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United States Senate

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TTY/TDD 202-224-2587

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September 12, 2008

The Honorable Ed Schafer
Secretary
U.S. Department of Agriculture
200-A, Jamie L. Whitten Federal Building, S.W.
Washington, DC 20250

Dear Secretary Schafer:

RE: Average Crop Revenue Election implementation

The Food, Conservation, and Energy Act of 2008, (P.L. 110-246, June 18, 2008) includes a new revenue-based counter-cyclical program the Average Crop Revenue Election (ACRE) program. As key authors of that program, we are concerned by reports in the press suggesting that USDA may set the 2009 revenue guarantees using market prices for the 2006 and 2007 crop marketing years despite clear language in the statute establishing the ACRE program guarantee price for a crop year for a covered commodity or peanuts as the simple average of the national average market price received by producers of the covered commodity or peanuts for the most recent 2 crop years. (Sec. 1105(d)(3), emphasis added). The crop year is the year the crop is harvested, so for the 2009 crop year, the most recent 2 crop years are 2007 and 2008.

We are puzzled why the Department would undermine this promising new revenue protection in the implementation process when the administration's own farm bill proposal called for a revenue protection program. We are extremely concerned that the Department seems intent on unilaterally making up a version of ACRE contradictory to what was clearly enacted in the farm bill's statutory provisions.

The Department has cited no valid reasoning for disregarding clear statutory language. In an August 29, 2008, Agriculture Online article, Dan Looker, the Successful Farming magazine Business Editor wrote, "the Secretary indicated that the Congressional Budget Office has estimated ACRE costs based on a different two years than members of Congress, who favor using 07 and 08." In fact, CBO has just confirmed to us that its scoring of the ACRE program in the farm bill was based on its interpretation that the guaranteed price for the 2009 crop year would be an average of the 2007 and an estimate of the 2008 crop year prices.

In any event, the price assumptions used by CBO for scoring purposes are irrelevant to USDA's proper interpretation and carrying out of the farm bill's clear statutory language on ACRE. If USDA is suggesting that the price projections used by CBO are the prices that USDA should or must use to carry out the program, that is just plain wrong and contrary both to the enacted law and to many, many years of precedent in the way in which USDA carries out farm

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commodity programs. Using the argument expressed in Agriculture Online, USDA would have adjusted payments for marketing loan benefits and counter-cyclical payments over the last 5 years to reflect the CBO scores from 2002. As you well know, this is not how these mandatory programs operate. Rather, the statute sets the parameters that the Department must follow.

In establishing the guarantee prices for the 2009 ACRE program, USDA must use the simple average of national prices for the 2007 and 2008 crops. We recognize that the final prices for the 2008 crop year will not be available at the time the Department provides notice to producers of the opportunity to elect to participate in ACRE. This will in no way jeopardize implementation of the program. USDA may want to calculate estimated revenue guarantees prior to producer signup, but this is not essential to program implementation. Our expectation is that for the 2009 crop year, USDA would announce program signup no later than early spring 2009. USDA would calculate and announce state revenue guarantees for each covered commodity and peanuts once all the relevant price and yield data are available. These announcements using national average prices for 2007 and 2008 crop years and state-level yields for 2004, 2005, 2006, 2007 and 2008 crops would be available for all covered commodities and peanuts no later than October 2009. Payments would be calculated at the end of the 2009 marketing year for each covered commodity and would be paid beginning October 1, or as soon as practicable thereafter (Sec. 1105(b)(3)).

We strongly urge you to implement the ACRE program on a timely basis and to follow the Congressional intent and statutory language by using 2007 and 2008 prices to determine the guarantees for the 2009 crop year. We are excited about the possibilities for this new farm bill program. We look forward to working with you to see that the Average Crop Revenue Election is a viable option for farmers next year.

Sincerely,



Tom Harkin

Richard Durbin



Sherrod Brown

Cc: The Honorable Jim Nussle, Director of the Office of Management and Budget