Minority Farmers Advisory Committee

June 1, 2016

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:

The Minority Farmers Advisory Committee (MFAC), a congressionally mandated committee, was appointed by you to advise on matters regarding the civil rights of minority farmers and their access and participation in all USDA programs. One of this Committee's primary objectives is to deliberate upon and advise you of the actions and outcomes of USDA policies and service delivery that adversely and disparately impact your minority stakeholders. The MFAC believes the past two decades of civil rights litigation against USDA is an appropriate context in which to view USDA's record of civil rights and treatment of minority farmers. The members of our committee are in a unique position to make policy recommendations that address historic injustices and that may help to prevent future discrimination lawsuits against USDA.

The MFAC remains concerned over the outcome of the Hispanic and Women Farmers and Ranchers (HWFR) USDA Discrimination Settlement. What is most disturbing is that many of these Hispanic and the female farmers and ranchers faced discrimination *again* in this process. Many of us members and our stakeholders remain troubled with the current process. We ask that you review the outcome very closely and consider our recommendations. Consider that only 3,210 (14.6%) of the total 22,163 claimants who filed timely and complete claims were approved for the settlement. When compared with the success rates among claimants in the Pigford I, Pigford II, and Keepseagle class action lawsuits, which had a 60 to 70 percent positive settlement rate, the result of the HWFR settlement at 14.6 percent is substantially and markedly lower.

Moreover, 10,361 (47%) of the 18,953 claims of those claims that were denied are alleged by the Claims Administrator's process to have "fraud concerns." A *blanket of fraud* has been cast over almost half of the accepted claims, none of which were reviewed on their merits but were summarily rejected without adequate explanation. We find that on its face, a **47 percent** suspected fraud rate is **excessive** in comparison to other claims processes. A reasonable presumption stands that suggests these individuals were *once again* subject to a discriminatory process by the USDA contracted Claims Administrator.

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As you may be aware by now, the USDA Inspector General recently issued Audit Report No. 50601-0002-21which was an ineffective attempt to address what MFAC considers to be a grave instance of injustice. It barely addresses the MFAC concerns of civil rights violations in this process that we raised in an earlier letter to you. In the attached Appendix A, we offer strong support for our contention that this process and its adverse impacts and outcomes will have rippling effects on minority farmer and ranching communities throughout our country. Justice once again delayed is justice denied. This litigation spanned decades only to be poorly administered by USDA's contractors.

In our September 2015 letter prepared during a MFAC meeting in Savannah, Georgia, we submitted a data request (reproduced in Attachment B of this letter) for information that would provide, state-by-state and county-by-county, the numeric breakdown of claimants in both the Hispanic and Womens and Pigford II settlement process and outcomes. The MFAC is the only committee specifically appointed by you to render advice on minority farmers' concerns related to civil rights as well as program access and participation by minority farmers. The only way our committee can study and assess past and continuing civil rights violations against socially disadvantaged USDA stakeholders is for USDA to provide the committee with factual and statistical information that we request from the agency.

The high rate of denial of claims in the HWFR process is the direct result of decisions by USDA because the contractor was chosen, directed, and supervised by the agency. At the very least, we implore you to require that the adjudicators send claimants a more detailed explanation of their denial that is *specific* and explicitly explains how their documentation should be resubmitted. 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.

MFAC leaders would like to meet with you meet with you to explain our concerns and the first-hand experiences of our stakeholders in relation to the HWFR process. These are critically sensitive matters impacting the lives of many minority farmers and ranchers. We want to explore next steps a way forward and resolutions with you as quickly as possible in the hope that USDA can move forward with a new chapter in addressing civil rights issues with minority farmers.

Thank you in advance for your consideration of our recommendations and requests.

Sincerely yours,

Paula Garcia, Chairwoman

Appendix A: Detailed concerns about the HWFR Settlement Process
Appendix B: List of Data requested on the HWFR Settlement Process

Appendix A

Detailed points and background on the HWFR Settlement Process

- This appendix discusses in more detail the concerns of the Minority Farmers Advisory Committee (MFAC) regarding the civil rights implications of the past two decades of litigation by minority farmers and women farmers against USDA. Particularly, we are concerned with the Hispanic and Women Farmers and Ranchers (HWFR) Settlement Process, which remains open and has not been officially closed.

- This appendix also responds to some of the specific findings in the USDA Office of Inspector General Audit Report No. 50601-0002-21 on the Hispanic and Women Farmers and Ranchers Claim Resolution Process.

- The MFAC is aware that the USDA Hispanic and Women Farmers and Ranchers Discrimination and Settlement process was not granted "class action status". However, we feel the results, where only 14.4% of the accepted claims were approved, compare unfavorably with the 60 to 70% positive success rates in Pigford I, Pigford II and Keepseagle.

- The discrimination claims process in the HWFR process spanned the same 15+ years period of 1981 to 1996 and 1998 to 2000, used in the other claims processes. Many of the same USDA lending offices (FmHA and FSA) were implicated in discrimination in the prior three cases. Based on the results test alone, there are many concerns raised about the fairness and equity of this process. Many of these claims of discrimination occurred two and three decades ago and the remedy was long delayed and then denied for questionable and inequitable reasons. None of these overall concerns were addressed in the USDA/OIG Report No. 50601-0002-21 on the HWFR process.

- The denial of 10,631 claims in the HWFR process was based on unsubstantiated fraud concerns. The fraud screen patterns used to deny claims were designed by the Claims Administrator and Chief Adjudicator. The OIG report states on page 4, "*Overall, approximately 47 percent of the claims adjudicated were denied for a fraud concern based on the patterns approved by the Chief Adjudicator. Of the roughly 22,000 adjudicated claims, the contractor found over 13,000 claims that possibly fit a pattern. Ultimately, the Chief Adjudicator denied 10,361 claims for a fraud concern.*"

- The OIG report indicates that, "*A claim posed a fraud concern if it contained similar characteristics to other claims, such as similar language, handwriting, format, phraseology, or geographic location. To identify the fraud concerns during the adjudication process, individual adjudicators analyzed claims following the contractor's fraud guidelines. Based on individual adjudicators' concerns, the contractor identified similarities between claims, summarized the attributes, and formulated possible fraud patterns. Once these analyses were complete, the contractor provided descriptions of 350 possible fraud patterns to the Chief Adjudicator. From this sampling, the Chief*

Adjudicator approved 176 fraud patterns. Those claims that were determined to fit one of the approved patterns were subsequently denied for a fraud concern."

- The "fraud patterns" selected such as geographic concentration, phraseology, format and handwriting are manifestly unfair and intrinsically unjust. There were concentrations of claimants because there were concentrations of Hispanic and Women farmers and ranchers in certain rural areas of the country, who were discriminated against by USDA lending agencies in the past, i.e., southern New Mexico, Puerto Rico, Alabama Black Belt, eastern Arkansas, North Carolina and Oklahoma, to name a few. There were geographic concentrations of claims because of the natural geographic concentration of Hispanic and Women farmers.

- The USDA Rural Development Agency that presided over this process, provided outreach funding to community-based organizations, to inform farming communities in selected geographic areas of the HWFR process and recruit legitimate claimants. Thus, due to the natural rural geographic concentrations of farmers and the unfortunate discrimination by offices in specific areas, there would be a natural geographic concentration of claimants. This characteristic should not be used to disqualify claims as "fraudulent", because they came from specific rural areas of the country.

- The issue of handwriting, phraseology and format were also used unfairly to develop "patterns of fraud". Staff of community-based organizations and law firms voluntarily assisted claimants to fill out claims. The same staff may have filled out numerous claims, in the same handwriting and similar formats and phraseology. These characteristics should not have been used as a basis to deem these claims as fraudulent, without reviewing these claims on an individual basis on their merits. The OIG report did not look at these alleged fraud patterns in the larger context of the community's limited resources available to assist underserved claimants in filing claims. Underserved claimants who were assisted in making claims are now being accused of fraud and denied relief because they received help from a CBO, whose staff used the same handwriting, format and phraseology in writing claim forms.

- The HWFR claimants that were denied were never informed of the reasons for their denial. Most received a one-sentence explanation that said, *"You failed to provide sufficient documentation, or the documentation that you provided was not sufficient to meet the requirements under the Framework."* Most of the claimants do not understand this explanation. Those whose claims were denied due to "fraud concerns" were never informed that this was the reason for their denial. Many of the HWFR claimants feel they were discriminated against twice, first when they tried to make a loan and secondly when they participated in the claims process.

- The claimants also feel that their due process was violated when they were required to check off boxes that they would not appeal the decisions in this process and would accept these decisions as final.

- Many of the women and Hispanic farmers and ranchers that participated in the claims process feel that they checked these boxes on their claim form in good faith. Many of

these claimants were also members of organizations represented by the MFAC. These claimants question USDA's good faith as to whether their claims were evaluated on their merits; and whether USDA's contractor made fair decisions or instead "threw an unfair blanket of fraud over their claims" and unjustly denied them.

- The process of settlement of the Hispanic and Womens Settlement Process should be reassessed for the fairness, legitimacy, and equity of the administrative process. The OIG Report No. 50601-0002-21 was a complete, sufficient or correct evaluation of these issues.

- Every claim denied in this process should also be reviewed by an objective third-party 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.

- There were sufficient funds ($1.3 billion) set aside to pay all of the HWFR claims accepted. Approximately $210 million was used in payment of all HWFR claims, so funds are available to pay claimants who were incorrectly and unfairly eliminated due to invalid "concerns of fraud."

Appendix B

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 which was promised by a member of the Office of General Counsel in Savannah, Georgia. These data will facilitate our chartered task of rendering advice on the concerns raised in both MFAC letters submitted to you in October 2015.

1. The number of claims, 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.