Minority Farm Advisory Committee

October 2, 2015

The Honorable Thomas Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., SW
Jamie L. Whitten Building, Room 200A
Washington, DC 20250

Dear Secretary Vilsack:

Re: USDA Discrimination Litigation and Settlements

We are writing this letter at the conclusion of our first public meeting of the Minority Farm Advisory Committee (MFAC) meeting in Savannah, Georgia, on September 22-24, 2015.

This letter concerns the outstanding matters related to the litigation and settlements of past discrimination by the United States Department of Agriculture (USDA) against farmers of color in our nation. At our meeting we heard a report from your Office of General Counsel (OGC) that did not fully respond to the concerns expressed by farmers from among our respective farm and rural communities.

We are concerned about the current status of unresolved discrimination litigation and settlements against USDA. More specifically, we advise you to:

- **Negotiate a speedy resolution of the use of the $380 million *cy pres* funds in the Keepseagle case that allows for distribution to claimants, organizations, and institutions;**

- **Negotiate a resolution on the use of the $13 million *cy pres* funds in Pigford II for distribution to claimants and community-based organizations with a proven track record of assistance and support to African-American farmers; and**

- **Reconsider those claims (more than 18,953) denied in the Hispanic and Womens Discrimination Settlement Process. Moreover, send claimants a detailed explanation of the reasons for their denial and pay the claims of those whose denials were made in error.**

Background

In the Keepseagle case, brought by American Indians against the USDA, OGC informed the MFAC that $380 million dollars remains unspent as *cy pres* funds in this litigation. We advise you to pursue an expedited resolution of this problem with the distribution of

those funds to successful claimants including those claimants who were left out of the first part of the settlement. We also advise that a significant portion of the remaining funds be distributed to Native American organizations and 1994 educational institutions that have a proven track record of assistance and support for Native American farmers and ranchers.

In the Pigford II case, there were *cy pres* funds totaling $13 million remaining. We again advise you to pursue a speedy resolution pertaining to the distribution of these remaining funds. We advise they be distributed to claimants who were left out of the settlement and, more importantly, to community-based organizations (CBO) that have proven track records of assistance and support for African-American farmers involved in the case. This distribution to CBOs would support needed outreach and technical assistance to African-American farmers and ranchers.

In the Hispanic and Womens' USDA Discrimination Settlement, we are very concerned with the results of this process. Although the USDA claims that an independent, arms-length contractor (i.e., its adjudicators) made the decisions following USDA's framework, we believe the USDA is ultimately responsible for the outcome. **A majority of the Hispanic and women farmers and ranchers involved in the settlement process are unsatisfied and feel that the process was unsatisfactory and the results are unacceptable.**

A status report, dated June 8, 2015, submitted on behalf of USDA, by Department of Justice lawyers, to the Federal District Court for the District of Columbia, in the Love case, Civil Action No. 00-2502, states that there were a total of 53,803 claims in the program. Of these 53,803 claims, 22,163 were timely filed and complete. The status report also states that the Adjudicator approved 3,210 of the timely and complete claims (comprised of 2,504 women and 706 Hispanic claimants). This data shows that less than 6% of the total claimants and 14.4% of the claimants with timely and completed claims were approved.

This approval rate for claims in the Hispanic and Womens Discrimination Settlement process compares unfavorably with a claims approval rate of 60 to 70% in Pigford I, Pigford II, and Keepseagle. We are dealing with a claims process that spanned the same 15+ years period of 1981 to 1996 and 1998 to 2000. Many of the same USDA lending offices (FmHA and FSA) were also implicated in the prior three cases. Based on the results test alone, there are many concerns raised about the fairness and equity of this process.

The status report, also states that, "The Adjudicator denied a total of 18,953 timely and complete claims, ***including 10,361 claims that were denied due to fraud concerns, see Framework section X (A) (1)***, [emphasis added] and 691 claims that were denied because they were filed by individuals who asserted claims in other civil proceedings ... the remaining 7,901 claims were denied on the merits."

MFAC committee members--Messrs. Alphonzo Abeyta and John Zippert—have personally reviewed more than 2,000 of the 18,953 denial letters in this process. These letters state an identical reason for the denial, which reads, "you failed to provide sufficient documentation, or the documentation that you provided was not sufficient to meet the requirements under the framework." Moreover, most of the claimants do not understand this explanation and believe they were discriminated again by the decision making process after they filed a detailed claim, provided notarized affidavits, and other documentation that they farmed and tried to get USDA loans during the required time period.

Many of the Hispanic and women farmers from within the same community were approved and others were denied. Although they had different farm operations, and claimants sought different loan amounts at different times, they all experienced similar discrimination during visits to the USDA local offices. These farmers believe their claims were treated arbitrarily and capriciously, and that they were not fairly evaluated by the adjudicators on the facts and merits of their individual cases. **Many of these women were insulted at the suggestion that their claims might be fraudulent without any justification, explanation, investigation, or prosecution for supposed "fraud concerns".**

In the framework section X (A) (1) – Review for Fraud and Unlawful Activity - the language gives several reasons *for conducting reviews to identify fraud* including, **"whether there are unusual concentration of claims in particular areas".** This section states that the unusual concentration of the claims is a basis for further review and audit of the claim itself, but is not *per se* a reason to deny claims.

Denial of claims merely on suspicion of fraud is itself suspect, especially considering that there exist natural clusters of Hispanic and women farmers in particular areas of the country. This was due to natural demographics in rural areas and the prevalence of discrimination in particular USDA lending offices, due to County Supervisors and staff who were presumptively prejudiced and bigoted.

There were in fact clusters of applicants because of the nature of farm and rural communities, not fraudulent conduct. Throwing a blanket accusation of fraud over 10,361 hardworking farmer claimants cannot be justified as a fair and impartial judgment.

Additionally, USDA and community-based organizations funded by USDA conducted outreach and educational meetings on the settlement. These meeting were held in geographical areas where there were natural concentrations of potential claimants. So outreach, in fact, was done and in part financed by USDA, resulting in clusters of claimants in particular areas, among them southern New Mexico, the Salinas Valley in California, Puerto Rico, Oklahoma, eastern Arkansas, the Alabama Black Belt, and parts of North Carolina. The outcome was that USDA's contractor declared this concentration of claims as evidence of fraud.

For these reasons, the Committee requests that you review and reassess the fairness, legitimacy, and equity of the administrative process used in the adjudication of the Hispanic and Womens' Settlement Process. We advise you to reconsider every claim denied in this process and direct that the adjudicators send claimants a more detailed explanation of their denial - stating specific reasons for the denial and specific problems with their documentation. Should there be a determination made that some claimants were unfairly and unnecessarily denied, we moreover request that the denials be reversed and claimants be paid the settlement to which they are entitled. Anything less would be a travesty of justice inflicted on people who were discriminated once in the process of applying for USDA agricultural credit and discriminated against a second time when they agreed to an administrative process that failed to deliver justice.

The Minority Farm Advisory Committee was so disturbed by this process to resolve the original injustice of discrimination in the provision of USDA credit, that we were compelled to submit these recommendations to you as Secretary of Agriculture for an immediate review of the administrative and adjudicative process used for Hispanic and Women farmers and ranchers.

We have enclosed Appendix 'A' which lists additional information, sought about the Hispanic and Women's Settlement and Pigford II, from general counsel (OGC) who gave an update on the litigation and settlement process during our public advisory meeting. This request would give our MFAC more information to make recommendations on these issues.

We look forward to your reply.

Sincerely yours,

Paula Garcia
Chairperson
Minority Farm Advisory Committee

Appendix A

Request for detailed information on the Hispanic and Women Farmers and Ranchers Settlement Process and the Pigford II process

The USDA Minority Farm Advisory Committee officially requests the following information is provided to our Minority Farm Advisory Committee, as soon as possible to facilitate our deliberations on these concerns.

1. The number of claims, and amount of awards and debt relief granted to Hispanic farmers and ranchers by Tier.

2. The number of claims, and amount of awards and debt relief granted to women farmers and ranchers by Tier.

3. Number of claims granted and denied to Hispanic farmers, broken out by state, and within states, by county of submission, and by gender of applicant.

4. Number of claims granted and denied to women farmers, broken out by state, and within states, by county of submission, and by race/ethnicity of applicant.

5. Number of claims denied under each basis or denial category utilized by the administrator and/or adjudicator, such as "fraud," "untimely," "incomplete," "insufficient evidence," "insufficient documentation," "*Pigford* claimant," etc., total, and by state, and within states with more than 50 claims, by county of submission, broken out by gender and race/ethnicity of applicant.

6. An explanation of what entity, agency, or contractor(s) reviewed for possible fraud, what standards were applied, and what referrals to other legal agencies or law enforcement were made by USDA, Epiq, JAMS, or others in connection with the 10,361 claims denied due to "fraud concerns.

7. What category of claim denial was the basis for, and was communicated to the 10,361 claimants whose claim forms were deemed timely and complete and whose claims were then denied due to "fraud concerns".

8. Number of claims that were approved and denied for debt; the amount of debt relief approved and the reasons for denial of debt relief.

The Minority Farm Advisory Committee requests similar detailed information on the Pigford II case, which provides information on the claims by category that were approved and denied by state and county (where there were more than 50 claims); and the reasons for denial of claims and denials of debt relief.