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The Hispanic and Women Farmers and Ranchers USDA Claims Process

Diverse farmers and ranchers and prospective agricultural producers have historically faced racial, ethnic and gender prejudice in their access to credit, which has led many to foreclosure upon their farms and displacement from their land (Cowan & Feder, 1). The U.S. Department of Agriculture found in its own evaluation of its loan services that African American, American Indian, Hispanic, Asian and women farmers faced documented and systematic discrimination in participating in its loan programs (2). The USDA defines these minority groups of producers as socially disadvantaged when they may have been subject to prejudice based on their identity as part of a racial, ethnic or gender group (Dodson & Koenig, 22). To address the long-term discrimination of socially disadvantaged producers in the USDA's Farm Service Agency direct loan services, the USDA established claims programs starting in 1997 through which African American farmers and ranchers in the Pigford I and Pigford II class action suits and American Indian producers in the Keepseagle class action suit received billions of dollars in compensation. USDA established an additional claims process in February 2011 by which Hispanic farmers and women farmers could demonstrate their discrimination in access to farm loans benefits. This paper seeks to briefly analyze the Hispanic and women farmers and ranchers' (HWFR) claims process, its framework structure, implementation by the USDA and the substantial questions that remain about the program results. This paper argues that the HWFR claims process exemplifies the institutional barriers and ongoing challenges in addressing past and ongoing discrimination and inequities in farm ownership among socially disadvantaged producers. The claims program also serves to highlight the significance of inclusive coalition-

building among community-based organizations as a method for representing socially marginalized agriculture groups in policy change and the food justice movement.

During the ongoing settlements of the Pigford II and Keepseagle class action suits, U.S. Congress directed USDA through a resolution in the 2008 Farm Bill to resolve the women and Hispanic farmers' claims of discrimination against the agency ("Action Necessary"). Yet the *Garcia v. Vilsack* case representing Hispanic farmers and the *Love v. Vilsack* case representing women farmers did not receive designation as class action suits as the previous cases had, therefore did not receive court supervision or counsel assistance. Under the terms of USDA's framework for adjudicating the claims, the women and Hispanic claimants were eligible for smaller award amounts than given under the previous discrimination litigation, given more extensive documentation requirements and denied the same consideration of actual damages individual farmers sustained. The higher evidentiary requirements and less generous terms of the claims process framework compared with the Pigford I and II and Keepseagle processes contrasts with evidence that Hispanic and women farmers suffered essentially the same form of long-term discrimination as African American and American Indian farmers ("USDA Settlement"). In dismissed court cases in 2012, claimants asserted that the claims resolution program denied equal protection and due process, and they expressed serious concern about USDA's inconsistent treatment of minority groups.

According to the framework stipulations, USDA designed an outreach process to reach out to eligible farmers through which it gave regionally and constituently diverse community-based organizations (CBOs) the task of informing eligible women and Hispanic farmers of the claims program and assisting in their applications. USDA developed lists of regions where many

eligible producers may reside in order to guide their activities and its own outreach work. The CBOs were given six months and considerably fewer resources and legal assistance than what was provided under the previous claims litigations to conduct the outreach activities ("Action Necessary"). By the deadline of May 2013, a total of 53,803 claims had been filed ("Plaintiffs' Response").

In order to ensure fairness in addressing complaints against the department, USDA appointed an independent and external administrator, Epiq Systems and claims adjudicator, JAMS to review and evaluate individual claims ("Plaintiffs' Response"). Out of 53,803 total claims filed, the claims administrator, Epiq Systems deemed 22,163 (41.19%) timely and complete. Of these, the adjudicator, JAMS approved 3,210 claims, granting 14.4% of the timely and complete claims and only 6% of the total claims submitted. The 706 Hispanic farmers and 3,210 women farmers with successful claims received forgiveness of farm loan debt and tax relief totaling $200 million, which represented about 15% of the $1.3 billion pledged by Congress for the program ("USDA's Status Report"; "Plaintiffs' Response"). In comparison with the African American and American Indian farmers' settlements, the HWFR program resulted in far fewer accepted claims and award amounts. With many claimants having little to no information on the status of their claim or the reason for its denial, the CBOs tasked with the initial outreach work were responsible for fielding calls, visits and requests for information from claimants. Yet these organizations lacked the information and resources necessary to provide answers to claimants and reach out to those who were denied (L. Picciano, personal communication, October 19, 2015). Some requested a meeting with USDA to discuss receiving additional support for their ongoing outreach efforts and clarification on the administrative

process ("HWFR Claims Letter to USDA"). USDA denied the request for a meeting and the details requested were not provided ("USDA Reply").

In a USDA status report, officials from the Justice Department reported that 10,361 of the timely and complete claims were denied because of "fraud concerns" (2). In fact three times as many claims were denied based upon a suspicion of fraud than those that were successful ("Plaintiffs' Response"). Compared with the minimal findings of fraud in the previous litigations on loan discrimination, the HWFR claims settlement resulted in an enormous proportion of the claims dismissed because of fraud. To the claimants with timely and complete claims, USDA sent letters offering one sentence in explanation of their denial, either stating that the claim failed to meet the "substantial evidence standard under the Framework" or the applicant did not provide sufficient documentation ("Claim Determination Form"). However no letter to denied claimants listed fraud as the reason for the claim denial. With a lack of explicit, up-front information from USDA or its contractors, claimants have been left to speculate on the true reasons their claims were denied ("Plaintiffs' Response"). Additionally, claimants gave up their right to pursue further litigation when they filed their claim through the USDA program. For the substantial number of claimants with denied claims, they continue to have significant unanswered questions about USDA's basis for "fraud concerns" and the overall validity and transparency of the USDA claims program.

According to the claims program framework, suspected fraud cannot be the basis for the denial of a claim, but instead USDA must forward suspected cases of fraud to the Justice Department for review (HWFR Framework). It appears that the USDA and its contractors did not follow this process and the standards they did use for determining fraud remain obscured. A

valid indicator of fraud listed in the framework is the "unusual concentrations of claims in particular areas" (X(A)(1)). Yet it is unclear how USDA defined an "unusual cluster" of claims. There are several reasons for the claims to legitimately concentrate in certain geographic areas. Many of the CBOs focused their outreach efforts in certain areas due to the limited resources allocated for their work. USDA's own outreach lists and outreach efforts also targeted localities where the agency believed many eligible producers might reside. The historical discrimination of women and Hispanic farmers may also be legitimately concentrated in certain localities where discriminatory USDA offices or personnel oversaw loan services ("Action Necessary"). These reasons for a legitimate and "usual" clustering of claims must be compared with state by state and county by county figures of the rejected claims to clarify if the agency considered the clusters of claims alongside the relevant patterns of community outreach and historical discrimination.

Another question that remains unanswered is why African American and American Indian women had more denied claims than other women and Hispanic claimants. It remains speculative whether the adjudication process subjected these women's claims to a higher standard of evaluation in order to protect against individuals receiving an additional awards package after the Pigford and Keepseagle litigations or unlawfully turning over farm operations to a spouse to receive benefits ("HWFR Claims Letter to USDA"). Without an open dialogue between USDA and the CBOs tasked with outreach activities, it is difficult to determine if USDA responsibly and objectively followed the established, albeit deeply flawed program framework in addressing long-standing discrimination in the agency's work. USDA has declared that their various loan discrimination claims programs represent a way for the agency to fully

address its history of discrimination against socially disadvantaged producers and to move into a new phase of the agency's work ("USDA Reply"). This suggests acknowledgement and concerted responsiveness to injustices in their services. Yet denied Hispanic and women farmers have justified concerns that the claims program, from its design to its results, represents a continued form of bias. In response, CBOs have urged USDA Secretary Vilsack to review the HWFR claims program for fairness and objectivity ("Action Necessary").

The competing interests and mandates of the various stakeholders in the program makes it challenging to gauge what led to such a low acceptance of claims. Perhaps the program framework itself led to excessive barriers to documenting discrimination or errors in the implementation of the framework resulted in unjustly denied claims. Clarification remains elusive because bureaucratic hurdles and political interests obstruct open communication between the USDA, its contractors and the CBOs. While discrimination in USDA loan servicing to certain groups of producers is well-established, the claims program illustrates the challenges in determining which individuals within these groups experienced the discrimination.

The HWFR claims program also represents a revealing example of the significance of field networks of community-based organizations. Organizations like the National Latino Farmers and Ranchers Trade Association, the Oklahoma Black Historical Research Project and many other diverse CBOs coordinated their outreach work and advocated jointly in correspondence to USDA. Although African American and American Indian farmers received more favorable claims settlements than the Hispanic and women farmers, the CBOs did not emphasize this division among minority producers, but instead approached the issues of institutional discrimination and the lack of visibility of minority agricultural producers as shared

concerns (L. Picciano, personal communication, November 9, 2015). Mexican Americans' strikes in coordination with Filipino farmworkers in the 1960s and the diverse union of producers represented in the National Immigrant Farming Initiative represent examples of collaborative and committed food justice advocacy that similarly used networks of shared experience and strength to promote institutional change (Gottlieb & Joshi, 126). The prominent food justice advocate LaDonna Redmond sees this coalition-building across racial, ethnic, regional and occupational lines as necessary for creating the political will to support food justice policies that address historical inequities, poverty, hunger, and the devaluing of food and agriculture workers (2013).

The administration of justice for past discrimination must also extend to fix ongoing, systemic barriers to accessing credit and securing land tenure for small landholders. Future iterations of the Farm Bill and other agriculture policies present an opportunity to confront the ways funding allocations and credit programs continue to bear the legacy of historical bias in access to land and credit. The significance of coalitions of community-based organizations in uniting and amplifying the interests of marginalized farmers will continue to be crucial for addressing the inequities that remain in federal agricultural policies.

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