

Congress of the United States
House of Representatives
Washington, DC 20515

December 23, 2011

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, Northwest
Washington, D.C. 20500

Dear Mr. President:

We write to express concern about the current terms of the administrative claims program that the United States Department of Agriculture (USDA) and Department of Justice (DOJ) have proposed to address discrimination in USDA farm loan programs towards women and Hispanic farmers. This program follows other administrative programs addressing virtually identical claims brought by African-American and Native American farmers. We believe that women and Hispanic farmers should be offered the potential for compensation on similar terms as African-American and Native-American farmers.

Unfortunately, widespread discrimination at USDA going back to at least 1981 has been widely-documented in government reports, testimony, and filings in the lawsuits brought by African-American (*Pigford* and *Pigford II cases*), Native American (*Keepseagle*), Hispanic (*Garcia*), and women farmers (*Love*). We applaud the Administration for working to resolve the discrimination claims against USDA, but we are troubled by the different treatment that women and Hispanic farmers will receive if changes are not made to the proposed administrative claims program. We outline some of the most important problems here, and we urge the Administration to act to improve the program before it is launched.

Equal Evidentiary Requirements: We understand that the Administration seeks to impose higher evidentiary requirements for Hispanic and women claimants than it has for previous administrative claims programs. To recover up to \$250,000 under “Track B” in the programs for African-American and Native American farmers, claimants need only present some “documentary evidence admissible under the Federal Rules of Evidence.” Hispanic and women farmers, however, must clear much higher evidentiary hurdles for the chance to receive less in compensation. To recover a flat \$50,000 under the second “track” of their program, women and Hispanic claimants must provide not only sworn written statements, but also copies of their original loan applications and written discrimination complaints, or correspondence from USDA reflecting the submission of these documents. We further understand that women and Hispanic constructive applicants face similar stringent evidentiary requirements that are not required for African-American and Native-American farmers. We believe that it is unreasonable to expect claimants to have copies of specific documents filed decades ago. We also believe women and Hispanic farmers should face the same reasonable evidentiary requirement as other minority groups: any documentary evidence admissible under the Federal Rules of Evidence.

Equal Access to Legal Representation: We are troubled that while most claimants in *Pigford I*, *Pigford II*, and *Keepseagle* are provided free legal representation, that is not the case for women and Hispanic farmers. The Administration has proposed not to include *any* legal representation for Hispanic and women claimants in the program. We believe that women and Hispanic farmers should have the same access to counsel as other minority groups facing the complex administrative claims process.

Equal Two-Track Recovery Process: The Administration is offering lesser recovery to women and Hispanic farmers than offered to previous claimants: they may receive up to \$50,000 under Tier 1 or only a flat \$50,000 under Tier 2. We would like a fuller explanation why eligible women and Hispanic farmers should not be allowed to recover such damages as they are able to prove in the second “track” under their Program, as was allowed for African-American claimants in the *Pigford I* settlement.

Increase the Overall Cap: According to the USDA’s census data from 2007, there are over 306,000 women principal farm operators and approximately 56,000 Hispanic principal farm operators. Given the number of women and Hispanic farmers across the country, there may be a large number of applicants for this claims program. We are concerned that the Administration is setting itself up for complications down the line with a low cap. In our view, if women or Hispanic farmers were discriminated against by the USDA farm programs, and they can prove it under reasonable standards of evidence, they should be allowed to recover a fair sum. This program does not seem to be set up to manage the appropriate resolution of their claims.

A Fair Process: We understand that there are a variety of process-related problems with the program as currently proposed. For example, USDA apparently reserves the right to submit information in response to any filed claim, and the program includes no mechanism for informing a claimant that USDA has made such a submission. The programs for other minority groups require that all loan-related information submitted by USDA is forwarded to claimants and/or claimants’ counsel. Moreover, unlike in the other minority farmer cases, the program documentation for women and Hispanic farmers provides that it does not bind USDA in any way, thus the government may unilaterally modify the terms of the program. Women and Hispanics should not be required to release their claims against USDA unless they have their claims actually adjudicated by the program adjudicator.

We support a fair program for women and Hispanic farmers that accomplishes the goal of settling outstanding discrimination claims against USDA. We urge the Administration to consider making the changes outlined above to ensure that women and Hispanic claimants are treated fairly. We stand ready to support such a revised program.

Sincerely,


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