025 (Removal of Unconstitutional Preferences Based on Race and Sex in Response to Court Ruling, 90 FR 30555), USDA “has independently determined that it will no longer employ the race- and sex-based “socially disadvantaged” designation to provide increased benefits based on

race and sex in the programs at issue in this regulation.” The USDA has faced a long history of litigation stemming from allegations of discrimination in the administration of its farm loan and benefit programs. However, over the past several decades, USDA has undertaken substantial efforts to address past problems, culminating in comprehensive settlements, institutional reforms, and compensatory frameworks. These actions collectively support the conclusion that past discrimination has been sufficiently addressed and that race- and sex-based remedies are not necessary or legally justified.

In *Strickland v. USDA* (Case No. 2:24-CV-60-Z), white farmers challenged USDA disaster and pandemic relief programs that targeted socially disadvantaged groups. The plaintiffs argued that the use of race and sex as criteria violated the Equal Protection Clause. Emphasizing an emerging judicial scrutiny of remedial race-based classifications, particularly considering Supreme Court precedent clarifying constitutional limits on affirmative action, the Court, on June 7, 2024, preliminarily enjoined the challenged relief programs that included race- and sex-based preferences. *Strickland v. United States Dep’t of Agric.*, 736 F. Supp. 3d 469 (N.D. Tex. 2024).

As provided in the Defendant’s Statement in the Response to the Court’s January 27, 2025 Order, “the Department of Justice has determined that the [USDA] programs at issue in this case are unconstitutional to the extent they include preferences based on race and sex. USDA has independently determined that it will no longer employ the race- and sex-based ‘socially disadvantaged’ designation to provide increased benefits based on race and sex in the programs at issue in this case.” On May 15, 2025, the United States District Court for the Northern District of Texas, Amarillo Division, granted the parties’ request for voluntary remand in *Strickland*. The court further ordered USDA to finalize its reconsideration of the programs challenged in that case for its use of the race- and sex-based “socially disadvantaged” designation on or before September 30, 2025.

In alignment with the *Strickland* Court’s June 7, 2024, decision and recent federal directives,¹ the USDA’s final rule of July 10, 2025, amended the regulations of multiple USDA programs as a result of USDA’s conclusion that the use of discretionary policy choices, made under the rubric of the statutory authorities for the programs identified in the rule, is inconsistent with constitutional principles and the administration’s policy objectives (90 FR 30556). The rule amended the regulations of the Coronavirus Food Assistance Program (CFAP) 2, the Pandemic Assistance Revenue Program (PARP), and the Emergency Relief Program (ERP) Phase 2 to remove the use of the race- and sex-based “socially disadvantaged” designation when determining benefits under those programs.²

Consistent with the actions taken in the final rule, FSA is issuing this notice to announce changes to the provisions of ERP Phase 1, ELRP Phase 1 and Phase 2, ERP 2022 Track 1 and Track 2, and ELRP 2022, which were each announced and administered through a Notice of Funds Availability (NOFA) rather than through a rule and regulation. The application periods for these programs have closed and payments have been issued except in limited circumstances, such as when a payment has been delayed due to errors, omissions, and appeals. As a result of the revisions made by this notice, any remaining payments that are issued will not use the “socially disadvantaged farmer or rancher” designation to provide increased benefits. The revisions to each of these programs are described below.

ERP Phase 1

ERP Phase 1 was announced in a NOFA published on May 18, 2022 (87 FR 30164), as revised and clarified by a notice published on August 18, 2022 (87 FR 50828).

¹See Executive Order 14148, “Initial Recissions of Harmful Executive Orders and Actions” (90 FR 8237), and Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (90 FR 8633).

²See 7 CFR 9.203 for CFAP 2, § 9.306 for PARP, and § 760.1905 for ERP Phase 2.

For any remaining payments, a producer who is a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher will still receive an increase to their ERP Phase 1 payment that is equal to 15 percent of the amount calculated as described in the first through fourth paragraphs under “Payment Calculation” in the NOFA of May 18, 2022 (87 FR 30168-30169). Other producers will not receive an increase of 15 percent of the calculated amount.

ELRP Phase 1

ELRP Phase 1 was announced in a NOFA published on April 4, 2022 (87 FR 19465), as revised and clarified by a notice published on August 18, 2022 (87 FR 50828). For any remaining payments, the ELRP Phase 1 payment percentage will be 90 percent for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher, and 75 percent for all other producers.

ELRP Phase 2

ELRP Phase 2 was announced in a NOFA published on September 27, 2023 (88 FR 66366). As provided in that NOFA, the ELRP Phase 2 payment was equal to the eligible livestock producer’s gross ELRP Phase 1 payment multiplied by 20 percent. As described above, any remaining ELRP Phase 1 payments will not use the “socially disadvantaged” designation when calculating the payment amount. As a result, any ELRP Phase 2 payments that result from such Phase 1 payments will not be increased based on the “socially disadvantaged” designation.

If an ELRP Phase 1 payment was issued prior to USDA’s termination of the use of the “socially disadvantaged” designation but the Phase 2 payment was delayed, any remaining Phase 2 payments will be based on the amount that would have been issued for ELRP Phase 1 according to the revision above (that is, the amount calculated using an ELRP Phase 1 payment percentage of 90 percent for a beginning farmer or rancher,

limited resource farmer or rancher, or veteran farmer or rancher, and 75 percent for all other producers).

ERP 2022

ERP 2022 Track 1 and Track 2 were announced in a NOFA published on October 31, 2023 (88 FR 74404). On August 23, 2024, FSA published a notice announcing the actions FSA was taking to comply with the preliminary injunction in *Strickland* related to payment calculations for ERP 2022 (89 FR 68125). That notice stated, “If the preliminary injunction is lifted, with available funds, FSA will make or update payments to affected and eligible socially disadvantaged producers consistent with the terms of the [NOFA].” As explained above, FSA is amending the provisions of the NOFA because USDA will no longer employ the race- and sex-based “socially disadvantaged” designation to provide increased benefits based on race and sex. Accordingly, FSA will not make or update any ERP 2022 payments based on the “socially disadvantaged” designation. Any remaining ERP 2022 payments will be subject to the following revisions.

As provided by the initial NOFA, ERP Track 1 payments for insured crops and trees are calculated by determining a producer’s loss consistent with the approved Risk Management Agency (RMA) loss procedures for the type of coverage purchased by the producer, but using the ERP factor to determine the liability. The result is adjusted by subtracting the gross Federal crop insurance indemnity. FSA then applies progressive factoring by payment range as described in the NOFA and calculates the sum of the results for all payment ranges (88 FR 74410). For any remaining Track 1 payments for insured losses, FSA will add the producer’s share of the Federal crop insurance administrative fee and premium to that calculated amount for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher. For all other producers, the share of the administrative fee and premium will not be added to the

calculated amount for insured losses. FSA will continue to apply a final payment factor of 75 percent to all payments.

For crops with coverage under the Noninsured Crop Disaster Assistance Program (NAP), ERP Track 1 payments are calculated by determining a producer's loss consistent with FSA's NAP calculation, but using the ERP factor in place of the crop's coverage level to determine the guarantee. This calculated amount is then adjusted by subtracting the gross NAP payment, without progressive factoring (88 FR 74411). For any remaining Track 1 payments for NAP-covered losses, FSA will add the producer's share of the NAP service fee and premium to the result of that calculation for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher. For all other producers, the share of the service fee and premium will not be added to the calculated amount for NAP-covered crops. FSA will continue to apply a final payment factor of 75 percent to all payments.

For any remaining Track 2 payments, for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher, the calculated Track 2 payment, prior to application of the final payment factor, will be equal to the lesser of: 1) the sum of the results for each payment range described in the second paragraph under "Track 2 Payment Calculation," multiplied by a factor of 115 percent; or 2) the amount calculated by Steps 1 through 3 of the first paragraph under "Track 2 Payment Calculation" (88 FR 74414). For all other eligible producers, the sum of the results for each payment range described in the second paragraph under "Track 2 Payment Calculation" will be the calculated Track 2 payment prior to application of the final payment factor.

ELRP 2022

ELRP 2022 was announced in a NOFA published on September 27, 2023 (88 FR 66361). On October 30, 2024, FSA published a notice in the *Federal Register* announcing a second round of payments for ELRP 2022 participants that were subject to

a modified payment calculation in compliance with the preliminary injunction in *Strickland* (89 FR 86310). That notice stated, “If the preliminary injunction is lifted, with available funds, FSA will make or update payments to affected and eligible socially disadvantaged producers consistent with the terms of the [NOFA].” As set forth above, FSA is amending the provisions of the NOFA because USDA will no longer employ the race- and sex-based “socially disadvantaged” designation to provide increased benefits based on race and sex. Accordingly, FSA will not make or update any ELRP 2022 payments based on the “socially disadvantaged” designation.

For any remaining ELRP 2022 payments, the payment will be equal to the eligible livestock producer’s gross 2022 LFP calculated payment multiplied by the applicable ELRP 2022 payment percentage of 90 percent for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher or 75 percent for all other producers, multiplied by a 25 percent factor for an initial payment or 7.25 percent factor for a second-round payment.

William Beam,

Administrator,

Farm Service Agency.

[FR Doc. 2025-17861 Filed: 9/15/2025 8:45 am; Publication Date: 9/16/2025]