



April 7, 2011

Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, DC 20500

Dear Mr. President:

On behalf of The Leadership Conference on Civil and Human Rights, along with the undersigned organizations, we write to express concern with the latest proposal issued by the Department of Agriculture (“USDA”) and the Department of Justice (“DOJ”) on February 25, 2011, to address claims of discrimination brought by thousands of women and Hispanic farmers in the court cases known as *Love v. Vilsack* and *Garcia v. Vilsack*. The announcement of this proposed claims process follows the recent resolutions of similar discrimination claims brought by African-American and Native American farmers in the *Pigford I*, *Pigford II*, and *Keepseagle* cases.

While we strongly support the administration’s efforts to resolve these longstanding gender and ethnic discrimination claims against USDA, we remain troubled by the continued differential treatment of women and Hispanic farmers, as compared to African-American and Native American farmers. In the view of many, including the lead plaintiff in *Pigford I*, women and Hispanics “suffered the same discrimination by the USDA as African-American farmers.” Prior court filings by USDA, and reports issued by the GAO and others, have indicated that women and Hispanic farmers suffered virtually identical forms of discrimination. For example, in 2004, USDA filed a court pleading acknowledging that the D.C. Circuit’s holding regarding class certification in the *Love* and *Garcia* cases should control in the *Keepseagle* case as well: “Now that there is an actual conflict in the certification of class actions in **virtually identical suits** by Hispanic, female, and Native American farmers, **review by this Court may well be appropriate to ensure that similarly-situated minority groups are treated consistently.**”¹

Like the African-American and Native American farmers who recently negotiated a more equitable claims resolution plan, many of these female and Hispanic farmers suffered the denial of farm loan applications, the denial of farm loans, delayed issuance of farm loans, higher loan rates, lower loan amounts, denied loan servicing and non-credit farm benefits such as disaster relief. Despite the similarity of the claims, and despite the fact that there are many more women and Hispanic farm operators in the United States, the current proposed settlement plan for these farmers is far less generous than the settlements for Native American and African-American farmers.

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¹ See Defendant’s Response to Plaintiffs’ Petition for Permission to Take An Interlocutory Appeal, *Garcia v. Vilsack*, D.C. Cir. Dkt. No. 04-8008 at 19-20 (Oct. 2004) (emphasis added).



While we appreciate there are some advances in this latest proposal, we continue to have serious concerns about the overall package. On the favorable side, we understand that the administration would no longer require these farmers to file, and dismiss, an action in federal court before filing an administrative claim. The lifting of this onerous procedural step will surely assist many farmers who wish to obtain access to the claims settlement procedure. We also understand that some plaintiffs who have the documentary evidence to qualify for “Tier 2,” may recover a flat \$50,000 award. But this improvement to the plan still falls far short of the uncapped award available to similar claimants under *Pigford I*, and the potential award of up to \$250,000 that African-American and Native American farmers can receive under *Pigford II* and *Keepseagle*, which involve limited funds as a result of legislation and settlement. The *Pigford I*, *Pigford II*, and *Keepseagle* claimants also face lower evidentiary requirements. We see no reason why the women and Hispanic farmers should not be allowed to prove their actual damages, as was the case for African-American farmers under *Pigford I*, and face the same evidentiary requirements as the other farmers.

As we read the current proposal, women and Hispanic farmers will be eligible for smaller awards (in both Tier 1 and Tier 2) and will face much higher documentation requirements, in an award system that does not allow claims based on actual damages, and lacks court supervision and lead counsel to shepherd the cases through the claims process. Unfortunately, many of these claimants feel that the differences in the claims processes for various groups perpetuates the United States government’s pattern of treating women and Hispanic farmers in a discriminatory fashion.

In order to fully resolve these claims, we hope the administration will strongly consider the following steps to achieve parity in the claims processes for all those affected, regardless of their gender, race or ethnicity:

- Offer a true two-track claims process to women and Hispanic farmers, similar to those offered to other claimants. This should include a track that allows claimants to seek actual damages, as in the *Pigford I* case;
- Establish similar evidentiary requirements for all claimants (including constructive claimants who were not allowed to file a loan application). The current proposal would require Hispanic and women farmers who are constructive applicants or who wish to recover under Tier 2 to produce copies of loan applications and complaints filed decades ago. USDA has not required African-American or Native American farmers to satisfy these same requirements, and USDA will not make its records available;
- Ensure debt relief is available to women and Hispanic farmers on par with what has been offered to the *Pigford I*, *Pigford II* and *Keepseagle* claimants. This will require a greater commitment from USDA to extinguish debts that exist due to discrimination;
- Establish court oversight of the claims process, both as a means to deter fraud and to ensure the program is run as efficiently as possible. This should include oversight of the notice process, to ensure widespread notice throughout affected communities;
- Provide access to legal counsel for these farmers through the claims process, on par with the assistance of counsel benefit afforded to African-American and Native American farmers. Given the requirements of the program, the relative lack of sophistication with legal claims processes of potential claimants as a group, and the fact that many claims stem from discrimination which occurred up to 30 years ago, many claimants may need assistance in filing their claims. This is especially true if the evidentiary requirements are not modified. It is clearly discriminatory for the federal government to cover the cost of legal counsel for some classes of claimants and not for others who are similarly situated.



We urge the administration to consider these proposed improvements to the claims settlement program for women and Hispanic farmers before it becomes operational. It is unjustifiable for women and Hispanic farmers to be treated less favorably than other farmers who suffered similar discrimination in government loan programs.

We look forward to following up with you on this matter. If you have any questions, please feel free to contact Lexer Quamie, counsel at The Leadership Conference on Civil and Human Rights at (202) 466-3311 or Nancy Zirkin at (202) 263-2880.

Sincerely,

9to5, National Association of Working Women
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of Labor-Congress of Industrial Organizations
Asian American Justice Center, a member of the Asian American Center for Advancing Justice
Disciples Justice Action Network
Equal Rights Advocates
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
MomsRising
National Council of La Raza (NCLR)
National Council of Negro Women
The National Latino Farmers & Ranchers Trade Association
National Partnership for Women & Families
National Women's Law Center
UNITED SIKHS
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Women of Color Policy Network, NYU Wagner Graduate School of Public Service

C: Eric Holder, U.S. Attorney General
Tom Vilsack, U.S. Secretary of Agriculture