Whistleblower Comments to Agency Supplemental Report

Re: OSC File No. DI-25-000006

I appreciate the Office of Special Counsel and the Department of Agriculture for their research into 7 U.S.C. § 2204b(b)(4). Their findings underscore a crucial issue—this authority has been extensively utilized yet lacks the regulatory structure of Federal Grant and Cooperative Agreement Act (FGCAA) (31 USC § 6305). My comments examine whether its continued use benefits rural communities fairly and recommends necessary reforms. The Secretary and Congress should consider whether, over the past thirty years, this use of authority has provided benefit and bridged the gap in assistance to rural communities. Does this use of authority create a program to "*improve* the coordination and effectiveness of Federal *programs, services, and actions* affecting rural areas, including the *establishment* and financing of interagency groups" as the statute laid out for USDA? When financial assistance awards are coordinated at the highest levels of USDA leadership, recipients closely connected to decision-makers may receive exceptionally favorable terms—terms that would not have been available under a structured, competitive framework. This practice enables high-ranking officials to bypass conventional oversight mechanisms, creating funding agreements that extend beyond statutory and regulatory limitations. To strengthen program integrity and ensure alignment with established governance principles, *the Secretary should update 7 CFR to bring 7 U.S.C. § 2204b(b)(4) in alignment with other assistance opportunity programs* within the farm and rural development, promoting transparency, fairness, and efficiency in federal funding decisions. Further, I recommend that Congress consider *amending this authority to align it with 2 CFR* to promote transparency and fairness for the public.

In the past year alone, thirty-seven cooperative agreements were signed under 7 U.S.C. § 2204b(b)(4)—an authority that lacks formal regulation, apart from delegations of authority (e.g., 7 CFR 2.16(a)(13)). Because these agreements are coordinated and approved at the highest levels of the USDA, funds originally appropriated for programs and administrative purposes are reallocated to augment these agreements, enabling the creation of special terms, conditions, and programs that extend beyond the scope of both statute and congressional appropriations (31 U.S.C. § 1301(a)). Recent USDA practices indicate that high-level leadership conducted authorized these agreements hastily, reallocated administrative funds (including Salaries and Expenses) without congressional notification (specifically for agreements in the past year), dodged fiscal year deadlines to preserve unspent funds (such as Inflation Reduction Act and American Rescue Plan Act program funds), and worked closely with recipients, some close colleagues of USDA, to

have advantageous terms and conditions and generous funding advances from September through December 2024 and in January 2025. Due to the discretionary nature of these agreements and their reliance on reallocated funds, it is essential to determine who is responsible for identifying and approving these partnerships, how they are vetted, and whether they provide meaningful benefits to both the government and the public—especially beyond the tenure of particularly beyond the tenure of current USDA leadership, who hold the authority to sign these agreements under 7 U.S.C. § 2204b(b)(4).

Operating under these conditions is detrimental to the beneficiary, as it fosters an expectation of USDA funding without statutory or regulatory support. This results in an unregulated program that receives funding but lacks substantial agency participation—since decisions are made at such high levels—and may lead to a lack of follow-up when leadership or priorities shift. While these agreements can support worthwhile initiatives, their structure raises concerns about accountability, oversight, and long-term sustainability. While some agreements support valuable initiatives, cooperative agreements under 7 U.S.C. § 2204b(b)(4) lack the essential safeguards found in FGCAA-regulated programs—raising concerns about transparency and oversight regardless of acclaimed individual merits or successes. The supplemental report implicitly acknowledges several vulnerabilities inherent to this and similar agreements—structural flaws that demand urgent attention:

- **No Defined Eligibility Criteria** – No formal guidelines on who qualifies for participation.
- **Lack of Cost Principles** – No standard rules ensuring funds are spent responsibly.
- **Absence of Performance-Based Accountability** – No measurable benchmarks to assess effectiveness.
- **No Fixed-Amount Award Structure** – No predetermined spending limits, leading to unpredictable allocations.
- **No Reporting Requirements** – No obligation to document outcomes, limiting transparency.
- **No Audit Provisions** – No independent oversight to verify proper fund usage.

The supplemental report suggests that oversight of these agreements—spanning application to closeout—is largely informal, relying on recipient cooperation and USDA's discretion rather than structured accountability mechanisms. Aside from certain Notices of Funding Availability, such as the most recent in June 2022, there is no publicly available documentation establishing clear parameters for, or merits of, these awards. This is because the USDA has not regulated them within 7 CFR or other delegated areas such as Farm Production or Civil Rights, as the report itself highlights. As a result, both the USDA

and its recipients face significant risks, leaving taxpayers unaware of how their funds are used. Meanwhile, high-level leadership retain complete discretion in setting parameters and responsibilities for awardees. An honor system for financial integrity is insufficient for structured governance. Oversight mechanisms remain informal, and if publicly examined, could highlight vulnerabilities that warrant reform. The USDA's supplemental report acknowledges this approach, yet USDA continues allocating funds through an authority that lacks clear regulatory protections year after year.

Finally, financial assistance funding should not be a dogmatic exercise or left to the discretion of an individual or faction. Agreements under 7 U.S.C. § 2204b(b)(4) should be subject to competition and vetted by neutral, qualified grant specialists delegated by the USDA, ensuring alignment with the Departmental priorities and the full range of appropriations and statutes. When recipients are selected without competition—perhaps because they are personal colleagues, are sought out specifically for proposals, or align with an official's personal priorities—it diminishes the integrity of the process. It undermines the efforts of those who have spent years meeting rigorous requirements, drafting performance and financial reports, and operating within congressionally appropriated programs. Moreover, when these non-competed agreements lose priority, it is a disservice to both recipients and the USDA. The USDA risks its reputation for fair funding practices, limiting access to critical resources for rural communities and farmers who depend on equal and transparent decision-making. Again, I thank the Department of Agriculture for their research into these agreements and the Office of Special Counsel for their time and assistance in surfacing this important issue.

These findings highlight the need for a thorough review of this authority by the Secretary, ensuring alignment with federal financial assistance best practices. USDA should examine its administration of 7 U.S.C. § 2204b(b)(4) to close oversight gaps in financial assistance, ensuring a framework that upholds accountability and transparency. Likewise, Congress must undertake a comprehensive review of this authority to assess its effectiveness in rural development. Key areas for reform include aligning 7 U.S.C. § 2204b(b)(4) with 2 CFR, strengthening accountability standards, and ensuring transparent fiscal oversight to protect taxpayer resources.