

USDA's Pigford case: More claims than Black farmers

By Sara Wyant

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Washington, May 27— "The Pigford case is controversial, and always will be."

That statement, made by Attorney Alex Pires during a House Judiciary Subcommittee hearing six years ago could not be truer today. As part of a April 14, 1999 class action case settlement, commonly known as the Pigford case, U.S. taxpayers have already provided over \$1 billion in cash, non-credit awards and debt relief to almost 16,000 black farmers who claimed that they were discriminated against by USDA officials as they "farmed or attempted to farm." In addition, USDA's Farm Service Agency spent over \$166 million on salaries and expenses on this case from 1999-2009, according to agency records.

Members of Congress may approve another \$1.15 billion this week to settle cases from what some estimate may be an additional 80,000 African-Americans who have also claimed to have been discriminated against by USDA staff.

It's an emotional and racially-charged issue, especially for John Boyd Jr., the head of the National Black Farmers Association, who has fought tirelessly on behalf of his fellow farmers. Boyd says many of the farmers seeking help are elderly and may not live to see these cases resolved.

"We needed \$2.5 billion, but I didn't want to tie us up in federal court anymore," Boyd told *Agri-Pulse* during an interview earlier this year. "I looked at the faces in the South and these people are old. That made me say, hey, let's settle this case and let's get the money to the farmers and help as many as we can." He estimated that only about half of the 80,000 farmers seeking restitution will eventually get it.

Settling this case is clearly a priority for the White House and USDA. Secretary Vilsack described the funding agreement reached between the Administration and advocates for black farmers early this year as "an important milestone in putting these discriminatory claims behind us for good and in achieving finality for this group of farmers with longstanding grievances."

However, confronted with the skyrocketing federal deficit, more officials are taking a critical look at the billion dollars spent thus far and wondering when these discrimination cases will ever end. **Already, the number of people who have been paid and are still seeking payment will likely exceed the 26,785 black farmers who were considered to even be operating back in 1997,** according to USDA. That's the year the case initially began as *Pigford v. (then Agriculture Secretary) Glickman* and sources predicted that, at most, 3,000 might qualify.

At least one source who is extremely familiar with the issue and who asked to remain anonymous because of potential retribution, says there are a number of legitimate cases who have long been denied their payments and will benefit from the additional funding. But many more appear to have been solicited in an attempt to "game" the Pigford system. For example, our

source said a large number of late filers had similar zip codes in large Ohio cities, suggesting a door to door effort might have taken place to find likely candidates.

Last summer, *Agri-Pulse* attempted to verify these allegations. We filed a Freedom of

**Pigford Track A Claimants by
State who received payments as
of 7-1-09**

AL	3445
AR	1532
AZ	3
CA	140
CO	8
CT	6
DC	14
DE	2
FL	273
GA	1957
HI	1
ID	1
IL	163
IN	15
KS	26
KY	64
LA	591
MA	3
MD	36
MI	81
MN	3
MO	81
MS	3193
NC	1349
NE	2
NJ	35
NY	40
OH	22
OK	607
PA	15
SC	892
TN	474
TX	302
UT	1
VA	178
VI	28
WA	3
WI	15
Total	15,601

Information Act (FOIA) request, asking USDA to provide the names and locations of those individuals who had received payments under all of the Pigford cases, both Track A and Track B, including the late filers. However, unlike the farm program payment data released by USDA and published by the Environmental Working Group on their website, the agency denied access to the Pigford information, citing an **“unwarranted invasion of personal privacy.”**

The agency did provide the total number of claims by state for cases that have already been decided as of June 30, 2009. (See table on left.) **This data does not include information on the late filers who could presumably be covered by the additional \$1.25 billion.**

As the table indicates, Alabama and Mississippi had the largest number of payment recipients under “Track A” which provided a flat \$50,000 fee —plus relief in the form of loan forgiveness and offsets of tax liability (\$12,500). These numbers seem to correspond with the outreach conducted and the large number of black farmers in those states. (See map)

However, in Illinois, 163 people received checks under the Pigford I settlement as of last year, even though Ag Census data from 2002 indicates there were only 78 black or African American operators in the state.

USDA sources say the location of the check recipient may not be indicative of where the Pigford class member farmed or attempted to farm. The claimant may have been denied access to USDA programs, given up farming and moved to another state.

This could explain **why 14 individuals in Washington, D.C. received payments as a result of the Pigford case.** Another possible reason for the variance in numbers between the Ag Census and the Pigford cases is that multiple individuals could be farming together, even though only one operator was identified by the Census.

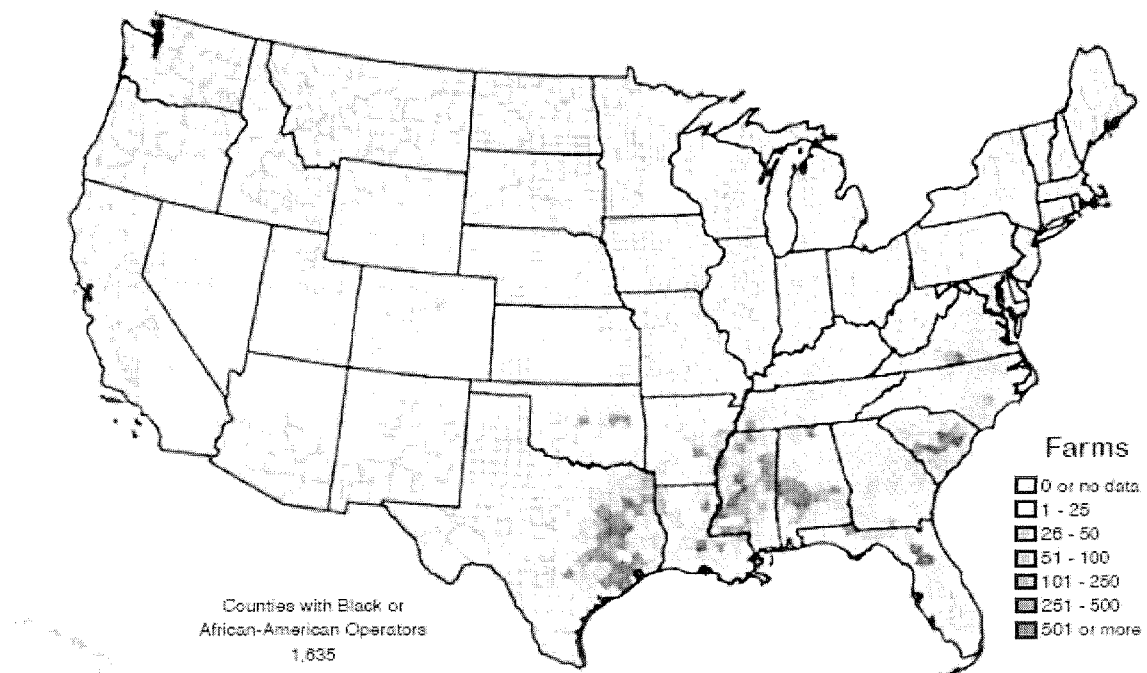
USDA tried to address the potential for undercounting in the 2002 Ag Census. In addition to the principal operator, information was gathered on up to two additional operators for the first time that year. When three operators per farm could be reported, a total of 30,605 farms in the U.S. had Black or African-American operators in 2002. The 2007 Census reported 32,938 farms operated by African-Americans.

If the Ag Census data is correct, there still seems to be a disconnect between the number of people filing Pigford claims and the number of black farmers in the U.S.

No guarantees

There is no guarantee that anyone who claims to have been discriminated against and files a claim will be awarded a payment under the Pigford class action suit or the *Consolidated Black Farmers Discrimination Litigation*, authorized by Section 14012 of the 2008 Farm Bill. The consent decree set up a system for notice, claims submission, consideration, and review that involves a facilitator, arbitrator, adjudicator, and monitor, all with associated checks and balances. Under Pigford I, 69%, or 15,638 of the 22,549 of the Track A claims were approved, as of May 11, 2010, according to the Pigfordmonitor.org

The majority of farms owned by Black or African-American farmers are located the South with the highest percentage of principal farm operators in Mississippi, according to the 2007 Census of Agriculture. Source: USDA.



Under the Pigford consent decree, an eligible recipient is an African-American who:

1. Farmed or attempted to farm between January 1981 and December 31, 1996,
2. Applied to USDA for farm credit or program benefits and believes that he or she was discriminated against by the USDA on the basis of race, and
3. Made a complaint against the USDA on or before July 1, 1997.

The Pigford consent decree establishes a two-track dispute resolution mechanism for those seeking relief, according to the Congressional Research Service report, “The Pigford Case: USDA Settlement of a Discrimination Suit by Black Farmers.”

The most widely-used option—Track A—provides a monetary settlement of \$50,000 plus relief in the form of loan forgiveness and offsets of tax liability. Track A claimants had to present substantial evidence (i.e., a reasonable basis for finding that discrimination happened) that the loan was denied, provided late, approved for a lesser amount than requested, encumbered by restrictive conditions, or USDA failed to provide appropriate loan service, and such treatment was less favorable than that accorded specifically identified, similarly situated white farmers; and the USDA’s treatment of the loan application led to economic damage to the class member.

Under Track B, there is a higher burden of proof and the potential for a much higher payment. Track B claimants had to prove their claims and actual damages by a preponderance of the evidence. The documentation was reviewed by a third party arbitrator, who made a binding decision. The consent decree also provided injunctive relief, primarily in the form of priority consideration for loans and purchases, and technical assistance in filling out forms, according to the CRS report. As of January 12, 2010, the CRS reported that there were 172 eligible Track B claimants.

According to USDA data obtained by *Agri-Pulse* under a FOIA request, Track B payments have ranged from \$25,000 to over \$625,000.

Not enough time?

The opportunity to participate in the Pigford class action case was publicized in a variety of traditionally black media outlets and through a series of meetings across the South. According to testimony from Attorney Alex Pires, at least 42 meetings were held in Alabama alone. In 1998, USDA’s Farm Service Agency provided \$40,000 to the National Black Farmers Association to provide training and technical assistance, according to FSA records.

Still, the Black Farmers Association has long complained that there was not sufficient time or notice for farmers to file claims. Under the original consent decree, claimants were to file their claim within 180 days of the consent decree, or no later than October 12, 1999.

The Court extended the deadline to September 15, 2000, but only for claimants who could show that “extraordinary circumstances,” such as damages incurred from Hurricane Floyd or medical problems prohibited them from filing claims.

Approximately 73,800 Pigford II petitions were filed under the late filing procedure, but only 66,000 were received on time.....that is, before the September 15, 2000 late filing deadline, according to the CRS report.

Approximately 58,000 claimants who filed claims after the October 12, 1999 deadline, but before the September 15, 2000 “late-filing” cut-off, never had their discrimination claims resolved because they failed to meet the “extraordinary circumstances” test for the filing of late claims, according to the Black Farmer Claims website.

Frustrated by the delays, the Black Farmers and Agriculturalists Association (BFAA) filed a \$20.5 billion class action lawsuit in September 2004 on behalf of roughly 25,000 farmers against the USDA for alleged racial discriminatory practices against black farmers between January 1997 and August 2004. The lawsuit, however, was dismissed in March 2005 because BFAA failed to show it had standing to bring the suit.

Congress stepped in to remedy the situation, introducing the Pigford Claims Remedy Act of 2007 and the African-American Farmers Benefits Relief Act of 2007, providing relief for those that previously filed a Pigford discrimination lawsuit, but were denied as a result of late-filing. Those measures were included in the 2008 Farm Bill and authorized up to \$100 million for potential settlement costs.

On February 18, 2010, Attorney General Eric Holder and Secretary of Agriculture Tom Vilsack announced a settlement of these so-called Pigford II claims, which, if funds are appropriated, would bring the total to \$1.25 billion and presumably be enough to settle all of the remaining claims.

Foreclosures Completed FY 2003-2008 Total by Race by Year

FISCAL YEAR	White	African American	Asian/PI	American Indian	Hispanic	Total
2003	275	9	5	2	20	311
2004	253	10	2	14	19	298
2005	196	15	0	6	12	229
2006	159	24	4	2	9	198
2007	115	21	3	2	9	150
2008	111	26	5	7	19	168

Source: USDA/FSA FOIA request by Agri-Pulse.

For some farmers unable to repay USDA loans, foreclosures continue. However, USDA’s Farm Service Agency has changed their procedures in an attempt to prevent discrimination. Since 1997, USDA’s Farm Service Agency has required all foreclosure cases to be reviewed and cleared by its civil rights staff working at state offices. Under the 2008 Farm Bill, Congress directed the Office of Inspector General to determine whether or not foreclosure proceedings involving socially-disadvantaged farmers from 2003-2008 were consistent and in conformity with actual laws. The OIG found that FSA’s process was indeed consistent and conformed with the laws. “Moreover, when we compared how FSA restructured and foreclosed loans to socially disadvantaged and non-socially disadvantaged borrowers, we found that the borrowers were processed consistently.

“Putting this behind us will allow USDA to focus on the future,” emphasized Vilsack in an interview earlier this year. **“It will help socially-disadvantaged farmers become and remain successful in their efforts to farm. And hopefully it sends a strong message about the new direction for USDA.”**

Secretary Vilsack has been focused on addressing a wide variety of civil rights issues, both in the field with customers and internally, at USDA headquarters.

As one of his first orders of business after being confirmed, Secretary Vilsack issued a memo proclaiming “A new Civil Rights Era for USDA” in which he vowed to address about 3,000 complaints that had yet to be processed and to “move USDA into a new era as a model employer and premier service provider.”

A Government Accountability Office (GAO) report issued in May 2008 found that management of civil rights complaints by the USDA “continues to be deficient despite years of attention.” Vilsack’s memo incorporated many of GAO’s suggestions.

USDA’s renewed focus on civil rights is a mixed blessing for some of the folks who work at an agency, originally founded as “the People’s Department.” An employee who only agreed to speak on a confidential basis told *Agri-Pulse*:

“Some people think that our agency is the last plantation, that we have systemic bigotry. It really hurts morale in the agency and recruitment efforts. Why would a minority candidate want to work here after all they have heard? ”

To help document improvements in civil rights cases within USDA, *Agri-Pulse* filed another FOIA on July 2, 2009, requesting additional information on the number of minorities employed in the agency and civil rights cases filed from 1997 to present. Agency staff acknowledged receipt of our request, but almost 11 months later, no formal response has been received.

For more information, go to: www.Agri-Pulse.com

U.S. Farms Operated by Blacks and Whites 1900-1997

	Blacks	% Change	Whites	% Change
1997	18,451	-1.9	1,882,652	-0.9
1992	18,816	-18.0	1,900,629	-8.0
1987	22,954	-31.0	2,064,805	-6.5
1982	33,250	-41.9	2,207,726	-8.0
1978	57,271	-57.3	2,398,726	-22.4
1969	133,973	-50.8	3,089,885	-9.6
1959	272,541	-51.3	3,419,672	-28.8
1950	559,980	-17.9	4,802,520	-10.7
1940	681,790	-22.8	5,378,913	0.1
1930	882,852	-4.6	5,373,703	-2.3
1920	925,710	3.6	5,499,707	1.1
1910	893,377	19.6	5,440,619	9.5
1900	746,717	--	4,970,129	--
Overall percentage loss, 1920-1997				
			-98.0	-65.8

Chart Source: “Returning African Farmers to the Land” by Wood and Gilbert p 45. The Review of the Black Political Economy, 2000.

The authors noted that “establishing direct comparisons between the 1997 Census of Agriculture numbers and those from earlier years is problematic due to a change in the enumeration technique. In 1997, for the first time, the USDA conducted the count rather than the Census Bureau and found 26,785 Black farmers rather than 18,451 identified by the U.S. Census. “The farm numbers appear to be more accurate than they have been previously. Thus, while the numbers are more accurate, we cannot determine if the rate of decline has improved. The Census only identified one operator per farm.”

Article from <http://www.libertynewsonline.com>

USA :: [Discrimination](#)

THE PIGFORD vs GLICKMAN CASE: RIPOFF OF THE AMERICAN TAXPAYERS BY BLACK ACTIVISTS

08-02-2010 2:16 am - John Wallace



Pigford v. Glickman was a class action lawsuit against the United States Department of Agriculture (the "USDA"), alleging racial discrimination in its allocation of farm loans and assistance between 1983 and 1997. The lawsuit ended with a settlement in which the U.S. government agreed to pay African American farmers \$50,000 each if they had attempted to get USDA help but failed.

To date, almost \$1 billion has been paid or credited to the farmers under the settlement's consent decree.

CASE HISTORY:

The lawsuit was filed in 1997 by Timothy Pigford, who was joined by 400 additional African American farmer plaintiffs. Dan Glickman, the Secretary of Agriculture, was the nominal defendant. The allegations were that the USDA treated black farmers unfairly when deciding to allocate price support loans, disaster payments, "farm ownership" loans, and operating loans, and that the USDA had completely failed to process subsequent complaints about racial discrimination.[1]

After the lawsuit was filed, Pigford requested blanket mediation to cover what was thought to be about 2,000 farmers who may have been discriminated against, but the U.S. Department of Justice opposed the mediation, saying that each case had to be investigated separately. As the case moved toward trial, the presiding judge certified as a class all black farmers who filed discrimination complaints against the USDA between 1983 and 1997.

The plaintiffs settled with the government in 1999. Under the consent decree, all African American farmers would be paid a "virtually automatic" \$50,000 plus granted certain loan forgiveness and tax offsets. This process was called "Track A".[2]

Alternatively, affected farmers could follow the "Track B" process, seeking a larger payment by presenting a greater amount of evidence — the legal standard in this case was to have a

preponderance of evidence along with evidence of greater damages.

THE RIPOFF OF THE TAXPAYERS BY BLACK ACTIVISTS:

Originally, claimants were to have filed within 180 days of the consent decree. Late claims were accepted for an additional year afterwards, if they could show extraordinary circumstances that prevented them from filing on time.

Far beyond the anticipated 2,000 affected farmers, 22,505 "Track A" applications were heard and decided upon, of which 13,348 (59%) were approved. \$995 million had been disbursed or credited to the "Track A" applicants as of January 2009[update], including \$760 million disbursed as \$50,000 cash awards.[3] Fewer than 200 farmers opted for the "Track B" process.

HOW COULD THERE BE 86,000 DISCRIMINATION CLAIMS IF THERE WERE ONLY A TOTAL OF 26,785 BLACK FARMERS IN 1977?

Beyond those applications that were heard and decided upon, about 70,000 additional petitions were filed late and were not allowed to proceed. Some have argued that the notice program was defective, and others blamed the farmers' attorneys for "the inadequate notice and overall mismanagement of the settlement agreement." A provision in a 2008 farm bill essentially allowed a re-hearing in civil court for any claimant whose claim had been denied without a decision that had been based on its merits

In other words, the number of total claims filed by Black people claiming to be farmers not only exceeded the original estimate by almost 40 to 50 times, it is close to four times the USDA's estimate of 26,785 total black owned farms in 1977! One reason for this is that the settlement applied to farmers and those who "attempted to farm" and did not receive assistance from the USDA. So Black people who were thinking of going into the farming business, but never did, were also eligible for the \$50,000 fraud award, because they might have been discriminated against. It sounds like "Black Reparations" to me. Paying off the latest group of Pigford fraud application cases is said to be a high priority for the Obama administration.

CONNECTION TO SHIRLEY SHERROD - USDA

Remember the recent case involving a woman by the name of Shirley Sherrod, whose quick dismissal from the Obama administration may have had less to do with her comments on race before the NAACP than her long involvement in the aptly named "Picford" case. In a special article written for the Washington Examiner, Tom Blumer explained that Shirley Sherrod and the group she formed along with family members and others, New Communities, Inc. received the largest single settlement under the Pigford case.

Her organization, New Communities, is due to receive approximately \$13 million (\$8,247,560 for loss of land and \$4,241,602 for loss of income; plus \$150,000 each to Shirley and her husband Charles for pain and suffering). There may also be an unspecified amount in forgiveness of debt. This is the largest award so far in the minority farmers law suit.

What makes this even more interesting is that Charles Sherrod, Sherill's husband, appears to be the same Charles Sherrod who was a leader in the radical group Student Nonviolent Coordinating Committee in the early 1960s. The SNCC was the political womb that nurtured the Black Power movement and the Black Panthers before it faded away.

In his article, Blumer had some interesting questions about this settlement and about Sherrod's rapid departure from the USDA

- Was Ms. Sherrod's USDA appointment an unspoken condition of her organization's settlement?
- How much "debt forgiveness" is involved in USDA's settlement with New Communities?
- Why were the Sherrods so deserving of a combined \$300,000 in "pain and suffering" payments -- amounts that far exceed the average payout thus far to everyone else? (\$1.15 billion divided by 16,000 is about \$72,000)?
- Given that New Communities wound down its operations so long ago (it appears that this occurred sometime during the late 1980s), what is really being done with that \$13 million in settlement money?

Here are some other questions to consider:

- Did Shirley Sherrod resign so quickly because the circumstances

of her hiring and the lawsuit settlement with her organization that preceded it might expose some unpleasant truths about her possible and possibly sanctioned conflicts of interest?

- Is USDA worried about the exposure of possible waste, fraud, and abuse in its handling of Pigford?
- Did USDA also dispatch Sherrod hastily because her continued presence, even for another day, might have gotten in the way of settling Pigford matters quickly?

Here is another area for concern: In her position at the not for profit, "Rural Development Leadership Network," a network of activists and community builder, was Sherrod involved in any way in encouraging people to submit fraudulent claims under Pigford? Did she put Black people who owned rural land in touch with lawyers who would file the paperwork claiming attempts to farm had been prevented by the non cooperation of the local USDA?

As many of you may know, there are a multitude of small parcels of non productive rural land all across the south, land unsuitable for mechanized agriculture that was once owned by subsistence farmers, black and white alike. Many of these parcels continue to be owned by family members who moved elsewhere out of sentimental reasons. The property taxes and other carrying costs are cheap and often ancestors are buried there in family plots. A drive on any country road in the South may turn up several carefully maintained postage stamp sized family cemeteries. I wonder how many of the these owners claimed they had farmed, attempted to farm, or thought about farming such acreage to score a fast \$50,000 Black Farmer Fraud Award from Uncle Sam?

I guess if you are or were a poor White, Asian, Native American or Hispanic farmer, you're just out of luck in collecting your \$50,000 fraud award.

FOOTNOTES:

1. Timothy Pigford, et al., v. Dan Glickman, Secretary, United States Department of Agriculture, US District Court for the District of Columbia, Civil Action No. 97-1978 (PLF). Paul L. Friedman, U.S. District Judge.
2. "The Pigford Case: USDA Settlement of a Discrimination Suit by Black Farmers", Tadlock Cowan, Congressional Research Service, January 13, 2009. Fetched February 9, 2009 from [1].

3. "The Pigford Case: USDA Settlement of a Discrimination Suit by Black Farmers", p. 5. Tadlock Cowan, Congressional Research Service, January 13, 2009. Fetched February 9, 2009 from [2].

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Trio calls for Pigford investigation

Republicans call for DOJ investigation of Pigford settlements, allege widespread fraud and claim whistleblowers are prepared to testify.

Congressmen, alleging “massive, widespread fraud” amongst claimants and attorneys in the Pigford settlements, have called on the Department of Justice to open an investigation. During a Wednesday press conference, legislators said whistleblowers – including an FBI agent, USDA employees and black farmers – are prepared to testify about the malfeasance.

For more on potential fraud in the Pigford case, see [USDA's settlement with black farmers](#)

The trio of Republicans – Iowa Rep. Steve King, Minnesota Rep. Michelle Bachmann and Virginia Rep. Bob Goodlatte – said they want legitimate cases of USDA discrimination against black farmers to be rectified. However, they made clear that plenty of evidence has surfaced that deserves to be addressed by investigators.

King said more USDA employees wanted to speak on the record regarding the case but were fearful of losing their jobs.

The press conference can be seen at [conference](#)

Interestingly, also on Wednesday, Agriculture Secretary Tom Vilsack called on Congress to fund the \$1.15 billion settlement.

“While members of Congress have noted the bipartisan support for this legislation, it is time for Congress to turn their support into action and fund the settlement agreement once and for all,” said Vilsack. “The time for Congressional action to fund the settlement agreement is running out, and the victims of this discrimination should not need to wait a day longer. Congress should not leave today without exhausting every option for passing legislation that provides for the funding.”

Vilsack’s statement came only days after several farm-state legislators -- including Arkansas Sen. Blanche Lincoln, Louisiana Sen. Mary Landrieu and North Carolina Sen. Kay R. Hagen – announced they would propose a bill to fund last February’s \$1.15 billion settlement.

Unfortunately for those wanting an investigation, the agitating trio of legislators – especially King and Bachmann -- are widely seen as beholden to right-wing, even fringe, cultural interests making it easier to dismiss their claims regarding the Pigford settlements. If their voices are not joined by a more inclusive chorus, the chances of an investigation or hearings on Pigford certainly lessen.

Unsurprisingly, in an August interview with *Delta Farm Press*, John Boyd, president of the Black Farmers Association, hit King hard over his Pigford stance.

“When I hear that stuff from (Iowa Rep.) Steve King ... you have to ask ‘what is he ever for?’ I’ve been testifying before Congress many times and he’s always there. What does he support? What is he for?

“If he has a problem with black farmers stating their claim against the government, then where is his urgency of need to stop the discriminating against black farmers? I haven’t seen that statement.

“We have 80,000, or so, black farmers saying they have a problem being mistreated by the federal government. What’s his stand on fixing that?”

Now we know.

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More claims than Black farmers

http://www.agri-pulse.com/20100603H1_Pigford_Response.asp

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East Point, GA, June 1 Black farmers filed suit against the U.S. Department of Agriculture in 1997 because of long standing racial discrimination in services and credit opportunities. The lawsuit is referred to as Pigford v Vilsack (Pigford being Tim Pigford, a Black farmer in North Carolina, and Tom Vilsack the present Secretary of Agriculture) and is in its second phase. Pigford II, as it is called, is for the thousands of African Americans who filed petitions late in the lawsuit and have yet to file a claim.

Of relevance to the Pigford lawsuit, in 1983 President Ronald Reagan eliminated the Office of Civil Rights at USDA. This meant there was no place in the government for Black farmers to address their grievances. The office was not re-opened until 1996 during the Clinton administration. As noted below, it is this period that encompasses the eligibility requirements for Black farmers to participate in the Pigford lawsuit.

Under the Pigford consent decree, an eligible recipient is an African-American who:

- (1) Farmed or attempted to farm between January 1981 and December 31, 1996;
- (2) Applied to USDA for farm credit or program benefits and believes that he or she was discriminated against by the USDA on the basis of race; and
- (3) Made a complaint against the USDA on or before July 1, 1997.

The potential universe of farmers in Pigford II is 80,000. Your article raises questions about this figure. You state, for one, that the number far exceeds Black farms in the agriculture census, which, in the recent 2007 census, was 32,938.

There are a number of things to consider in understanding this apparent anomaly, but it is perhaps best to start with the census itself.

(1) Discrimination against Black farmers has been pervasive. The discrimination did not stop with lack of services from USDA but included the census itself. Counting Black farmers was, on the whole, not prioritized by census administrators. Historically, thousands of Black farmers have not been listed on USDA files and it is only recently that there has been a concerted effort to locate and adequately count minority farmers (i.e. African America, Native American, women, Asian, Latino). But this process is in its infancy and its likely that the count still does not reflect the reality of the Black farming community;

(2) Over the 16 years covered by Pigford, Black farms that are reported in the census likely had more than one person attempting to use the land to produce crops father and son, or siblings. This is no different than with white-owned farms;

(3) The 80,000 undoubtedly includes thousands of individuals who were not familiar with the requirements of the Pigford lawsuit when they applied to participate, and they will ultimately be screened out. Please keep in mind that none of the 80,000 listed applicants has been interviewed to determine if they meet the class definition. Anecdotal evidence is that many don't;

(4) In some instances it is likely that more than one heir has applied to participate on behalf of a farmer who died in the 1980s. But, those applications will be combined into one, further reducing the class size at the end of the day;

(5) Many Black farmers attempted to obtain services from USDA offices and were denied and generally their names have not been recorded in USDA offices unless they actually received a loan or others services.

You refer to 163 claimants in the lawsuit being from Illinois and that in the last agriculture census there were only 78 Black farmers in the state. You question the discrepancy and correctly surmise they might be those who attempted to farm, gave up and moved to another state.

Illinois is directly north of Mississippi. Historically, leaving the oppressive state of Mississippi was a

priority for many during the heart of the Jim Crow years and into the difficult adjustment period after passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act and into the 1970s and 1980s. Many would simply go up the Mississippi River into Chicago and other areas of Illinois where there were family and friends. While your article reveals that most Black farmers in the country are in Mississippi, even today it is a common saying that there are more Mississippi land owners in Chicago than in Mississippi.

You also question the relevance of the late filers and the issue of not being notified. You refer to Class Counsel Attorney Alexander Pires stating that 42 meetings were held in Alabama alone.

Notifying the potential claimants in the Pigford lawsuit was not an easy task. Southern Blacks have dispersed throughout the country. There was not a list of individuals with addresses to contact as would be case, for example, with credit card holders or stockholders. Many of the potential claimants were living all over the country and many would have made a concerted effort to leave the rural South. As a result, it took some time for the information about the lawsuit to reach the potential universe of claimants and much of it was through word of mouth.

Further, as the late J. L. Chestnut, a prominent civil rights lawyer who was a leader in the Pigford case, told both Judge Friedman and the House Committee on the Judiciary, many eligible claimants did not come forward to attend the meetings because they simply didnt believe it would do any good. All they knew was that no one ever before had been able to hold USDA accountable for its treatment of Blacks and there was no good reason to expect that would change soon that is, until late in the last few weeks of the six-month application period, when the first rulings came down in favor of individual claimants. Once that word spread, those who had been too discouraged to apply came forward and the Pigford lawyers were hit with a tidal wave of applicants just after the filing deadline.

You also question the number of claimants in large cities in Ohio. You write, quoting a source, that there are a number of legitimate cases who have long been denied their payments and will benefit from the additional funding. But many more appear to have been solicited in an attempt to game the Pigford system. For example, our source said a large number of late filers had similar zip codes in large Ohio cities, suggesting a door to door effort might have taken place to find likely candidates. The clustering of applications does not seem unreasonable given that when families and individuals leave the South they tend to cluster together with those they know; or when families and communities anywhere in the world leave an area or move to another country they tend to gravitate toward people of a familiar culture to cushion the shock of the move. As mentioned, one of the most viable communications to seek claimants in the lawsuit was word of mouth which could well have been the case in Ohio.

And again, please keep in mind that none of the late applicants has been interviewed and many of them simply are not aware of the requirements of the class definition, or will turn out to be duplicative representatives of their deceased parents or grandparents who were denied by USDA, lost their land, and moved North.

Yet, you also provide information about the infrastructure for the lawsuit. The Pigford consent decree set up a system for notice, claims submission, consideration, and review that involves a facilitator, arbitrator, adjudicator, and monitor, all with associated checks and balances. The process has been a rigorous one whether for those in Track A (claimants with less documentation) or Track B (with more documentary proof of discrimination). Claimants have to prove, to the satisfaction of authorities in the various levels of the lawsuit, that they comply with the eligibility requirements. Thirty percent of those who filed claims in the original Pigford case lost, and that doesnt even count the literally thousands of persons who were turned away by the class lawyers without their claims being filed, once it became apparent that they didnt meet the class qualifications. And, as I understand it, the same rigor in weeding out those who dont qualify will be applied to the processing of Pigford II applicants.

The Pigford lawsuit has not solved all the problems for Black farmers but it has brought attention to the issue and financial relief to thousands and, as you mentioned, the Obama administrations USDA Secretary Vilsack has vowed to address the on-going discrimination within his department. But, as J. L. Chestnut said in 2005 Pigford was not perfect. No lawsuit or anything else crafted by the hand of man is perfect, because man is not perfect. I will stand here and tell you that if I had understood in 1997 the magnitude, the real magnitude of mistrust that hurting Black farmers felt against their government, I would have searched for some kind of formula specifically to address that problem. I dont know what we would have come up with. I dont know if we could have come up with anything, but more attention would have been given to the problem. When people have been ruined by their

government, it is hard for them to believe that this government now wants to help them. And I don't care how much you advertise or where you advertise, you can't get really to that problem in depth.

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#30

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Pigford: review set-up, anti-fraud measures (Updated)

Tue, 2010-11-30 17:29

[David Bennett](#)

UPDATE: On Tuesday afternoon, the Claims Settlement Act of 2010 passed the House on a 256 to 152 vote. The legislation now awaits President Obama's signature.

Following the vote, Obama said Congress dealt with the funding bill "in a bipartisan fashion to bring this painful chapter in our nation's history to a close. ... Yet, while today's vote demonstrates important progress, we must remember that much work remains to be done." The Obama administration "will continue our efforts to resolve claims of past discrimination made by women and Hispanic farmers and others in a fair and timely manner."

Having passed the Senate, the \$4.6 billion Claim Settlement Act of 2010 is now in the hands of the House. The legislation – which bundles together settlements for Pigford II, Cobell (brought by Native Americans against the Interior Department over the management of Indian trust accounts and resources) and four Native American water rights cases – is expected to be voted on in early December.

For more, see [Pigford funding passes out of Senate](#)

On Monday, Agriculture Secretary Tom Vilsack and U.S. Associate Attorney General Tom Perrelli addressed the settlements and how the claims process will be set up. While keen to point out efforts to root out any fraud, Vilsack made it clear it is unlikely anyone at USDA will be punished for the discrimination that was the basis for Pigford.

"President Obama has been very clear with me ... that we're to treat farmers, ranchers and growers equally and fairly," said Vilsack. "That means not only making sure we're doing the right things today but righting the wrongs from the past."

"Civil rights has become a top priority of mine since coming to USDA and we've implemented a comprehensive program to learn from past errors, to learn from our mistakes, and take definitive action to ensure all our customers are treated fairly. We've conducted civil rights training in our FSA locations, doubled our compliance reviews and seen the lowest number of FSA complaints since we began keeping records."

Also on the USDA agenda: "cultural transformation. Today, we have the lowest number of equal employment opportunity complaints since the department began keeping track."

For more see [\\$1.25 billion settlement for black farmers](#)

Vilsack spoke on how claims will proceed, assuming House passage of the settlement funding.

“First, the proposal passed by the Senate and agreed upon by USDA, lays out a very complicated and detailed method for individuals filing a claim seeking compensation. They must qualify as a class member (which means they must have filed a ‘late-filing request’ under the original Pigford consent decree sometime after October 1999 and prior to June 2008). If they aren’t on the current ‘timely’ list of those who filed late requests, they’ll have to provide significant and independent documentary evidence that they had, in fact,” made such a filing.

In addition to being a member of the class, claimants “also must furnish a detailed, complete claim form. If they’re represented by counsel, that will include a statement by the attorney (representing the claimant under penalty of perjury) that the claim is based on existing law and factual contentions are true and correct.”

The eligibility/payment process will include “a number of steps inherent in the review of these claims by the comptroller general and USDA’s inspector general. (This will) ensure we’re performing the settlement process appropriately ... and paying those who are entitled to payment.

“Payments will not be forthcoming until the court has ultimately approved the final accounting of expenditure funds made available in the appropriation.”

Vilsack is hopeful the House takes quick action “because we’d like to put this chapter at USDA behind us. Then, we’ll focus on other cases pending against the department.”

The cases have been in court for decades, said Perrelli, and have been “incredibly hard-fought. Both judges and Congress have repeatedly urged the parties to settle and there’s never been any doubt that significant sums were necessary to resolve them....

“With respect to Pigford II, in the 2008 farm bill, Congress gave new claims to African American farmers who’d submitted late claims to the original Pigford settlement. Working with the USDA, we at DOJ took that class of individuals ... didn’t make one additional person eligible, and saw that we could fight this for years in court or see if there was a more responsible way to resolve it. We think this settlement does that.”

Vilsack said USDA operations are currently under review to make sure the agency “isn’t making the same mistakes made 20 years ago.” That report is due at the end of December.

Looking at claims during the last Bush presidency “we found, roughly, 3,000 claims that required further investigations and 600, or so, that might very well lead to claims. We’ve asked Congress to take a look at that in terms of the statute of limitations.”

Congress, said Vilsack, has yet to respond.

If the funding is approved, how long before payments reach claimants?

“I don’t know that anyone can give a good estimate,” said Vilsack. “Obviously, an individual arbitrator ... has to be appointed with the consent of all engaged. That person/s will have to set up shop (and review claims).

“That will take some time. We want to make sure it’s done right and, as it is looked at by the comptroller general or inspector general, there aren’t any problems. We’ll take the time required to do it right with the understanding that folks have waited a long time.”

Vilsack was also asked about the USDA facing discrimination cases involving Hispanics and women.

“We are engaged in an effort to provide opportunities for a quicker resolution for individual claimants (in the cases involving Hispanics and women). They are different than the Pigford II cases because there was no congressional directive or a certification of the courts of a class. So, these are individual claims...

“What we hope is that in the not-too-distant future we’ll see how to set up a process where those claims will at least have the option of resolving their dispute with the government case-by-case.”

Asked if the Obama administration has decided not to punish USDA employees for past discrimination, Vilsack said his focus “has been on making sure we don’t get the government in the same situation it’s been in (over the) last 20 or 30 years.” That means “taking a look at our current practices and procedures and making sure we’re not making the same mistakes again, intentionally or unintentionally...

“I think it might be somewhat difficult to be able to establish responsibility for something that may have occurred 20 or 30 years ago. I think what we ought to be doing is focusing ... on making sure we’re serving today’s farmers as well as we possibly can.”

Perrelli fleshed out the anti-fraud measures in the Pigford settlement. “The Pigford II settlement arises out specific legislation out of Congress that created a class of individuals of between 65,000 and 66,000 individuals who’d filed claims late in the original Pigford settlement...

“With respect to fraud, the government’s liability is capped. That provides some protection.

“More directly, there is an independent adjudicator who is responsible for making sure the process is fair and without fraud. They are directed, if there is any concern about fraud, to seek additional, appropriate information. ... There will (also be) multiple audits that will focus across the whole.”

Source URL: <http://deltafarmpress.com/government/pigford-review-set-anti-fraud-measures-updated>

A head lawyer for **black farmers** said it's likely they won't see money from their discrimination settlement until at least 2012.

"There will be a deadline for claims, but it has not yet been set," said **Andrew Marks**, a lead counsel for the farmers. "It's highly unlikely that anyone will get any money until some time in 2012."

President Barack Obama recently signed the \$1.2 billion settlement into law, ending 20 years of legal back and forth and political fighting over the money for farmers who were discriminated against by the federal government when it came to loans and subsidies.

Farmers will receive an average of about \$50,000, and some may qualify for up to \$250,000 if they can prove economic damage up to that amount. **John Boyd**, president of the **National Black Farmers Association**, has repeatedly said that each farmer will have to go through a mediation process and that this was not a blanket settlement.

The process is based on concerns by some members of Congress about possible fraud. Rep. **Michelle Bachman** said the settlement was "rife with fraud." But there are several layers of approval that farmers will have to go through to claim a settlement. After meeting with a mediator, the settlement will have to be approved by the court and also be reviewed by government auditors.

The length of the process is one reason Boyd said he is speaking with the **U.S. Department of Agriculture** about funding outreach to farmers so that a repeat of what happened during the first settlement doesn't occur.

After black farmers successfully sued the government for discrimination in 1999 in the **Pigford v. Glickman** case, the federal government paid out \$980 million to more than 16,000 farmers. Many eligible farmers were left out of the settlement or were not given enough time to file a claim. In 2007, then-Sen. **Barack Obama** introduced a bill to reopen the case, and the \$1.2 billion settlement was agreed upon.

"My goal is to not leave anyone out. Now is the time for the farmers to reach out and say: 'This is what happened to me and I can tell my story,'" Boyd told **BlackVoices** in an interview last week. About 30,000 farmers have filed to be a part of the class.

Boyd said the settlement was bittersweet because so many farmers had died or lost their property while waiting for the claim.



Marks answered a few questions about the next steps in the process for **Gannett News Service**.

Question: What should farmers do now?

Answer: They should start gathering information, particularly any proof that they filed a claim in the original Pigford case. They also should gather any proof they were denied loans or other assistance or received less favorable terms than white farmers got.

Q: Who can apply?

A: This settlement applies only to black farmers who missed the deadline for filing a claim in the Pigford I case. But even farmers who can't prove they filed an application past that deadline should move forward in pursuing a claim, because claims arbitrators should have those records, Marks said.

Q: When can farmers apply and where?

A: They will be notified later, perhaps early next year, about where and when to file a claim.

Q: Why is it taking so long to get the money to farmers?

A: Final court approval of the settlement may not happen until next summer, Marks said. Farmers likely will have six months after that to file claims. Meanwhile, arbitrators are expected to begin reviewing claims.

Q: How much will black farmers get?

A: Farmers can choose two options for payment. The fast-track option pays a fixed amount. The other may pay more but requires a higher burden of proof, including evidence of economic damages.

Tagged as: [Andrew Marks](#), [AndrewMarks](#), [Barack Obama](#), [BarackObama](#), [black farmers](#), [black farmers settlement](#), [BlackFarmers](#), [BlackFarmersSettlement](#), [John Boyd](#), [JohnBoyd](#), [michelle bachmann](#), [MichelleBachmann](#), [PigfordV.Glickman](#)
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