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September 16, 2004

County Committee Election Reform Comments
United States Department of Agriculture
Room 3092-S, Mail Stop 0539
1400 Independence Ave., SW
Washington, DC 20250-0539

Dear Sir or Madam:

Re: Comments on Proposed Uniform Guidelines for Conducting Farm Service Agency County Committee Elections, 69 Fed. Reg. 51052 (August 17, 2004).

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the proposed uniform guidelines for conducting Farm Service Agency county committee elections, published at 69 Federal Register 51052 (August 17, 2004).

NFFC represents 30 grassroots farm and rural advocacy organizations in more than 30 states. The coalition was formed in 1986 to coordinate the efforts of a growing network of grassroots organizations concerned with maintaining a family farm system of food production. NFFC's work includes education, outreach, and advocacy for stable rural communities, safe food, and the preservation of natural resources through family farming. NFFC has long been interested in federal farm policy.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For over fifteen years, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural credit issues.

These Uniform Guidelines Represent an Important Step Forward

NFFC and its member organizations and allies have worked for many years to bring about change in the county committee election process, so that the members of county committees would more closely resemble the make-up of the farming population in the county or area. When entire sectors of the farming population are underrepresented on the county committees—or are not represented at all, as has been the case much too often in the past—the decision-makers often fail to ensure that all farmers have equal protection of the law.

NFFC believes that the proposed uniform guidelines, issued pursuant to § 10708 of the 2002 Farm Bill, are an important step toward a more representative and more democratic county committee system.

Define “Fairly Represent”

The proposed uniform guidelines echo the language of the statute when they state that the goal is to ensure that county committees “fairly represent” or are “fairly representative” of their counties or areas. It would be helpful if the final guidelines furnished greater insight into the agency’s interpretation of the meaning of this phrase. NFFC believes that “fairly representative,” as used in the statute, means that the committees’ make-up is roughly proportional to the make-up of the farming population of the affected area in terms of race, ethnicity, and gender.

The Proposed Guidelines Assign Appropriate Responsibility to Local Offices, But Greater Accountability is Needed

NFFC believes that section I of the proposed guidelines, dealing with Outreach and Communication Efforts, properly allocates responsibility between state and county offices. It is both efficient and effective for state and county FSA offices to work together to improve outreach. In particular, NFFC supports subsection B, which assigns primary responsibility for preparing and executing an outreach plan to the county offices. County offices are in the best position to work with producers, other institutions, and organizations in the area.

However, hard experience has shown that it is also the county offices that are in the best position to impede the agency’s outreach efforts—either with overt discrimination or with lack of commitment to fair representation. The guidelines fail to establish any consequences if the required reports reflect lackluster outreach efforts and results. This is inconsistent with the statute, which states that the procedures promulgated by the Secretary “shall ensure” fair representation of socially disadvantaged groups. 16 U.S.C. § 590h(b)(5)(B)(iii)(VII)(bb). FSA county offices and local employees must be held accountable for an honest and sincere effort to conduct outreach activities and recruit

socially disadvantaged persons to stand for election and serve on county committees. The uniform guidelines should outline measurable performance standards for FSA employees with respect to outreach and communication responsibilities (for example, a specified number of contacts with partner organizations and institutions), as well as consequences for failure to meet those standards. Further detail regarding these standards should be set forth in FSA's personnel evaluation policies.

Increase Financial Support for Other Organizations to Do Outreach

The proposed uniform guidelines recognize the key role of other institutions and organizations in developing FSA county committees that more fairly represent their local farming communities. This is entirely appropriate. Few farmers, and especially few farmers who are members of socially disadvantaged groups, will decide to nominate someone or to stand for election themselves on the basis of a nomination form they receive in the mail. It takes "shoe leather" and face-to-face contact to persuade historically disenfranchised farmers to run for election to an FSA county, area, or local committee.

As part of its commitment to broad participation in county committee elections, USDA should support full funding for Outreach and Technical Assistance to socially disadvantaged farmers. (Referred to as § 2501, this provision is codified at 7 U.S.C. § 2279. Funding, in particular, is provided for at 7 U.S.C. § 2279(a)(4)). Community-based organizations, educational institutions, and others that provide technical assistance to socially disadvantaged farmers are uniquely situated to help increase participation by socially disadvantaged farmers in the county election process. Adequate funding will help enable them to devote substantial staff-time to coordinating with local FSA offices and to meeting with farmers in order to achieve these goals. Without dedicated funding to do this work, many of these organizations simply cannot do it.

The proposed uniform guidelines, at subsection D under section I, seem to distinguish between "developing partnerships" and "working with" groups. The guidelines should clarify the differences, if any (such as financial or other support), between these terms. If there are differences in the two terms, clear standards for determining which category a particular organization falls into must be included in the guidelines.

Review of Boundaries for Local Administrative Areas Is Appropriate, Provided There are Adequate Safeguards

The proposal at subsection A of section II—to consider redrawing local administrative area (LAA) boundaries in order to ensure fair representation of socially disadvantaged farmers—is a sensitive one. These comments take as a basic presumption that the record of past discrimination by USDA in administration of farm credit and farm programs has been thoroughly documented elsewhere and need not be rehearsed here. *See, e.g., Pigford v.*

Glickman, 185 F.R.D. 82 (D. D.C. 1999); *Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team*, Appendix B (Feb. 1997).

Taking action to correct past discrimination on the basis of race, ethnicity, and gender is lawful, so long as the action is "narrowly tailored" to achieve that effect. NFFC understands that FSA may consider re-drawing LAA boundaries for a number of reasons, including the underrepresentation of socially disadvantaged farmers on the committee with jurisdiction. NFFC also understands that the goal of re-drawing the boundaries would be to ensure fair representation of such farmers, in order to correct the underrepresentation caused by the past discrimination.

The provision in subsection A.3 that the state office will review any re-drawn boundaries proposed by the county office before they are implemented appears to be a prudent safeguard against unlawful discrimination. NFFC would also suggest that any proposals to re-draw LAA boundaries include some mechanism for soliciting input from the public. This could be another way to gain feedback on whether the proposal is narrowly tailored to correct past discrimination and achieve fair representation of socially disadvantaged farmers on the committee.

The provision of subsection A.4 for annual reviews of selected county committees by the national office is one that NFFC strongly supports. This type of oversight and accountability for results is what will be needed for these measures to succeed. The discretion to establish local administrative areas is assigned to the Secretary by law. 16 U.S.C. § 590h(b)(5)(B)(i)(II). Oversight from the national office is an essential part of the exercise of that discretion.

Appeals Process Must Be Adjusted to Provide Decisions in More Timely Fashion

The proposed election procedures in section II appropriately include an appeals process. However, NFFC believes that a 15-day period to resolve appeals may be excessive in this context. Questions regarding whether or not a farmer is an eligible voter should be readily resolved within 3-5 days of the farmer's attempt to join the list of eligible voters or to cast a ballot. A speedy resolution to appeals is imperative because, under the proposed guidelines (II, F.1), a candidate has 15 days to challenge an election. Appeals should be resolved promptly. Candidates deserve to know whether all ballots cast were in fact cast by eligible voters before the time they must decide whether to challenge the election.

Mailing Nomination Forms is Appropriate, But Further Steps are Needed

Under proposed election procedures (section II. C.1), the nomination forms are to be mailed. NFFC supports this approach as one component of a broader outreach and communication strategy. One benefit of this approach is that farmers are not required to single themselves out by asking for nomination forms at the office. If nomination forms are mailed with other items or enclosed in a county newsletter, NFFC encourages the agency to

utilize a special stamp or sticker on the newsletter, or use some means to draw the farmer's attention to the enclosure. Particularly during a busy harvest time, many farmers may overlook the enclosed form. In any case, merely mailing forms could never be adequate to satisfy the statutory mandate to ensure that county committees more fairly represent their local communities. As noted above, community-based and other organizations are well-suited to the more intensive recruiting and outreach work that is called for.

Elections Should Not Be "Nullified," Except in Extraordinary Circumstances

The proposed guidelines (II, F.2) refer to "nullification" of election results. The guidelines should specify criteria under which an election might be nullified. NFFC believes that nullification should not occur except in the most extraordinary circumstances.

The Proposed Reporting Provisions Appropriately Consider Each SDA Category Separately

The proposed guidelines (III, A.6) indicate that county offices will be required to report the race, ethnicity, and gender of each nominee. This is the approach required by the statute. 16 U.S.C. § 590h(b)(5)(B)(iii)(V)(ff). NFFC supports this approach, rather than a reporting approach which asks for total numbers of African-Americans, women, etc., nominated. The approach in the proposed guidelines provides the most useful information, because it allows FSA and the interested public to pinpoint where progress in recruitment may have been made (for example, if the number of white women nominated was roughly proportional to the percentage of white women farmers in the area), and where more reporting remains to be done (perhaps men or women of specific racial or ethnic groups that continue to be underrepresented). Lumping these disparate groups together would hinder the effort to evaluate the success of the recruitment efforts.

NFFC would also like to suggest that the reporting include data about how many nominees and successful candidates are immediate family members of previous county committee members or FSA employees. This data is important because nepotism and family "dynasties" have resulted in "shutting out" socially disadvantaged farmers from participation on county committees, or in persuading socially disadvantaged farmers that the county committee system is an "insider" game. Tracking this data might reveal patterns where certain families have held onto certain seats for many years, and where even more concentrated outreach or other intervention may be needed.

Reasonable Term Limits Should Apply

A reasonable limit on the number of consecutive terms one farmer may serve, such as that in proposed subsection G of section II, will help to achieve fair representation of socially disadvantaged farmers on county, area, and local committees. Reasonable limits on

consecutive terms allow some returning members to contribute valuable knowledge and experience to their committees, while ensuring voters have the opportunity to elect new members—including new members from previously underrepresented races, ethnicities, and genders—to make their own contributions.

Ongoing Training Should Be Incorporated in the Guidelines

Ongoing training in civil rights issues should be required for FSA employees and county, area, and local committee members, so that everyone may be reminded of legal requirements and civil rights goals of the agency at least once per year.

Priority Should be Placed Upon Recruiting Candidates to Run for County Committee Seats, Rather Than Appointing Persons to the Seats

NFFC strongly supports efforts to improve the representativeness and diversity of county committees. NFFC agrees with the proposed uniform guidelines that priority should be placed upon recruiting socially disadvantaged candidates to run for county committee seats, and utilizing the Secretary's power to nominate socially disadvantaged persons to run for election. See proposed subsections D.2 and D.4 of section II. While any election is in some sense "political," an exercise by the Secretary of the power to appoint voting members would further politicize the process and damage its legitimacy. Socially disadvantaged farmers who are elected to county committees will have greater credibility, as well as greater accountability to the community. While this question may bear revisiting if the proposed guidelines do not bear fruit in the form of county committees that more fairly represent their areas, at present, NFFC supports the emphasis upon recruitment and outreach reflected in the proposed uniform guidelines.

Consider An Extension of the Comment Period

NFFC is well-aware of the urgency of efforts to reform the county committee election process, and supports USDA efforts to carry out these requirements of the 2002 Farm Bill as soon as possible. Nonetheless, NFFC would ask that the agency consider extending the comment period, or at a minimum pledge to give full consideration to comments received after the deadline to the extent it is able. The 30-day comment period provided was quite short, particularly when it comes during August and September, which is harvest time for many farmers, and—this year—has involved serious natural disasters for many farmers in different regions of the country. The preamble to the proposed uniform guidelines indicates that USDA intended to act in accordance with the proposed guidelines in preparing and conducting the 2004 FSA County Committee elections. 69 Fed. Reg. 51052, 51052 (2004). Because the proposed uniform guidelines are already being implemented, extending the comment period would not materially slow the reform process, and would give farmers a greater opportunity to respond.

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Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/Jill E. Krueger

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