



October 8, 2021

Submitted Via Federal eRulemaking Portal (<http://www.regulations.gov>)

Farm Service Agency
U.S. Department of Agriculture

Re: Document Citation: 86 FR 43381
Docket Number: FSA-2021-0002
Document Number: 2021-16459
Federal Register: Monday, August 9, 2021; Vol. 86, No. 150; Page 43381 - 43397

Heirs' Property Relending Program (HPRP), Improving Farm Loan Program Delivery, and Streamlining Oversight Activities

Dear Administrator Ducheneaux,

American Farmland Trust (AFT) is pleased to submit these comments regarding the Final Rule for the Heirs' Property Relending Program (HPRP). Founded in 1980, AFT is the only national organization that takes a holistic approach to agriculture, focusing on the land itself, the agricultural practices used on that land, and the farmers and ranchers who do the work.

Racial injustice is very much a part of our nation's agricultural history, and unfortunately, inequity persists to the modern day. Black, Indigenous, People of Color (BIPOC) and other socially disadvantaged producers still face challenges such as loan discrimination, barriers to accessing federal programs, unequal receipt of federal funding, and unstable land tenure. Because of past and present injustices, 95% of the nation's farmers and ranchers are white, which does not reflect the incredible diversity of America's population.¹

In light of this long and painful history, AFT was proud to support the Heirs' Property Relending Program in the 2018 Farm Bill. We saw this program as a way to help primarily socially disadvantaged farmers and ranchers secure their land tenure, build generational wealth, and take full advantage of federal programs such as disaster relief. AFT has urged the United States Department of Agriculture (USDA) to implement the program on several occasions and commends the Farm Service Agency for releasing the final proposed rule. This critical step will enable the program to begin supporting heirs' property owners across the nation.

AFT is particularly supportive of the prioritization of program funding to states that have passed the Uniform Partition of Heirs' Property Act (UPHPA). The UPHPA, which has already been adopted in 19 states, helps to keep heirs' property in the family by reducing the likelihood

¹ USDA NASS, "2017 Census of Agriculture: Highlights: Farm Producers." 2019.
https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf

of a forced partition sale. It also helps to ensure that if the land *is* sold, the heirs receive a fair price for their property.² AFT believes that the efforts of HPRP will be strengthened by the universal adoption of UHPA and encourages the Department to make widely known to states the benefits of UHPA as it conducts outreach related to HPRP.

AFT has two additional recommendations regarding the HPRP rule. The first is that once the program is implemented, FSA should gather information regarding whether HPRP would be more effective as a grant program, rather than a relending program. This would provide vital information to Congress on how they might improve the program within the 2023 Farm Bill. Heirs' property owners tend to be socially disadvantaged and "land rich but cash poor."³ Resolving ownership can be a lengthy and expensive process, requiring the would-be sole owner to seek legal aid and buy dozens or more co-owners out of their shares.⁴ AFT's concern is that taking on debt to resolve their title could put these producers at risk of defaulting on a substantial loan, spelling disaster for their operations and making them *worse off* than when they started. Changing the program to a grant or forgivable loan (to be forgiven upon resolution of ownership) would remove risks to the producer and enable broader program participation.

AFT's second recommendation is that while finalizing this rule, FSA should pay particular attention to input from heirs' property owners, BIPOC-led organizations, and other groups that specialize in dealing with heirs' property issues. Only recently did this issue gain national and federal attention. However, organizations such as the Black Family Land Trust and the Federation of Southern Cooperatives have been working on this issue for many years. Their expertise should be recognized and elevated.

AFT appreciates the opportunity to submit our comments on the Heirs' Property Relending Program. We look forward to continuing to work with USDA and FSA to make agriculture a more diverse and equitable sector.

Respectfully submitted,
American Farmland Trust

² Uniform Law Commission, "Partition of Heirs Property Act." <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>

³ C. Gaither, A. Carpenter, T. McCurdy, and S. Toering, "Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment." USDA, 2019. https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf

⁴ C. Gaither, et al, "Heirs' Property and Land Fractionation."