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VIA www.regulations.gov

Team Leader
Program Allocations and Management Support Team
United States Department of Agriculture
Natural Resources Conservation Service
P.O. Box 2890
Room 5212-S
1400 Independence Avenue SW
Washington, DC 20013-2890

Dear Team Leader:

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**Re: Comments on Interim Final Rule for Technical Service Provider Assistance,
74 Fed. Reg. 2,800 (January 16, 2009)**

The Farm and Food Policy Diversity Initiative, including the Rural Coalition, and the undersigned partners and allies, submits these comments, prepared with the assistance of the Farmers' Legal Action Group, Inc. (FLAG) on our behalf concerning the interim final rules for Technical Service Provider Assistance as published at 74 Fed. Reg. 2,800 (January 16, 2009).

The **Farm and Food Policy Diversity Initiative (FFPDI)** includes diverse partner organizations with deep roots in the civil rights and rural and urban movements to secure land and justice. They work to ensure that organizations serving people of color in the food system have the opportunity to develop and support their own initiatives to improve equity in food and farm policy. The DI has successfully advocated for policies to increase USDA transparency and accountability, halt land and farm loss by eliminating the factors that cause it, and to increase prosperity in the food system by expanding opportunities and access to agriculture programs for the nation's diverse farmers and farmworkers.

The Rural Coalition is an alliance of more than 80 regionally and culturally diverse organizations working to build a more just and sustainable food system. Its programs include advocating for national policies which support these goals, as well as economic development efforts such as bridging the digital divide, and helping our diverse members market the products of their farms.

The Farmers' Legal Action Group (FLAG) is a nonprofit, public interest law center dedicated to the preservation of family farms. For 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 issues.

Use Technical Assistance Funds to Assist Socially Disadvantaged and Beginning Farmers and Ranchers

We the undersigned stress the importance of having adequate numbers of qualified NRCS staff members at the field level dedicated to work with Indian Tribes and Socially Disadvantaged and other Small Farmers and Ranchers. At present, NRCS staff have a greater level of familiarity and more relationships with this sector of producers than do Technical Service Providers. NRCS should first of all assure that there are adequate numbers of staff to serve these needs and that the performance review system for these employees takes into account their service to this sector.

The interim final rule on technical service provider assistance makes no mention of targeting the provision of technical services to socially disadvantaged and beginning farmers and ranchers, or Indian Tribes. However, section 2704 of the 2008 Farm Bill directed NRCS to use, to the maximum extent practicable, of the funds made available through 2012 to carry out the Environmental Quality Incentives Program (EQIP) and of the acres made available to carry out the Conservation Stewardship Program, 5 percent to assist beginning farmers or ranchers and 5 percent to assist socially disadvantaged farmers or ranchers. This provision is now codified at 16 U.S.C. section 3841(g). The funds, facilities, and authorities made available under 16 U.S.C. section 3841 may be used to provide technical assistance.

The Diversity Initiative and other undersigned groups recognize that the interim final rule for the Environmental Quality Incentives Program (EQIP) addresses assistance to socially disadvantaged and beginning farmers and ranchers in section 1466.8(e). (74 Fed. Reg. 2,293, 2312 (Jan. 15, 2009)). The broad term "EQIP funds" used in section 1466.8(e) indicates that both payments and technical assistance are included in the set aside. We anticipate that the rule for CSP will include a similar provision when it is published.

Expressly recognizing the set-aside provision in the technical service provider assistance rule, as well as in the rules for EQIP and CSP, would assist in carrying out the intent of Congress. Including such a provision in the technical service provider assistance rule itself would help ensure that approved and potential technical service providers are aware of this Congressional priority. While both payments and technical assistance provided directly by NRCS to socially disadvantaged and beginning farmers and ranchers would count toward the Congressional goal, technical service providers should also be enlisted to contribute to this goal. One way to do this would be to establish a national target to set aside 5 percent of technical service provider funds for work on behalf of eligible participants who are socially disadvantaged farmers and ranchers and 5 percent for work on behalf of eligible participants who are beginning farmers and ranchers. At a minimum, NRCS should require technical service providers to collect data on what percentage of their clients are socially disadvantaged farmers and ranchers or beginning farmers and ranchers. This requirement should be reflected in the final rule.

NRCS Must Provide Training for Technical Service Providers, Especially Those Who Assist Specialty Crop and Organic Producers

The Diversity Initiative applauds the NRCS for addressing the need for training for persons to meet the certification criteria to become technical service providers, as contained in interim final rule section 652.3(c)(4). It is appropriate for NRCS to provide training that is focused upon the unique requirements of NRCS programs. Indeed, in providing such training, NRCS will not only educate potential TSPs, the agency will likely identify barriers to participation by potential TSPs. Thus, NRCS' commitment to provide training may lead directly to improvements in the process for TSPs.

The Diversity Initiative notes that the need for training to increase technical expertise and familiarity with USDA programs is likely to be most acute among socially disadvantaged, limited resource, and beginning farmers and ranchers. The dearth of technical services is compounded for many of these producers, who are currently involved in or interested in specialty crop production and organic production

While the Census of Agriculture did not prior to the passage of the 2008 Farm Bill collect data on "specialty crops" as a category, the legal definition of specialty crops from PL 108-465, the Specialty Crops Competitiveness Act of 2004, includes fruits and vegetables, tree nuts, dried fruits, and nursery crops. While we have not completed an analysis of recently released 2008 Agriculture Census data, according to the 2002 Census of Agriculture for the three relevant NAICS Categories:

There were 194,670 specialty crop producers in the United States.

- Of those, 182,944 were white, and 11,726 non-white as follows:
 - 2,368 Black or African American
 - 1,330 American Indian or Alaska Native
 - 429 Native Hawaiian or Pacific Islander
 - 6,214 Asian
 - 1,385 more than one race
- Another 11,507 specialty crop producers identified as Spanish, Hispanic, or Latino origin.
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The 2002 Census of Agriculture counted 23,233 socially disadvantaged specialty crop producers; at least 11 percent of all specialty crop producers are socially disadvantaged. Because the Census of Agriculture frequently undercounts socially disadvantaged producers, we believe these numbers may in fact be understated.

Congress directed USDA to ensure that adequate technical assistance is available for the implementation of conservation practices related to specialty crop production, organic production, and precision agriculture. The statutory requirement to develop programs that meet the specific needs of organic producers and specialty crop producers through cooperative agreements, and to allow for innovative approaches to engage local resources in providing technical assistance to these producers was contained in section 2706 of the Farm Bill and is now

codified at 16 U.S.C. 3842(i)(2); it should be reflected in the regulations. Many nongovernmental community based organizations may have technical expertise in specialty crop and/or organic production, but may lack expertise in NRCS program requirements, and will require training in order to become eligible to become approved technical assistance providers. Because the needs for technical assistance are pressing for socially disadvantaged and other historically underserved producers, NRCS should place priority on the recruitment and training of technical service providers of diverse backgrounds who are familiar with the needs of socially disadvantaged and beginning producers. Developing training programs in conjunction with community-based organizations may most quickly build the capacity of TSP system to provide the services that this sector of producers need.

NRCS should also assure that there are an adequate number of TSP's to serve the population within states and localities, and should prioritize recruitment and training in areas where historically underserved populations are located.

Technical Service Contracts for Eligible Participants who are not Receiving Financial Assistance

The Diversity Initiative supports section 652.5(f) of the interim final rule, which provides authority for USDA to make payment to eligible participants who have a technical service contract.

Establishment of Payment Rates for Technical Services

The Diversity Initiative has some concerns about the interim final rule section 652.5(m), which sets forth how NRCS will establish payment rates for the provision of technical services. Section 2706 of the Farm Bill directed USDA to establish "fair and reasonable" amounts of payments for technical service providers. This requirement is now codified at 16 U.S.C. section 3842(f)(5).

One could conclude that using market and procurement data to allow for a profit margin for technical service providers, as the agency discussed in the prefatory comments, is "fair and reasonable." However, we are concerned that relying upon market rate data may actually ratify and replicate in NRCS programs any unfairness that exists in the marketplace.

For example, to the extent that payment for technical services is paid for on a per-acre basis in the marketplace, there would be a market-based incentive for technical service providers to prefer larger-scale clients for their technical services in participating in NRCS programs. A TSP rate based upon the number of acres involved should be permitted only to the extent that the amount of work for the TSP corresponds to the number of acres. Similarly, technical assistance in designing comprehensive nutrient management plans and animal waste management facilities may be compensated in the market at a higher rate than technical assistance in establishing a crop rotation or integrated pest management plan for specialty crop production and/or organic production. A higher TSP rate for certain conservation practices should be permitted only to the extent that the level of expertise required or amount of work needed is genuinely higher. The Diversity Initiative recommends that NRCS evaluate the basis for differentials reflected in market data before uncritically importing that data as a basis for TSP payment rates.

NRCS should strive for consistency not merely from state to state or region-to-region, but for the various categories of technical services and conservation practices. It should also fully implement Section 14006 of the 2008 Farm Bill to assure that historically underserved populations are receiving equitable access to TSP services, and that any focus on market rates does not have a negative impact on these producers. NRCS may want to consider establishing a minimum payment for providing technical services to a producer, in order to provide an incentive for TSPs to work with producers on small acreages.

In determining the proper process for establishing fair and reasonable payment rates, NRCS should consider not simply the effect upon technical service providers, but also the effect upon the diverse farmers and ranchers seeking their services, in order to ensure that technical services are available to all eligible participants. Further, in evaluating the fairness and reasonableness of various methods of calculating payment rates, the agency should also consider the benefits to TSPs of participating as authorized TSPs—a relatively stable client base and fewer difficulties in collecting payment are likely among them.

Review of Certification Standards and Conservation Practice Standards

The Diversity Initiative urges NRCS to carry out the reviews of certification standards and conservation practice standards called for in the Farm Bill in a timely, transparent, and participatory manner. In this review, NRCS should take particular notice of any certification standard that may disparately impact the availability of services to various sectors of providers.

The undersigned also raise the concern that the primary impediments to recruiting qualified technical service providers remain the rules in place requiring bonding and liability coverage. The pool of TSP's would be increased dramatically were NRCS to assume the costs of bonding and liability for those TSP's who have met certification and conservation practice standards.

Collect Information about Unmet Needs for Technical Services

The interim final rule does not specifically address the Farm Bill mandate to ensure that technical services be made available to every eligible participant who is installing an eligible practice. The Diversity Initiative recommends that NRCS utilize all data available to it, including past funded and unfunded applications for NRCS conservation programs, the 2007 census of agriculture, the data collected to respond to Section 14006 of the 2008 Farm Bill and new applications and requests for service by farmers and potential TSPs, in order to assess the unmet need for technical services and training, and to determine how best to address those unmet needs. The results of Farm Bill directed Census of Specialty Crop Producers should also be reviewed by NRCS when these are available.

Thank you for your consideration of these comments.

Sincerely,

FARM AND FOOD POLICY DIVERSITY INITIATIVE

Land Loss Prevention Project, Durham, NC
Intertribal Agriculture Council, Billings, MT
Rural Coalition/Coalición Rural, Washington, DC
Federation of Southern Cooperatives/Land Assistance Fund, Atlanta, GA
National Latino Farmers and Ranchers Trade Association, Washington, DC
National Hmong American Farmers, Inc., Fresno, CA
Farmworker Association of Florida
California Black Farmers and Agriculturalists

Arkansas Land and Farm Development Corporation, Brinkley, AR
National Immigrant Farming Initiative, Washington, DC
Markham Center, Montpelier, VT
Rural Advancement Fund, NC, SC
United Farmers USA, Manning, SC
National Family Farm Coalition, Washington, DC
Missouri Rural Crisis Center, Columbia, MO
Oklahoma Black Historical Research Project, Oklahoma City, OK
CASA Del Llano, Inc. Hereford, TX
New Mexico Acequia Association, NM
Texas Mexico Border Coalition, CBO, TX
Kansas Black Farmers Association, Nicodemus, KA
Agriculture Missions, Inc, New York, NY