

Position Paper on Pigford Legislation
Federation of Southern Cooperatives/Land Assistance Fund
June 19, 2008

In 2008, the U.S. Congress passed the Farm Bill. Included in the bill was a provision to assist the “late filers” in the Pigford Class Action Lawsuit filed by Black farmers against the U.S. Department of Agriculture. The wording of the provision in the Farm Bill can be found on the Pigford Lawsuit section of our website.

Below please find an explanation about the Pigford Lawsuit which includes: (1) **BASICS ABOUT PIGFORD** and (2) **RESOLVING PROBLEMS IN PIGFORD**.

While the provision to assist late filers in the Farm Bill is an opportunity for some farmers, there were other provisions we had hoped would also be included but were not. For example, assistance to farmers who were denied in the Pigford Lawsuit because of technical problems were not included (please see the section below entitled “Other Critical Issues That Need To Be Addressed”).

I. BASICS ABOUT PIGFORD

Timelines In Pigford

October 9, 1998 – Class Certification in Pigford granted by the Court

April 14, 1999 – Consent Decree Approved

The court approves the Consent Decree (what the parties agreed to in the settlement) after a Fairness Hearing.

October 12, 1999 – Deadline for claim sheets to be submitted

Six months after approval of Consent Decree: 21,776 individuals filed a claim by this date and were considered eligible by the facilitator.

July 14, 2000 – Court ruling for late filers

The court ruled that individuals could send in an application to provide information about the extraordinary circumstances (as spelled out in Section 5g of the Consent Decree) as to why they missed the October 12, 1999 deadline. The deadline for the late filers was September 15, 2000.

September 15, 2000 – Late Filers “Application” Deadline

For those who did not submit a claim by October 12, 1999, there was an opportunity to submit an “application/affidavit” to the arbitrator to explain why the October 1999 deadline was missed. The person had to convince the arbitrator of the extraordinary circumstances that prevented him or her from submitting a claim.

If the arbitrator agreed that there were extraordinary circumstances, the person could then submit an actual “claim” in the case.

Key Positions In The Pigford Lawsuit

Facilitator: after initial contact by phone or in writing, assigns each farmer a Tracking Number; receives the claim sheets, assigns a Claim Number and determines eligibility for membership in the class;

Adjudicator: determines the merits of the Track A claims and whether or not individuals will prevail in the lawsuit;

Arbitrator: arbitrates the cases in Track B of the lawsuit; and determines if late claim applicants had extraordinary circumstances which warranted issuance of an actual claim form for the case;

Monitor: monitors implementation of the consent decree for the court; attempts to resolve disputes that arise between the parties under the terms of the consent decree; reviews claims which have been rejected to determine if errors were made to warrant reexamination by the adjudicator.

Basic Procedures In The Pigford Consent Decree

Tracks In The Lawsuit

- **Track A** – The class member has a fairly low burden of proof but the recovery is limited to \$50,000 payment to farmer and \$12,500 tax payment to IRS and debt relief for certain USDA debt. 99% of the claimants filed Track A claims.
- **Track B** – There is a higher burden of proof but the recovery is unlimited.

Procedure For Filing A Claim

- (1) **Filing a Claim:** Prior to October 12, 1999, Facilitator provided a Tracking Number and six-page claim form to each person who requested one. People submit a filled out claim sheet to the Facilitator.

Among the critical questions on the sheet are: (a) Acknowledging that the person is a black farmer or heir of a black farmer; (b) Indicating that the farmer did seek assistance from the USDA (a loan or other kind of assistance) in the period 1981 to 1996; year(s); (c) Indicating that the farmer filed a formal complaint with the USDA, attended a USDA listening session or similar meeting, or complained to someone in his or her community that he or she had experienced discrimination when attempting to receive a service from the USDA; and (d) Including the name of a “similarly situated white farmer”, in his or her community or county, who

received a loan or service from the USDA, the same year that the described incident of discrimination indicated on the claim form occurred.

- (2) **Deciding on Eligibility:** Based on the information on the claim sheet, the Facilitator determines the eligibility of the person to be a member of the class (i.e. the claimant checked three appropriate boxes on claim form, signed the form, had an attorney to sign the form. The three boxes included the questions about whether the claimant was a Black farmer, sought USDA loans or other services between 1981 and 1996, and if the farmer complained about the services he or she received from USDA).
- (3) **Deciding the Merits of the Track A Claim:** The Adjudicator determines whether or not the claimant provided information sufficient to show that he or she was treated in a discriminatory manner by USDA; if so, the claimant prevailed; if not, the claim was rejected.
- (4) **Appealing the Adjudicator's Decision:** Within a 120-day period the individual who filed a claim and the USDA can "petition" the Monitor for review of the decision.

Procedures For Filing A Late Claim

- (1) **Late Petitioners:** People who submitted an "application/affadavit" to the Arbitrator explaining why they missed the deadline.
- (2) **Deciding on Exceptional Circumstances:** The Arbitrator determines whether there were exceptional circumstances preventing the person from filing the claim by the initial deadline.
- (3) **Filing a Claim:** If the Arbitrator ruled in favor of persons having valid extraordinary reasons for being late and missing the October 12, 1999 deadline, they may then "finally" file an actual "claim form" in the Pigford law suit and follow the "Procedures for Filing a Claim" as outlined above.
- (4) **Reconsideration of the Arbitrator's Late Claim Decision:** If the Arbitrator did not rule in the person's favor regarding the extraordinary reason for being late, within 60 days of the decision, the person may then ask for a reconsideration and present additional information to support their petition to file a late claim.

II. RESOLVING PROBLEMS IN PIGFORD

Major Issues For Legislative Remedy

To remedy some of the critical problems in the Pigford v Johanns lawsuit (involving discrimination by the USDA against African American farmers), there are some specific goals of the legislation in Congress that need to be addressed. These are as follows:

- **Thousands did not Receive a Timely Notice of Pigford Lawsuit:** Thousands of farmers never received notice about the lawsuit in a timely fashion and should be provided the same opportunity as other farmers who filed claims in the Pigford class action lawsuit.
- **Thousands of Late Petitioners Not Permitted to File a Claim:** The legislation needs to ensure that several groups of potential claimants, currently denied consideration, would have a chance to file a claim under the same conditions of present claimants of the Pigford Consent Decree.
- **Hundreds did not prevail due to Correctible Technical Issues:** Examples abound of technical issues that unfairly prevented individuals from prevailing in the case, such as: the year the similarly situated white farmer received a loan was not correct; the box stating that the farmer was Black was not checked; the post office was late sending the claim; claim not signed by claimant; claim was not signed by an attorney; some claimants who were denied did not petition the Monitor for reconsideration within the 120 days, due to difficulties in securing advice and help from attorneys.
- **Lawsuit needs to be Resolved:** The Pigford lawsuit is now in its 10th year and needs to be resolved.

Late Filers In Pigford

Misunderstandings On Late Filers

There is often a misunderstanding about the “late claim” issue. Some think that “late claimants” are people who submitted their claims after the October 12, 1999 deadline. As explained above in “Procedures for Filing a Late Claim”, rather than a “claim”, it was an “application/affidavit” that was submitted explaining why the October 12, 1999 deadline was missed.

Only after the arbitrator ruled that there were extraordinary circumstances that prevented the person from filing a claim by October 12, 1999 could he or she actually file a claim. Only a small percentage has been allowed to file a claim.

Thousands Of Late Filers Not Allowed To File Claims

As mentioned above, new legislation is needed to correct the problems of thousands of persons who filed a late claim “application/affidavit” but never actually were allowed to file a claim on the merits of their case. Many of these people did not receive adequate or proper notice of the lawsuit during the initial six-month claim period. Others were sick, hospitalized or caring for family members, i. e., spouses and children, who were sick, during the initial six-month period in 1999 and were late in filing. Some were away from home and did not get the notice in time. There are numerous legitimate reasons that Black

farmers were late in filing –between October 12, 1999 and September 15, 2000 – but the Arbitrator considered very few of these “late claim filers” as meeting the requirements of Section 5g of the Consent Decree, which requires extraordinary reasons for missing the filing deadline without clearly defining and explaining what these were.

Critical Statistics On Late Filers

Of the 65,989 late filers only 3% (2,260) were found eligible to file a claim in Pigford (see the table at the end with the statistics on late filers).

This leaves a staggering 63,870 (97% of late claimants; and over 75% of all claimants) individuals who were denied the opportunity to file a claim in the Pigford lawsuit.

The Facilitator and the Arbitrator have the name and addresses of these 65,989 individuals.

Other Critical Issues That Need To Be Addressed

Similarly Situated White Farmers

The requirement that each farmer who made a claim in the Pigford case had to list one or more white farmers in his or her community who were similarly situated and did receive benefits from USDA, when these benefits were denied to the Black farmer, proved to be difficult. Many Black farmers did not know the specific white farmers who received USDA loans and assistance. There were problems in determining who was “similarly situated” and what that meant in practical terms after decades of discrimination that prevented fair and equitable comparisons.

- Some of the adjudicators in the case decided that the white farmer(s) cited by the Black farmer claimant had to have received USDA assistance in the same year or for the same periods, in the same county and for the same type of loan that the discriminatory treatment was claimed. Thousands of claims were denied for reasons related to the requirement to list white farmers. Many of these have been successfully appealed because the Monitor allowed Black farmer claimants to submit new information about white farmers in their communities and counties.
- In addressing this problem, the Federation has recommended and the Davis bill (HR558) includes provisions for USDA to make the names of similarly situated white farmers in communities, counties and states available so this will no longer be a problem for late claimants and others allowed to file under new legislation.

Other Categories Of Farmers That Need To Be Addressed

- **Many farmers have not an opportunity to have their claim judged on its merits:** There are other categories of farmers who filed claims and whose claims were never judged on their merits who deserve another chance for a hearing under

this new legislation. For instance, as mentioned above, some farmers who filed a claim which had a procedural error – such as leaving off a signature or not checking off one of the three required boxes on the front page of their claim – had their claim returned by the Facilitator. They returned their corrected claim form after the October 12, 1999 deadline and were never given a review of their claim on its merits. Farmers who filed incomplete claim forms were not even permitted to appeal the rejections of their claim form.

- **Many farmers who should likely be in the class have never been able to file at all:** There are other farmers and their heirs who never filed a late claim application/affidavit or a claim who say they did not receive notice of the case.
 - The Federation’s suggested legislation includes provisions for these persons to register with the Facilitator so USDA, Congress and the public may know how many people, who feel they are class members, but never had the opportunity to file a claim in the case.

Attorney Fee Issues

The attorneys in the Pigford class action lawsuit have been paid separately from the farmers and not out of the farmers direct proceeds. The attorneys have been paid based on successful claims and much of their work on appeals and for late claim filers have gone uncompensated. The Federation recommends a basic fee schedule be established for attorneys filing documents and claims under this corrective legislation. Without some provision for attorneys to be paid for filing these documents, farmers and their heirs will experience difficulty in securing qualified and experienced legal counsel. In some cases, without specified fees, some farmers may not have any access to legal counsel.

Recommended Legislation On The Pigford Lawsuit From The Federation Of Southern Cooperatives/Land Assistance Fund

Please note that the Federation of Southern Cooperatives/Land Assistance Fund has prepared recommended legislation for Congress that would correct the problems experienced in the Pigford case but continuing under the legal framework of Pigford. The Federation’s recommendations go beyond the provisions of what was included in the Farm Bill.

Also the Federation has a set of recommendations for improvements in the 2007 Farm Bill which would provide for more equitable treatment of Black and other people of color farmers and ranchers. These recommendations would help to cure some of the systemic problems of discrimination still present in the policies and programs of USDA.

The Federation’s recommendations are available for review on our website at: www.federation.coop.

Statistics On Late Filers
From the Facilitator's Office 3/2/07

Approximate number filed on or before Sept. 15, 2000	65,989
Number of petitions approved	2,119
Number of petitions denied	63,865
Number undecided	5
Approximate number of requests for reconsideration	20,688
Number of reconsideration requests resulting in approval of petition	141
Number denied	20,544
Number undecided	3

Federation of Southern Cooperatives/Land Assistance Fund
2769 Church Street • East Point GA 30344 • 404 765 0991
www.federation.coop