

## 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
<b>Total</b>	<b>15,601</b>

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.

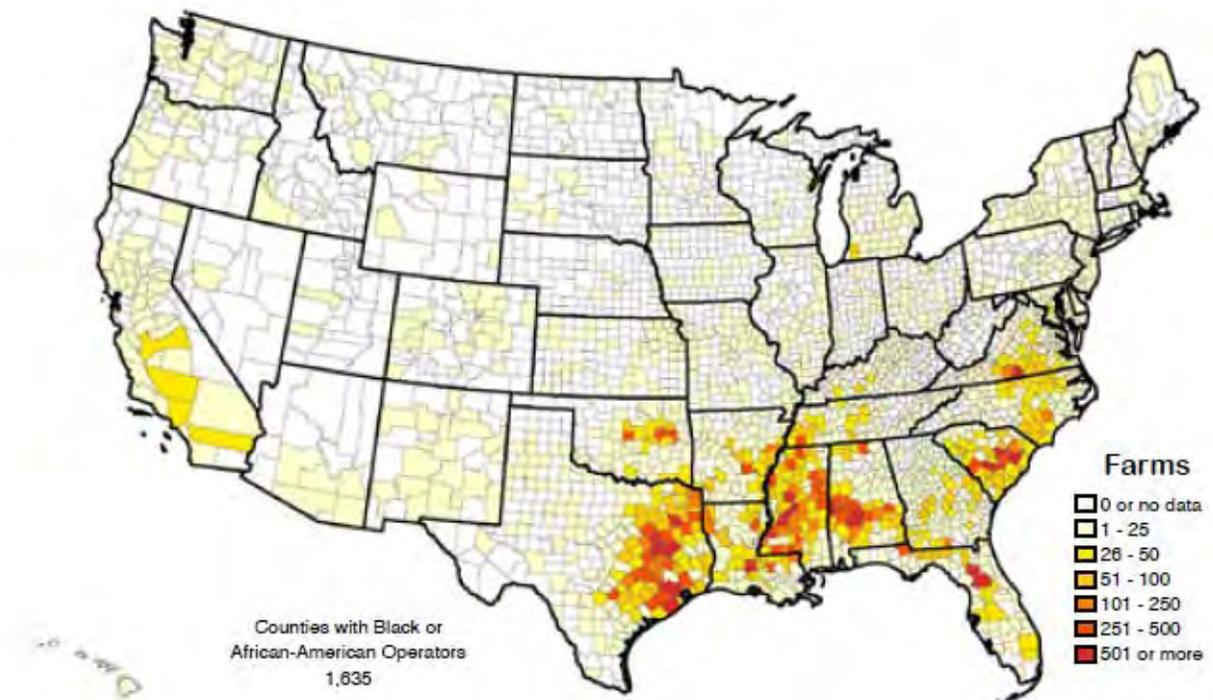
USDA tried to address the potential for undercounting in the 2002 Ag Census. In addition to the principal operator, information was gathered on up to two additional operators for the first time that year. When three operators per farm could be reported, a total of 30,605 farms in the U.S. had Black or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

<b>FISCAL YEAR</b>	<b>White</b>	<b>African American</b>	<b>Asian/PI</b>	<b>American Indian</b>	<b>Hispanic</b>	<b>Total</b>
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](http://www.Agri-Pulse.com)

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

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

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.”