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October 25, 2004

Ms. Ann Griffin
Special Assistant to the Director
National Appeals Division, USDA
3101 Park Center Drive, Suite 1100
Alexandria, VA 22302

Dear Ms. Griffin:

Re: Comments on Notice of Modified Privacy Act System of Records –
69 Fed. Reg. 57,254 (September 24, 2004).

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the notice of modification of Privacy Act systems of records published at 69 Fed. Reg. 57,254-55 (September 24, 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 USDA's implementation of farm credit, disaster assistance, and conservation programs and the administrative review procedures available to participants in those programs.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For almost two decades, 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 and farm program issues and the administrative review processes for these programs.

Internet Publication of NAD Determinations Is Welcome and Overdue

NFFC enthusiastically supports the publication of National Appeals Division (NAD) Hearing Officer and Director determinations on the Internet. Many federal agencies are already making their hearing and appeals decisions available on the Internet, including the Department of Health and Human Services (www.hhs.gov/dab/search.html), the Department of Labor (www.oalj.dol.gov/), the Board of Veterans Appeals (www.index.va.gov/search/va/bva.html), and the Interior Board of Indian Appeals (www.ibiadecisions.com). USDA Judicial Officer decisions are also posted on the Internet (<http://www.usda.gov/da/ojo.htm>).

Making NAD determinations available on the Internet will enhance the appeals process in many important ways. First, making all determinations easily accessible to the public will increase the transparency of the Department's policies and decision-making practices. An important aspect of reasonable administrative decision-making is that policies are applied uniformly. When program participants are able to review NAD determinations in cases similar to their own and discover that those determinations (and underlying agency decisions) are consistent from case to case, the participants will have greater confidence in the fairness of the process. They still might not like the outcome, but they will not have to be concerned that they have been singled out for adverse treatment. If it appears that agency decisions or NAD determinations are not consistent from case-to-case, program participants will be able to more clearly articulate their objections. NAD will then be in a better position to either address and correct the inconsistencies or more clearly explain the bases for the different outcomes. Publicly accessible determinations will also improve the efficiency of the appeal process by providing guidance to would-be appellants on how to approach their appeal, including how particular issues are handled and types of evidence that can be considered.

The notice does not indicate the tool that will be used for Internet access to NAD determinations. NFFC strongly recommends that the Internet publication of NAD determinations be accompanied by a search engine allowing the public to search the posted determinations by keyword. This is a crucial aspect of making the determinations truly accessible. NFFC also urges NAD to include older determinations to the fullest extent possible.

Sufficient Protection of Program Participants' Privacy Interests

It is appropriate for NAD to be concerned about the impact of Internet publication of NAD determinations on the privacy interests of program participants. Although it is not clear precisely what is meant by the term "personal and location identifiers" used in the notice, NFFC assumes that NAD is proposing to redact the name and address of the appellant and any third parties mentioned in a determination. NFFC agrees with NAD that such redactions are both appropriate and sufficient to protect program participants' privacy interests. NFFC agrees that if such personal identifying information is redacted, it

NFFC Comments on Notice of
Modification of Privacy Act System of Records
Page 3
October 25, 2004
FLAG

would not be necessary to further redact financial or other information, since it would not be possible to link any remaining information to an individual.

NAD's practice when responding to FOIA requests for determinations has been to leave the appellant's name and address but to redact dollar amounts and other financial information. NFFC believes that the proposed redactions in the current notice are much more appropriate. In some cases, financial information may be relevant to the determination outcome and would therefore be useful to those accessing the determinations, while the appellant's name and address would never be relevant.

NFFC notes that the proposed redactions are similar to those used by the Board of Veterans Appeals in its publicly available decisions. In those decisions, the Board has redacted the name and address of the veteran but includes the hearing office location and the names of the decision maker and Department counsel. NFFC expects that NAD also will retain the name of the decision maker in its published determinations.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/Karen R. Krub

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