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United States Senate

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AGRICULTURE, NUTRITION, AND FORESTRY

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July 2, 2010

The Honorable Thomas Vilsack
Secretary
U.S. Department of Agriculture
South Agriculture Building, Room 6092-S
1400 Independence Ave, SW
Washington, DC 20250

Dear Mr. Secretary:

As the Standard Reinsurance Agreement (SRA) renegotiation comes to an end, we write to express our appreciation for the Risk Management Agency's (RMA) willingness to respond to requests made by the Committee and the crop insurance companies. Given the changes incorporated in the mechanism for payment of administrative and operating (A&O) expenses and the sharing of risk in the 3rd draft released on June 10th, it is clear that the Agency paid attention to some of the companies' concerns. However, we do have a few very significant concerns.

First, we remain concerned that the \$6 billion in proposed cuts over the next ten years to the program reflected in the third draft of the SRA will severely constrain the CBO baseline for the farm bill. Although no doubt your plan to utilize a portion of the savings to expand certain crop insurance coverage and enrollment of acres into the Conservation Reserve Program and Conservation Reserve Enhancement Program is intended to respond to concerns about reductions to the farm bill baseline, it is unclear what the exact impact will be on the baseline.

Second, questions also persist about the appropriateness of the provision to cap commissions paid to crop insurance agents, who are a crucial component of the delivery system, particularly since they were not a party to the negotiations and thus should not be bound by any provisions it contains. We can think of no precedent for the government restricting how much companies can compensate a specific class of workers, whether they are direct employees or independent contractors, as is the case with most agents.

Finally, we are concerned about the inclusion in the final draft of subparagraph III(a)(2)(K) to the draft. This is a new provision that was not included in either of the previous drafts, and we question whether it would make the Federal Crop Insurance Corporation (FCIC)

susceptible to a claim based on this being a contract of adhesion. Beyond that, we have concerns about the precedent of using a contract with insurance companies as a way to limit the legal rights of the insurers and the agents.

We understand that the motivation behind this provision is to provide incentive to the companies to stick with their good faith negotiations on this latest SRA; however, we think this is an inappropriate means to that end. We understand that revisions are being considered to this provision. However, the discussion draft that we have seen continues to cause us concern. While it is less egregious than the original SRA provision in that it jettisons the explicit language requiring companies to pay FCIC when FCIC is found by a court to have violated the law, the revised language we have seen would still bind companies to not sue FCIC, RMA, and the U.S. Department of Agriculture. Worse, the draft language we have seen further attempts to bind agents to the same "no suing" standard by further requiring companies to get agents to sign "no sue" covenants with the companies as a condition of selling insurance. We believe that a more thoughtful approach should be taken to preserve the rights of those delivering the program.

Prior to FCIC signing this SRA with the companies, we would respectfully request that you provide this Committee with any applicable supporting documentation relating to three main issues: the legal authority of FCIC to include this provision; any other Federal precedence for this type of a contractual provision involving a Federal agency; and any materials regarding official Administration policy that are supportive of contractually limiting the rights of U.S. citizens to seek redress in the courts.

Thank you for your consideration of our concerns as you work to finalize the SRA.

Sincerely,

Blanchy L. Linnick



Chuck Grassley

Sandy Chambliss

to Benjamin Nelson

Mark Royce

Amy Klobuchar

Mike Crayon

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