

National Black Agricultural Alliance
DRAFT Recommendations to be presented at the Fairness Hearing

The National Black Agricultural Alliance (Alliance) is deeply concerned about the proposed Pigford II settlement agreement for Black farmers. The Pigford Black Farmer Consent Decree that you signed on April 14, 1999 left us hopeful that Black farmers would finally receive relief for discrimination that occurred since the creation of the USDA. We were led to believe that prevailing claimants would receive financial compensation (i.e. \$50,000 for Track A and actual damages for Track B) and debt relief. The debt relief was supposed to discharge all of the farmers' outstanding debt to USDA that was incurred under or affected by the program(s) where discrimination had occurred. An additional 25% was to be added to cover the taxes and was to be accompanied by injunctive relief. This original settlement was supposed to have a positive impact on discriminated farmers as well as entice future generations of Black farmers to join the profession. Twelve years later, we see that it has done neither. Black farmers continue to be the most rapidly diminishing demographic in agriculture and are losing farms at the same rate as they were prior to Pigford. We request that measures be implemented to avoid a repeat of the shortcomings in Pigford I. Doing so is critical in maintaining the rich source of diverse talent that Black farmers contribute to agriculture.

A review of the statistics (see **Table 1**) from the Pigford I cases raises major concerns with the recently passed Pigford II legislation. Our concerns focus on the following issues, a brief discussion of each follows:

- Very few active farmers prevailed, scarcity of debt relief awarded (only 371 out of 16281 (2.28%) claims);
- The high percentage of Track A claims versus Track B;
- Bad claims processing and the role of the Farm Service Agency (FSA);
- General class requirements and proof of discrimination;
- Ombudsman for Pigford II claims.

Problems with Active Farmers and scarcity of debt relief

Many active farmers were denied altogether and did not receive any compensation. Apparently, there was an unusually high burden of proof for these farmers. In many instances, the difficulty and trickery involved in properly identifying a "similarly situated White farmer" was used as a means of denial. For those farmers who did prevail, only 2.28% received debt relief. To date, more than \$1 billion have been paid out to Black farmers. Nearly 95% of these funds were paid in cash at the \$50,000 level (plus tax), while only 4.1% (plus tax) was for debt relief.

The majority of those who did get debt relief only received partial relief. Discussions with farmers receiving these settlements revealed that attorneys did not follow through on processing their debt relief claims. In many cases, these farmers ended up worse financially than they were previously. They continue to have strained relationships with USDA, especially with FSA. These facts, coupled with aggressive foreclosure tactics of USDA employees, continue to be problematic. **Recommendation:** *Debt relief,*

accompanied by full access to USDA programs, should be a major emphasis in Pigford II.

Unusually high percentage of Track A claims compared to Track B

Over 99% of eligible claims were filed under Track A. Claimants were told by their attorneys that it would be easy to prevail in this category, and that they would receive complete debt relief and preferential treatment on future loans. Newspaper summaries corroborated this information. As of March 2011, over \$1 billion has been paid out with nearly 98% going to Track A payments. Of this amount, 74.19% has been paid in \$50k cash settlements. However, a mere 4% was used for debt relief. Nearly 20% (19.09% for cash payments and 0.69% for debt relief) of the total funds were used for IRS taxes. Unfortunately, these funds have not been properly accounted for and some prevailing farmers are being levied for tax fines. More details on this injustice appear later in this report.

Track B claims accounted for only 0.75% of the eligible claims and only 2.37% of the funds. Of this percentage, 1.95% was for cash payments and only 0.42% was for debt relief. Interestingly, the percentage of farmers receiving debt relief was higher **within** the Track B class (17.69%) than **within** the Track A class (4.16%). In other words, Track B claimants were more likely to have debt and receive relief than those in Track A.

Recommendation: *Claimants should be allowed to decide on the appropriate Track after an initial conference with their attorney.*

Bad claims processing and the role of Farm Service Agency

As mentioned previously, an unusually high percentage of claims from active farmers were denied in Pigford I. Additionally, active farmers received less debt relief than promised or no debt relief at all. FSA played a major role in making determinations on claim eligibility and processing.

Information from a number of Black farmers who prevailed in the Pigford I settlement indicates that the income taxes have not been paid on the \$50,000 and related debt relief. In some cases, the IRS is using collection methods to collect the erroneous taxes from farmers who received a settlement. These methods include extracting funds from bank accounts, forcing assets (e.g. farm equipment and land) to be sold, taking social security wages, taking income tax proceeds, and taking USDA payments (including direct, countercyclical, and conservation program payments). USDA has been unwilling or unable to provide farmers with documentation showing that the taxes were paid to the IRS. IRS has been unwilling to cease the erroneous tax collection activity. Prevailing farmers are trapped in the middle and continue to suffer. ***Recommendation:*** *Appoint an independent agency to make these determinations or appoint someone (e.g. an ombudsman) to closely monitor the situation.*

General class requirements and proof of discrimination

In Pigford I, there appeared to be a high burden of proof for Black farmers, especially for those who had previously conducted business with USDA. The Alliance agrees that there needs to be sufficient proof to show that one is indeed a member of the class, especially given the large amount of erroneous information that has been disseminated. Required information should include the land that was intended to be farmed, the time period involved, the types and amounts of loans, and the intended use of the funds (e.g. intended crops to produce, equipment to purchase, land to purchase, etc.). However, once a Black farmer proves that he is an eligible party, the evidence of discrimination should include information that could easily be provided by the complainant or USDA. Such information could include evidence such as loan officers' delaying the paperwork or reporting that certain forms or funds were available. Additional proof could be evidence that the approved loan was: 1) for less than the requested amount, 2) was for less than funds provided for similar uses in the area, or 3) was improperly influenced by local FmHA or FSA personnel.

Implementation of the above guidelines should allow this settlement to reach the objective of correcting prior discrimination. In addition, the Alliance requests that any remaining funds from the \$1.25 billion be used to address the large number of active farmers who were outright denied or denied proper debt relief in the first Pigford settlement. Combined, these two steps should prevent re-occurrence of discrimination. ***Recommendation:*** *Given the amount of misinformation that has been distributed, allow potential claimants a means to exit from the class after being given factual information.*

Independent oversight (e.g. an ombudsman) needed

Several factors have led to uncertainties about the Black farmer settlement: elapsed time since the initial settlement, other class action settlements (e.g. Keepseagle, Love, Garcia), misinformation placed in the media, and misunderstandings between Pigford I and Pigford II. In the first settlement, there was a wide disparity in the way cases were filed, reviewed, approved, and compensated. To avoid inconsistencies, a resource person needs to be named to provide independent oversight to the entire claims process and to serve as a mediator between claimants and USDA. This ombudsman should be familiar with agricultural production (crops produced, techniques, budgets, common practices, etc.) in the complaint areas. In addition, they should be familiar with USDA programs and the historical disparities that prompted the lawsuits. They should be given access to all records so that they can make informed recommendations on the eligibility and validity of claims that are filed. This person should also be looked upon to provide consistency in implementing the settlement. The ombudsman should be accessible by farmers, USDA, and DOJ. Finally, the ombudsman should be equipped with a staff sufficient to cover the anticipated workload. ***Recommendation:*** *The Alliance requests the task of providing names of individuals to serve as the ombudsman.*

Table 1: Results from Pigford I Black Farmer settlement as of March 2011

<u>Item</u>	<u>Track</u>	<u>Number</u>	<u>Percentages</u>	
			<u>of Total</u>	<u>w/in Track</u>
Complete Eligible Claims	All	22,721	100.00	.
Complete Eligible Claims	A	22,551	99.25	.
Complete Eligible Claims	B	170	0.75	.

Total Claims prevailed	All	16,281	71.66	
Claims prevailed	A	15,645	68.86	69.38
Claims prevailed (Non Credit, \$3k)	A	499	2.20	2.21
Claims prevailed	B	137	0.60	80.59

Claims denied	A	6,906	30.39	30.62
Claims denied	B	33	0.15	19.41

Debt Relief Total (of Prevailed)	All	371	2.28	.
Debt Relief (of Prevailed)	A	351	2.16	2.24
Debt Relief (of Prevailed)	B	20	0.12	4.01

		<u>Dollars (\$)</u>		
Total Payment (Track A & B)	All	1037593719		
Total Payment Track A	A	1013040977	97.63	100.00
Cash Track A @ \$50,000 level	A	769800000	74.19	75.99
Cash Track A non credit@ \$3,000 level	A	1515000	0.15	0.15
Debt Relief	A	42109347	4.06	4.16
IRS Tax on Cash Payments	A	198055649	19.09	19.55
IRS Tax on Debt relief	A	7166630	0.69	0.71

Total Payment Track B	B	24,552,742	2.37	100.00
Cash Track B	B	20,210,588	1.95	82.31
Debt Relief B	B	4,342,154	0.42	17.69

		<u>Number</u>	<u>% of Total</u>	<u>Approval %</u>
Farm Ownership Loan requests	All	126	0.55	.
Farm Ownership Loan Approved	All	29	0.13	23.02
Farm Operating Loan requests	All	218	0.96	.
Farm Operating Loan Approved	All	76	0.33	34.86
Inventory Land Requests	All	10	0.04	.
Inventory Land Approved	All	1	0.004	10.00