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April 8, 2025

Mr. Ralph Linden  
Acting General Counsel  
United States Department of Agriculture  
1400 Independence Ave SW  
Washington, DC 20250

Re: Executive Order 14219 and USDA's race- and sex-based "socially disadvantaged" categories

Mr. Linden,

Being a farmer or a rancher is a risky business. Even though America's producers secure our Nation's food supply, one drought can wipe out a producer's entire season's crops, one wildfire can kill an entire herd, and one hurricane can destroy an entire orchard. Natural disasters do not discriminate. Neither should the United States Department of Agriculture (USDA). This industry is far too essential to disadvantage those who work to put literal food on the tables of Americans based on their skin color or sex. The Constitution promises equal treatment to all. It leaves no room for discrimination, especially not against the hardworking farmers of this country.

Like all agencies, USDA was directed under Executive Order [14219](#) (EO 14219) to "commence the deconstruction of the overbearing and burdensome administrative state." It directs agency heads to initiate a review of all regulations within their jurisdiction to identify regulations that are unconstitutional or "raise serious constitutional difficulties." We write to assist you in this effort by identifying one species of unconstitutional regulation against which Southeastern Legal Foundation<sup>1</sup> (SLF) has extensive experience litigating—USDA's use of a category of persons referred to as "socially disadvantaged" which discriminates based on race and (frequently) sex in violation of our Constitution and our civil rights laws. *See, e.g., Holman v. Vilsack*, No. 21-1085, 2021 U.S. Dist. LEXIS 127334 (W.D. Tenn. Jul. 8, 2021) (enjoining USDA program to forgive 120% of loans to "socially disadvantaged" farmers and ranchers); *see also Strickland v. USDA*, 736 F. Supp. 3d 469 (N.D. Tex. 2024) (enjoining 8 USDA disaster relief programs available only to "socially disadvantaged" farmers and ranchers). Attached you will find a table identifying all regulations containing the unconstitutional "socially disadvantaged" category that you should destroy. *See* Attachment, Table of "Socially Disadvantaged" Regulations. We suggest that these be included in your list of regulations to review under EO 14219.

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<sup>1</sup> Southeastern Legal Foundation is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic®. Founded in 1976, SLF has made it its mission to protect the American people from government overreach, challenge government policies when they violate the Constitution, and restore constitutional balance in our system of government. SLF is proud to serve as Freedom's lawyers.

This Administration has shown an abiding commitment to ending all forms of discrimination that the last one smuggled in under the banner of “diversity, equity, and inclusion” (DEI). Because USDA’s “socially disadvantaged” category discriminates based on race and sex, its use should be promptly abandoned in compliance with EO 14219. *See* Attachment, Table of “Socially Disadvantaged” USDA Regulations. Many are buried deep in federal regulations and are easily missed. But until they are rooted out, they lay as a dormant tool for a future administration to resort to the “sordid business, this divvying us up by race.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (opinion of Roberts, C.J.). We support you in this effort to extirpate all forms of discrimination from your regulations.

SLF stands ready to assist USDA as it restores its commitment to colorblindness and equality for America’s farmers. They certainly deserve it.

### **1. President Biden’s “equity agenda” ushered in a torrent of discriminatory USDA regulations.**

The last Administration weaponized so-called “diversity, equity, and inclusion,” or DEI, by smearing its discriminatory principles throughout the regulatory code and the federal government. Although it had different euphemisms—USDA’s preferred term was “socially disadvantaged—it always involved racial discrimination and often included sex discrimination.

During the last four years, USDA’s use of the discriminatory “socially disadvantaged” category exploded. On day one of his administration, President Biden issued Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg. 7009 (Jan. 25, 2021), which declared that his administration was taking a “comprehensive approach to advancing equity for all” and would establish “an ambitious whole-of-government equity agenda.” As Judge Ho of the Fifth Circuit explained, the difference between equity and equality is “the difference between securing equality of opportunity regardless of race and guaranteeing equality of outcome based on race. It’s the difference between color blindness and critical race theory.” *See Rollerson v. Brazos River Harbor Navigation Dist.*, 6 F.4th 633, 648 (5th Cir. 2021) (Ho, J., concurring in part and concurring in the judgment).

On April 14, 2022, in response to President Biden’s EO, more than ninety federal agencies released their first-ever Equity Action Plans. *See* The White House, Biden-Harris Administration Releases Agency Equity Action Plans to Advance Equity and Racial Justice Across the Federal Government (2022), <https://perma.cc/PF3B-D5R6>. Then, on February 16, 2023, President Biden updated his equity initiative through Executive Order 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. *See* 88 Fed. Reg. 10825 (Feb. 22, 2023). In EO 14091, President Biden proclaimed that his “[a]dministration has embedded a focus on equity *into the fabric of Federal policymaking* and service delivery” and “vigorously championed racial equity.” *Id.* (emphasis added). It further directed agencies to “support ongoing implementation of a comprehensive equity strategy . . . to yield equitable outcomes.” *Id.* at 10826, 10828.

USDA was all-in. Evidently, some at USDA saw the “instability unleashed by COVID as a crisis not to be wasted. They saw it as an opportunity to write race back into the law.” *Holman*

*v. Vilsack*, 127 F.4th 660, 666 (6th Cir. 2025) (Thapur, J., dissenting from denial of rehearing en banc). In the words of then-Secretary of Agriculture Thomas J. Vilsack himself, “Under this Administration, equity is more than a catchphrase. It’s a promise.” U.S. Dep’t of Agric., Equity Action Plan 2023 Update, 2 (2024), <https://perma.cc/PQH3-4B3W>. He meant it.

In February 2022, USDA then published its Equity Action Plan. U.S. Dep’t of Agric., USDA Equity Action Plan in Support of Executive Order (EO) 13985 Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Feb. 10, 2022), <https://perma.cc/9CVL-2FG9>. In its Equity Action Plan, USDA declared that “[it] strives to institutionalize this emphasis on equity” and will “remain steadfast in [its] commitment to advance equity in every facet of [its] mission.” *Id.* at 1, 5. It further promised to “fortify equity and racial justice” by centering equity in everything USDA does. Equity Action Plan 2023 Update, at 1.

By the time USDA actually implemented its “equity” strategy through actual rule making, USDA used a specific tactic to embed discrimination throughout the Federal Register. Here’s what it did. It created a category of farmers that it calls “underserved farmers,” which includes unobjectionable groups (veterans, beginners, or those of limited resources) but also so-called “socially disadvantaged” farmers. *Id.* at 6. Then, in regulations seeking to embed a preference for “socially disadvantaged” farmers, USDA defined the term to mean specific races and, sometimes, women. *See* Attachment, Table of “Socially Disadvantaged” Regulations.

In sum, USDA uses euphemisms like “socially disadvantaged,” or “equity” when it softens its public-facing efforts, but when it comes to actual implementation, USDA resorted to blunt race and sex discrimination that flattened the tremendous individuality of Americans into crude groups based on immutable traits. This was always unlawful and unconstitutional on top of being deeply odious to a free society built on the principle that all humans are created equal.

## **2. USDA’s “socially disadvantaged” category is unconstitutional.**

Court after court has found that, despite deliberately misleading and innocuous-sounding label, the “socially disadvantaged” category is, without a doubt, overtly and unconstitutionally discriminatory. *See generally, e.g., Holman*, 2021 U.S. Dist. LEXIS 127334; *Miller v. Vilsack*, No. 21-CV-0595, 2021 U.S. Dist. LEXIS 264778 (N.D. Tex. Jul. 1, 2021); *Wynn v. Vilsack*, 545 F. Supp. 3d 1271 (M.D. Fla. 2021); *Faust v. Vilsack*, 519 F. Supp. 3d 470 (E.D. Wis. 2021); *Ultima Servs. v. USDA*, No. 2:20-cv-00041, 2023 U.S. Dist. LEXIS 124268 (E.D. Tenn. July 19, 2023); *Strickland*, 736 F. Supp. 3d 469. In fact, in none of our cases with USDA has it even tried to deny that it is engaged in active discrimination. The above-cited cases unanimously recognized that the term discriminates based on race and sometimes sex, thereby requiring the programs face strict scrutiny. **USDA’s use of the category has never withstood that scrutiny, nor even come close.**

To succeed in defending its racial and sex discrimination, USDA would have to show that it had recently been engaged in active discrimination against the groups now benefited. It cannot. On the contrary, as the court in *Strickland* observed, “[o]nly the opposite has occurred . . . .” 736 F. Supp. 3d at 482 (citing to a 2022 law that allocated \$2.2 billion to farmers who allegedly suffered USDA discrimination). USDA’s recent history only actively discriminated *in favor of* the groups that it deems “socially disadvantaged.” USDA’s persistent use of fixed racial classifications in the

face of these unanimous rulings is deeply troubling and provides even more reason to promptly rescind these noxious regulations.

Even if USDA had an interest in remedying its own discrimination, the specific racial categories it uses are simply incoherent. They rest on racial stereotypes that presume all members of broad racial or ethnic groups are disadvantaged. The Supreme Court recently called these categories “imprecise,” “overbroad,” and “arbitrary or undefined.” *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 216 (2023). Justice Gorsuch went further, calling the categories “incoherent.” *Id.* at 291 (Gorsuch, J., concurring). Justice Gorsuch explained how these categories were created by ideological bureaucrats “without any input from anthropologists, sociologists, ethnologists, or other experts,” and were then rigidly implemented for decades even though the same federal regulators who devised them cautioned that they “should not be interpreted as being scientific . . . nor should they be viewed as determinants of eligibility for participation in any Federal program.” *Id.* (quotation marks omitted) (emphasis preserved). Yet USDA’s existing regulations never fail to employ these exact categories.

Perhaps no court has better demonstrated how arbitrary this racial framework is than the Court of Appeals for the Sixth Circuit. Recently, the Sixth Circuit wondered aloud how the government could draw lines that discriminated in favor of “Pakistanis but not Afghans; Japanese but not Iraqis; Hispanics but not Middle Easterners . . . .” *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021). Five judges later recognized that the “Asian” category was itself “indefensible,” emphasizing that USDA’s crude racial categorization are “less refined than that of the 1890 census takers.” *Holman*, 127 F.4th at 664 (Thapur, J., dissenting from denial of rehearing en banc) (“If those who used the racially stigmatizing term ‘octoroon’ can grasp that ‘Asians’ aren’t all the same, surely the government today can too.”).

Even if USDA had any evidence that its racial preference scheme was necessary in the first place, the races that fall under its “socially disadvantaged” umbrella are an incoherent mess. The categories are and always will be “indefensible.” *Id.* For too long, USDA was at war with the idea that “[t]he Constitution’s ideal is colorblind government policy,” *id.*, as it abandoned equality and smeared discrimination throughout its regulations. In many instances, USDA was quite open about it. See U.S. Dep’t of Agric., *What is Equity*, 2 (2023) (“The route to achieving Equity *will not be accomplished through treating everyone equally.*”) (emphasis added), <https://perma.cc/7G76-EYS8>. We urge you to rescind them.

### **3. Pursuant to EO 14219, USDA should repeal its “socially disadvantaged” regulations.**

USDA has a valuable opportunity to restore public confidence in the agency’s commitment to one of America’s core principles—equality. See *id.* at 666 (“[D]ividing ourselves by race in the United States Code and the Federal Register will divide us by race in the real world.”). USDA should begin the process of ridding its regulations of this reprehensible form of discrimination once and for all by providing the Administrator of the Office of Information and Regulatory Affairs

all regulations containing the “socially disadvantaged” category. *See* Attachment, Table of “Socially Disadvantaged” Regulations.<sup>2</sup>

The USDA should not be indulging in these racist or borderline-racist DEI qualifications. Discrimination against someone based on the color of their skin is the very thing the civil rights movement worked to eradicate, especially when it comes to accessing taxpayer funded programs.

### **Conclusion**

Farmers already face plenty of hardships; let’s not add state-sanctioned discrimination to this list. We hope this has been helpful. If you have any questions concerning the above, please do not hesitate to contact our office.

Sincerely,

/s/ Braden H. Boucek

Braden H. Boucek  
Vice President of Litigation  
Southeastern Legal Foundation

Cc: Jennifer Tiller, Chief of Staff to the Deputy Secretary.

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<sup>2</sup> For some—but not all—of its regulations, USDA is acting upon statutory authority that references the “socially disadvantaged” category. These statutes fall outside the scope of EO 14219 as they are not regulatory and cannot be repealed absent congressional involvement, and so we have not cited those provisions in our table below. But to the best of our knowledge, when used in a statute, Congress never expressly defined the term to mean specific races or a specific sex; USDA did that through implementing regulations. Most of USDA’s “socially disadvantaged” regulations lack congressional authorization. This provides a separate basis for their rescission under the EO. *See* EO 14219 §§ 2(iii) (regulations that are not based on the “best reading” of statutory authority), (iv) (regulations that implicate matters of social and political significance that are not authorized by clear statutory authority).

**Table of “Socially disadvantaged” USDA Regulations**

| <b>Program Name(s)</b>                                | <b>Regulatory Enactment</b>  | <b>Applied Regulatory SDFR Definition</b>  |
|---|--|--|
| Agricultural Management Assistance Program            | 7 C.F.R. § 1465.23(a)(2)   | 7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx. |
| Supplemental Agricultural Disaster Assistance Program | 7 C.F.R. § 760.107(a)  | 7 C.F.R. § 760.107(b)(1) (race only, not sex).   |
| Value-Added Producer Grant Program                    | 7 C.F.R. § 4284.916  | 7 C.F.R. § 4284.903 (does not list specific racial groups)   |
| Down Payment Loan Program                             | 7 C.F.R. § 764.201   | 7 C.F.R. § 761.2(b) defines “socially disadvantaged” groups as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women and applies it to all Farm Loan Programs in 761 through 769   |
| Inventory Property Management Program                 | 7 C.F.R. § 767.101(a)(2); 7 C.F.R. § 767.101(g); 7 C.F.R. § 767.101(c)(2); 7 C.F.R. § 767.101(d)(3); 7 C.F.R. § 767.151(a), (b), (c), (d); 7 C.F.R. § 767.152(a); 7 C.F.R. § 767.153(b)(3) | 7 C.F.R. § 761.2(b) defines “socially disadvantaged” groups as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women and applies it to all Farm Loan Programs in 761 through 769   |
| Property Management Program                           | 7 C.F.R. § 1955.106(b)   | 7 C.F.R. § 1955.103 (races and sex)  |
| Homestead Protection Program                          | 7 C.F.R. § 766.154(c)(2)   | 7 C.F.R. § 761.2(b) defines “socially disadvantaged” groups as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women and applies it to all Farm Loan Programs in 761 through 769   |

**Table of “Socially disadvantaged” USDA Regulations**

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| Target Participation Rate Requirement  | 7 C.F.R. § 761.208                                | 7 C.F.R. § 761.2(b) defines “socially disadvantaged” groups as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women and applies it to all Farm Loan Programs in 761 through 769   |
| Standard Guarantee Plan  | 7 C.F.R. § 762.129, 762.130                       | 7 C.F.R. § 761.2(b) defines “socially disadvantaged” groups as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women and applies it to all Farm Loan Programs in 761 through 769   |
| Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program                            | 7 C.F.R. § 2500.102                               | 7 C.F.R. § 2500.103 (does not list specific racial groups but in practice likely uses the same list)   |
| Beginning Farmer and Rancher Development Program   | 7 C.F.R. § 3430.609(a)(1)(ii)                     | Cites the race-only statute  |
| Office of Partnerships and Public Engagement & the Socially Disadvantaged Farmers Group within that office | 7 C.F.R. § 2.38                                   | None provided;   |
| Noninsured Crop Disaster Assistance Program  | 7 C.F.R. § 1437.7                                 | 7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx. |
| Biomass Crop Assistance Program  | 7 C.F.R. § 1450.202(a)(5); 7 C.F.R. § 1450.213(a) | 7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx. |

**Table of “Socially disadvantaged” USDA Regulations**

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| Dairy Margin Coverage Program  | 7 C.F.R. § 1430.406(e)                          | 7 C.F.R. § 1430.402 (race and sex)   |
| Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish | 7 C.F.R. § 1416.109(a)                          | 7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx. |
| State and County Committees Program                                  | 7 C.F.R. § 7                                    | 7 C.F.R. § 7.3 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.   |
| Emergency Conservation Program                                       | 7 C.F.R. § 701.126                              | 7 C.F.R. § 701.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics.  |
| Conservation Reserve Program   | 7 C.F.R. § 1410.33(a)(4); 7 C.F.R. § 1410.62(f) | 7 C.F.R. § 1410.2 (list of races only)   |
| Wetlands Reserve Program   | 7 C.F.R. § 1467.2(g)                            | 7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx. |
| Transition Incentives Program  | 7 C.F.R. § 1410.64                              | 7 C.F.R. § 1410.2 (list of races only)   |
| Soil Health and Income Protection Pilot Program                      | 7 C.F.R. § 1410.70(g)                           | 7 C.F.R. § 1410.2 (list of races only)   |
| Agriculture Risk Coverage Program and Price Loss Coverage Program    | 7 C.F.R. § 1412.51(d)                           | 7 C.F.R. § 1410.2 (list of races only)   |



**Table of “Socially disadvantaged” USDA Regulations**

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| <p>Environmental Quality Incentives Program</p>   | <p>7 C.F.R. § 1466.23(b)(3); 7 C.F.R. § 1466.24(d)(1); 7 C.F.R. § 1466.32(c)(1); 7 C.F.R. § 1466.32(e)</p> | <p>7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx.</p> |
| <p>Conservation Stewardship Program</p>           | <p>7 C.F.R. § 1470.4(c)(2); 7 C.F.R. § 1470.5; 7 C.F.R. § 1470.20(d)(2)(i)</p>                             | <p>7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx.</p> |
| <p>Agricultural Conservation Easement Program</p> | <p>7 C.F.R. § 1468.2(e)</p>  | <p>7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx.</p> |
| <p>Regional Conservation Partnership Program</p>  | <p>7 C.F.R. § 1464.5(c)(4)</p>   | <p>7 C.F.R. § 718.2 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women; 7 C.F.R. § 718.1 imports that definition to all FSA programs under 7 C.F.R. § 7xx and 14xx.</p> |
| <p>Milk Loss Program</p>                          | <p>7 C.F.R. § 760.1704</p>   | <p>7 C.F.R. § 760.1702 defines “socially disadvantaged” farmers and ranchers as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women</p>   |

**Table of “Socially disadvantaged” USDA Regulations**

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| Heirs' Property<br>Relending Program | 7 C.F.R. § 769.159 | 7 C.F.R. § 761.2(b) defines “socially disadvantaged” groups as American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women and applies it to all Farm Loan Programs in 761 through 769 |
|--------------------------------------|--------------------|--|