July 19, 2012

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

RE: USDA Advisory Committee on Minority Farmers

Dear Secretary Vilsack:

On behalf of the United States Department of Agriculture (USDA) Advisory Committee on Minority Farmers (Committee), we are providing you the first set of recommendations from our 2011 advisory Committee process.

Your appointment of the fifteen members to the Committee occurred on March 22, 2011. As a result, the first administrative meeting occurred on June 21, 2011. From that inception, seven (7) administrative meetings and two public hearings (Memphis, Tennessee, August, 10-12, 2011 and Albuquerque, New Mexico, November 3-4, 2011) gave the Committee first-hand knowledge of what the feelings were of minority farmers and ranchers in relationship to their participation in USDA programs and other USDA activities.

The Committee discussed the Jackson Lewis' "Civil Rights Assessment" (JL) and barriers that prevented minorities from participating in USDA programs. In relationship to the above, various senior level USDA employees from Civil Rights, Rural Development, Farm Service Agency, Forest Service, Natural Resource and Conservation Service and Risk Management Agency were interviewed. The Committee engaged in these discussions according to the duties you assigned as a result of section 14008 of the Food, Conservation and Energy Act. The duties were as follows:

1. the implementation of Section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279);

2. methods of maximizing the participation of minority farmers and ranchers in Department of Agriculture programs; and

3. civil rights activities within the Department as such activities relate to participants in such programs.

It was determined at the Memphis meeting that the work before the Committee was large enough that Sub-Committees should address the specific issues in different agencies and civil rights regarding each agency. Those Sub-Committees reported their findings and recommendations back to the Committee for consideration.

Attached are recommendations that will assist USDA to help achieve the aforementioned duties (1), (2) and (3) for the targeted minorities. We arrived at the proposed recommendations from the proceedings described above including each Committee's experience and knowledge of working with USDA programs and interfacing with "Socially Disadvantaged Farmers and Ranchers." We look forward to your response regarding these recommendations.

Respectfully submitted to the Honorable Secretary of Agriculture, Thomas J. Vilsack,

RANDALL WARE
Chairperson
USDA Advisory Committee on Minority Farmers

Enclosure

USDA Minority Farmer Advisory Committee Members

1. Robert Anderson, Oklahoma Black Historical Research Project, Earlsboro, Okla.
2. Donna Brew, Farmer/Rancher, Gooding, Idaho
3. Ben Burkett, Farmer/Rancher, Petal, Miss.
4. William Buster, W.K. Kellogg Foundation, Kalamazoo, Mich.
5. Jeannie Crittendon, Farmer, Jackson, Mich.
6. Archie Hart, Farmer, Knight Dale, N.C.
7. Paula Garcia, New Mexico Acequia Association, Mora, N.M.
8. Omar Garza, U.S. Mexico Border Coalition, St. Elena, Texas
9. Dewayne Goldmon, National Black Growers Council, Pine Bluff, Ark.
10. William Hudson, Florida A & M University, Tallahassee, Fla.
11. Richard Molinar, University of California, Reedley, Calif.
12. Brian Thomas, Farmer/Rancher, Owyhee, Nev.
13. Baldemar Velasquez, Farm Labor Organizing Committee, Toledo, Ohio
14. Randall Ware, Farmer/ Rancher, Fort Cobb, Okla.
15. John Zippert, Federation of Southern Cooperatives, Eutaw, Ala.

USDA Advisory Committee on Minority Farmers
Recommendations to the Secretary

Implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (U.S.C. 2279)

Section 2501, Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers

Background (#1):
Section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, is the cornerstone program to reaching and involving socially disadvantaged farmers and ranchers (SDFRs) in all aspects of USDA policies, programs and benefits. Over its twenty year history the program has made small but significant grants to 400 community based organizations and educational institutions to provide outreach, information, education, training and culturally sensitive support to socially disadvantaged farmers and ranchers.

This program has been the starting point and building block for SDFRs to utilize USDA benefits and services and influence public policies of benefit to SDFRs by lowering barriers to participation and increasing utilization of program benefits by SDFRs.

Recommendations (#1a-1b):

1a.) The Committee recommends that Section 2501 Program be funded at a level equal to or above the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill.)

1b.) That the Secretary of Agriculture, through the Office of Advocacy and Outreach (OAO), provide a comprehensive annual report to Congress and the public on the scope, effectiveness and results of the 2501 Program in outreach services to SDFRs and their communities.

1c.) That the OAO maintain a fair balance between community-based organizations, with a documented history and experience in serving SDFR's, and university programs, that serve the SDFR community, in the implementation of the 2501 Program.

1d.) That OAO adhere to the intent of the legislation by working with universities, such as HBCU's, Hispanic Serving Institutions and 1994 Indian Tribal Colleges, with a proven record of serving these communities. That these educational institutions be given preference to 1862 Land Grant Universities, which have had years of funding but offered little in the way of services to SDFR's, until the 2501 Program resources became a possible resource to fund these activities.

1e.) Based upon these standards and measures, provide multi-year funding (up to 5 years) to the most effective Section 2501 grantees to allow them to plan and develop more effective and beneficial programs for SDFR's and their communities.

1f.) Allow successful grantees at least a 10% indirect cost in the budget for Section 2501 programs to give more flexibility and sustainability especially to community based organizations participating it the program all allow them to pursue diversification of funding for their agencies and programs.

Background (#2):
The Committee has determined that all CBOs do not have the same financial requirements as it relates to administering Federal funds. For example, according to public comments, a small CBO in California

serving SDFs would require less 2501 Grant funding than a large CBO.

Recommendation (#2):
The Committee recommends that the 2501 Program create tiers of grant-funding according to the Grantees' size; such tiers are defined as small CBOs and large CBOs.

Background (#3):
FSA requires a 3-year experience requirement to be eligible for farm ownership loans that creates a barrier for perspective SDF to become farm owners.

Recommendation (#3):
The Committee recommends that the 2501 Program satisfy the FSA 3-year experience requirement by providing a certification process for SDF. Farmers must be able to qualify by completing a number of hours of agricultural classes (i.e. educational and hands-on farm workshops each year). The 2501 Grantees are to coordinate this certification process in order to satisfy the FSA experience criteria.

Methods of maximizing the participation of minority farmers and ranchers in Department of Agriculture programs

Farm Service Agency (FSA)

Background (#4):
The FSA County Committee system is a major concern among socially disadvantaged farmers. Repeated examples of discrimination and/or inadequate services were reported in the areas of program implementation, minority farmer representation, and general services.

Recommendations (#4a-4e):
The Committee recommends an overhaul of the FSA County Committee system through a series of changes as detailed below.

4a.) The hiring and reporting structure of FSA's County Executive Directors (CED) is problematic and allows subjective administrative processes to persist. Further, this arrangement provides loopholes that prevent proper accountability for federal programs not being implemented locally. The Committee recommends that the reporting structure changes so that the CED reports to the FSA District Director (DD) who in turn reports to the FSA State Executive Director. All of these individuals should become USDA employees that are subjected to priorities and evaluations previously discussed.

4b,) In several cases, County Committee member demographics are not a reflection of the farmers in the county that they are serving. The Committee recommends that FSA re-draw Local Administrative Areas (LAA) so that each zone reflects the demographics of the area.

4c.) The minority advisor position on the County Committee is not adequately representing the needs of the socially disadvantaged producers in their respective counties. The Committee recommends that reputable organizations with a proven history of providing service to SDF be asked to submit recommendations on individuals to serve in this capacity.

4d.) The non-voting status of the minority advisor position dissuades well-qualified individuals from serving. Additionally, differential terms of service for the minority advisor are a problem. Therefore, the minority advisor position should be given voting rights and have the same terms of service as the non-minority members.

4e.) The actions of the county committee are not known in the general farm community. To create more

transparency, county committee minutes, excluding executive session information, should be made available to the public in local libraries or non-governmental organizations that serve SDFs.

Background (#5):
Evidence and testimonies indicate that SDFs have experienced difficulties using FSA programs and policies and have little trust in the agency. In its attempt to be more transparent, FSA has included information on its website; however, many SDFs do not have internet services or lack broadband capabilities in their areas.

Recommendation (#5):
The Committee recommends that pertinent FSA information should be made available to the public in local libraries and/or non-governmental organizations that serve SDFs in that area.

Background (#6):
The FSA supervisory chain of command does not provide the appropriate oversight to obtain consistency between programs and loans. Therefore, accountability in implementing federal, regional, and state programs suffers,

Recommendation (#6):
The Committee recommends that FSA Loan Officers should report to the CED (or possibly to the DD if needed to evaluate performance in multiple counties) so that consistency between programs and loans can be achieved.

Background (#7):
The requirements for FSA to establish loan targets by population allows for a subjective process when determining minimal targets.

Recommendation (#7):
FSA should use the percentage of socially disadvantaged Farm Principal Operators as the minimal target to demonstrate equitable access and participation in FSA loans. The Committee also recommends that this evaluation be more detailed and include the dollars per acre loaned (commodity specific) be used as a metric to determine equity.

Background (#8):
Evidence and testimonies have indicated that support payments for SDFs are less than other farmers.

Recommendation (#8):
The Committee recommends for the Farm Bill that Crop Acreage Bases (CABs), which are used to calculate subsidies, should be adjusted in order to narrow the gap in the average payments made to SDF versus non-SDF. These payments impact multiple farm evaluation variables such as crop subsidies, crop insurance calculations, and land values. Although it appears that CABs will change dramatically, they will likely remain a key factor in determining the level of protection a farmer can reasonably afford. For these reasons, the CAB should be adjusted so that SDF can receive at least the area average in support.

Background (#9):
Exceptions are granted which allow subsidies to be paid on farm land that has less than 10 acres of CABs established if the **owner** is socially disadvantaged. However, there are several instances where recent land purchases have resulted in the owner not being socially disadvantaged, but the producer is a SDF. This situation continues to prevent subsidies from being received.

Recommendation (#9):
Add "socially disadvantaged producers" to the exception that allows SDFs to receive subsidies if established crop acreage bases are less than 10 acres.

Background (#10):
The collateral requirement to participate in certain FSA Loan Programs allows the loan officer to seek additional collateral **if** such property exists. Evidence and testimony from the public has revealed that loan

officers are often making this an absolute requirement for selected loans to SDF. This issue has been repeatedly cited as a barrier to loan qualification and has caused many SDFs to lose their farms.

Recommendation (#10):
The Committee recommends that this collateral requirement be decreased to 75% for SDFs so that diversity in agriculture can be increased.

Background (#11):
Paperwork required to complete FSA loan applications is often cumbersome and repetitive.

Recommendation (#11):
The Committee recommends that FSA streamline the paperwork requirements to reduce the number of trips required, required follow-up activities, and overall time required for loan completion.

Background (#12):
The Committee heard repeated cases of confidentiality breaches where farm loans (especially farm ownership loans) being requested by SDFs were used to signal available property for sale or lease. As the SDF was preparing to complete his/her loan package, a non-SDF would approach the owner and outbid the SDFs' offer. Having established relationships with lending sources (often including USDA loans), the non-SDF farmer often has acquired the property before the SDF loan is processed.

Recommendation (#12):
The Committee recommends that FSA allows SDF to pre-qualify for a farm ownership loan, up to a certain dollar amount. Upon locating a suitable property, the records could then be updated and the transaction could be completed more timely.

Background (#13):
The FSA has proposed regulations but never implemented a process for streamlining the loan process for loan requests (direct or guaranteed) for loans of less than $50,000 for a borrower. This process would be similar to the Small Business Administration's "Low-Doc" loan application process and would help smaller size farmers seeking credit for small enterprises, that add income to their farming operation, i. e., starting a goat herd, raising pasture poultry and/or farm raised eggs, raising herbs or vegetables in hoop houses or similar small scale farming ventures.

Recommendation (#13):
The Committee recommends that FSA implement a streamlined process for FSA loans under $50,000 consisting of a low-doc farm loan application and review process; and that this process be targeted toward SDFR's in selected areas where there are high concentrations of such underserved borrowers. The Committee recommends that 5% of the available FSA loan funds on a national basis be reserved and dedicated to this program at the beginning of the next fiscal year, and be expended in target areas of high concentrations of SDFR's; and if the funds are not utilized by the end of the first half of the fiscal year that they may be reprogrammed and shifted to other uses.

Forest Service (FS)

Background (#14):
The FS manages vast areas of forest land in areas with communities that include high populations of socially disadvantaged farmers and ranchers such as the Hispanic and Native American communities in the Southwest where historic uses of forest land pre-date the establishment of the FS. The Treaty of Guadalupe Hidalgo of 1848 continues to be a relevant treaty in relation to historic rights on FS land. While the US government has not explicitly acted on protection of the treaty rights, the USFS can support policies that promote the continuation of historic uses of the FS that benefit local forest-dependent communities. Longer term policy change may be necessary to more fully recognize historic rights and uses stemming from the Treaty of Guadalupe Hidalgo. However, the USFS has some discretion in the short term to support historic uses within the existing policy framework.

Recommendation (#14):
The Committee recommends that the FS update the 1972 Region 3 Southwest Forest Policy for Hispanic and Native American communities which addressed issues related civil rights, access for historic uses, and the recognition of the cultural heritage of forest-dependent communities of the Southwest. The policy should provide specific guidance to district foresters on recognition of the cultural and economic importance to the rural communities of the region, specific measures to address access for facilitation of historic uses on FS land, and requirements to increase participation of SDFRs in forest land management planning.

Background (#15):
Acequias and community ditches are the historic irrigation systems in New Mexico and Colorado that were established before the FS and retain community ownership of irrigation structures on FS land. Although acequias and community ditches retain a historic easement right to access their irrigation works for maintenance and improvements, including replacement in-kind of existing irrigation structures, the FS requires that acequias obtain special use permits for such access, and this special use permit requirement then is deemed to trigger a NEPA process, resulting in further delays for such access. In some instances, local acequias have been required to pay the FS in accordance with cost recovery policies related to NEPA implementation. Many SDFRs from affected communities have expressed concern that all these compliance requirements have resulted in extensive delays in vital rehabilitation projects, have imposed significant costs that have to be borne by the irrigators, and have negatively affected the livelihood of farmers and ranchers dependent of irrigation.

Several mechanisms exist for exempting acequia projects from the special use permit/NEPA processes:

- FS regulations, at 36 CFR 251.50 (e) (1), allow for proposed uses to be exempted from special use authorization requirements if the proposed uses would have only "nominal effects" on FS lands and resources;
- FS regulations, at 36 CFR 251.50 (e) (3), allow for proposed uses to be exempted from special use authorization requirements if the proposed uses are routine operation or maintenance activites in non-wilderness areas; and
- This second option could be combined with a modification of the Forest Service Manual (FSM) that would create an acequia-specific definition for "routine operation and maintenance activities" within the scope of an acequia easement on FS land. The FSM addresses "routine operation and maintenance activites" for irrigation ditches at FSM Section 2719 (10) and this acequia-specific definition could be incorporated in that section of the Manual, and could specifically include replacement in-kind of acequia infrastructure and other activites that should be exempted. The FSM appears to be at odds with some federal circuit courts, which have included replacement in-kind in their definition of routine maintenance activities that can be done without special use authorization, so modification of the FSM in this manner for acequias would seem to help conform the FSM to current case law. See (case cite SW Utah Wilderness Alliance.)

Recommendation (#15):
The Committee recommends that the FS exempt from special use authorization and NEPA compliance the necessary rehabilitation of acequia irrigation works located within historic easements belonging to the respective acequias. The FS should make a determination that these small-scale projects would have nominal effects on FS lands and resources and should therefore be exempt under 36 CFR 251.50 (e) (1). Alternatively, the FS should modify the Forest Service Manual to exempt activities such as replacement in-kind of acequia structures, as well as other activities, by including them in a new acequia-specific definition of routine operation and maintenance at FSM Section 2719 (10). This would then bring such activities under the exemption at CFR 251.50 (e) (3) of the FS regulations. Finally, the FS should waive cost recovery fees and grant a higher priority for NEPA implementation for any non-exempt acequia projects because of the time sensitive nature of construction on irrigation structures. In those cases, The FS should develop cooperative agreements with acequias and community ditches to facilitate maintenance and rehabilitation activities of acequias that would establish pragmatic guidelines for acequia rehabilitation that do not impose overly burdensome regulatory requirements.

Natural Resource Conservation Service (NRCS)

Background (#16):
The Farm and Ranch Land Protection Program (FRPP) is a useful farmland preservation strategy. It provides easement and or purchase development rights at a 50/50 match. Minority clientele rarely, if ever, participate due to inability to find matches via non-governmental organizations, landtrusts, or governmental entities

Recommendation (#16):
The Committee recommends lowering the cost share percentage to 5% and prioritize this for areas in the country with inordinately high loss of land by socially disadvantaged landowners.

Background (#17):
NRCS Environmental Quality Incentives Program (EQIP)- Socially disadvantaged farmers and ranchers have experienced an economic hardship due-to the sky rocketing steel T-post/Barb wire cost increases; in some cases, T-post and Barb Wire have increased 300 to 400 percent. The socially SDF has no accounting means to pass the cost to other sources.

This problem surfaced in the 2008 Farm Bill where SDF Cross Fencing cost share increased significantly over the previous Farm Bill. The Advisory Committee's public hearing in August 2011, in Memphis, Tennessee, heard first-hand the cry of SDFs who plead for assistance with Boundary (outside) fencing.

Recommendation (#17):
The Committee **strongly** recommends a provision **be** added to the **NRCS EQIP** that **Boundary Fencing** be allowed and funded at the 90% rate for SDFs. This recommendation is believed to increase the participation of social disadvantaged farmers and ranchers in the EQIP.

Background (#18):
According to public testimonies, SDFs continue to farm non-irrigated acres in areas where irrigation is used on the majority of acres. We refer to this situation as an "**irrigation desert.**"

Recommendation (#18):
The Committee recommends that the prior irrigation history be removed for SDF operating in these areas. Doing so would afford them the opportunity to participate in irrigation improvements at the allowed 90% cost-share rate.

Background (#19):
According to public testimonies there are problems managing irrigation in ***acequias*** (community ditches) were reported in the western states where these are common. Reportedly, SDFs using these are not eligible for EQIP program benefits.

Recommendation (#19):
The Committee recommends that this situation be changed so that SDFs can improve their irrigation from **acequias** via the EQIP program.

Background (#20):
In several areas, the 90% cost share rate is not covering 90% of the actual practice costs. Factors contributing to this include higher material costs, restrictions that force farmers to use more costly vendors, preparatory work required before practices can be installed, and more materials being required.

Recommendation (#20):
The Committee recommends that practice costs need to be adjusted and preparatory work added to cost share eligibility in order to remove these discrepancies.

Background (#21):
The installation of improvements often results in costly transactions with vendors that are not accustomed to dealing with smaller producers. To minimize risk of not being paid, these vendors often require upfront or immediate payment, which places a hardship on the producer.

Recommendation (#21):
The Committee recommends that a system of direct payment – from NRCS to the vendor – be arranged.

Risk Management Agency (RMA)

Background (#22):
The Committee has determined that the Approved Insurance Providers (AIPs) are not providing equal access to crop insurance for various reasons. For example, most SDFs have smaller acreage than non-SDFs. Therefore, the incentive to write a crop insurance policy is diminished by the size of the acres.

Recommendation (#22):
The Committee recommends that RMA expand its existing crop insurance program the Adjusted Gross Revenue (AGR) and the AGR Lite, to provide crop insurance in underserved, high need areas; areas with critical mass of SDGs. Additionally, these programs should be administered by an Agency that is sensitive to rural underserved, poor high need areas.

Rural Development (RD)

Background (#23):
Rural under-served, poor, high need areas lack Rural Development's (RD) Presence and the ability to successfully utilize existing programs to help such communities.

Recommendation (#23):
The Committee recommends that in order to expand RD's presence in rural underserved, poor high need areas, RD should seek organizations such as CBOs able to 1) identify RD programs appropriate for their constituents; 2) identify eligible participants; 3) educate potential applicants to build capacity; 4) assist with the application process; and 5) work with borrowers to increase the likelihood of success after funding is provided. Additionally, RD should create certified outreach partnerships by training organizations with technical and substantive knowledge, as well as strong ties to SDGs particularly in states that do not fully obligate funds or not are serving underserved populations. Lastly, the emphasis should be placed on those underserved, high need, poverty areas with "critical mass" SDG.

Background (#24):
The Committee has determined that there is a lack of understanding by potential borrowers on basic principles that enable them to participate in RD Programs.

Recommendation (#24):
The Committee recommends RD fund personal finance workshops in areas with high concentrations of SDGs, starting at the high school level to educate potential borrowers on basic principles that will enable them to participate in RD programs. RD should coordinate with 4H and the Cooperative Extension on providing such workshops.

Civil rights activities within the Department as such activities related to participants in such programs

Office of Civil Rights (OCR)

Background (#25):
The Secretary issued to all senior leadership and supervisors (along with the entire workforce) rigorous enforcement of a comprehensive United States Department of Agriculture (USDA) "Zero Tolerance" Policy, prohibiting all forms of discrimination, harassment and retaliation, along with related standards of conduct, and including mandatory discipline for violations regarding both employment and program delivery.

Recommendation (#25):
The Committee recommends the Secretary issue the "Zero Tolerance" policy letter on an annual basis and that such policy must be made a part of the USDA Affirmative Action Plan.