

As Controversy Lingers, Pigford II Payments Could Soon Be In The Mail



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Decades after black farmers first raised concerns about discrimination at USDA's Farm Service Agency (FSA) offices, the second round of legal payouts in the Black Farmers Discrimination Litigation Settlement, commonly called "Pigford II," may

finally start flowing in August. But the controversy over this second Pigford lawsuit and the billions of federal dollars paid to claimants under both Pigford I and Pigford II may linger decades more.

Thousands of black farmers claimed they were harmed by what black leaders described as rampant discrimination at FSA offices that led to denial of farm loans. After an 18-month claims period, the first Pigford class action lawsuit paid more than \$1 billion to more than 13,000 farmers. However, another 74,000 farmers filed late and complained they did not have sufficient time and resources to be considered under Pigford I.

The 2008 Farm Bill provided for additional claims to be heard and at the urging of President Obama and other Democrats, Congress eventually appropriated a total of \$1.25 billion.

Lead attorneys for the black farmers – Hank Sanders of Selma, Ala. and Greg Francis of Orlando, Fla. – briefed leaders of the Network of Black Farm Groups and Advocates about the claims process during a recent conference call. They said checks could start arriving in August, according to call participant John Zippert, Director of Program Operations, for the Federation of Southern Cooperatives. The Federation educated hundreds of potential claimants about the Pigford case and helped them apply for claims.

Sanders reported that 33,000 non-duplicate Pigford II claims were received by the Claims Administrator in Portland, Oregon and that 17,800 of the Track "A" claimants had been successful, noted Zippert. Another 800 claims are still being reviewed to determine if they are duplicates or multiple claims filed on the same farmland. The remaining claims were unsuccessful. Sanders told the group that no Track "B" claims, for higher monetary damages, had been approved. Pigford II claims officials would not respond to our requests to verify the numbers.

Due to the \$1.25 billion dollars approved by Congress to pay claims in the case, all of the Track "A" successful claimants will receive the full damage payment of \$50,000. In addition, a payment will be made to the Internal Revenue Service (IRS) of \$12,500 to cover each claimant's Federal income tax liability for the damage award, totaling to individual awards of \$62,000.

The claims administrator is still reviewing cases in which claimants are seeking debt relief for loans from USDA agencies. Claims are also still under review to determine the specific amount of farm debt to be forgiven under the settlement, Zippert said.

Unsuccessful claimants will each receive a

checklist showing the reason(s) their claims were denied. The decisions are final and there will be no appeals, he added.

Based on the data given by the lawyers, about 55 percent of the claimants in the Pigford II case were successful in winning claims, Zippert said. This is slightly less than the 63 percent who prevailed in Pigford I, a surprise to Zippert. He had expected the success rate to reach more than 70 percent in Pigford II, in part because the claimants no longer had to identify a similarly situated white farmer who was not denied help by FSA.

The lack of documentation required to win Pigford II financial awards is one of several reasons the Pigford cases continues to draw the wrath of many conservatives, like Rep. Steve King, R-Iowa, and other taxpayer groups who are concerned about the potential for fraud and the lack of accountability.

At the same time, Agriculture Secretary Tom Vilsack has continued to defend the payouts as part of the Obama administration's "new chapter" in civil rights. 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."

Last fall, the Government Accountability Office (GAO) found there was a "reasonable assurance" of weeding out false claims in Pigford II because of "numerous internal control measures. However, the congressional watchdog agency also pointed to the challenges faced by those charged with implementing the payouts – in part because of terms decreed by the settlement.

"For example, by the terms of the settlement agreement, most claims must be evaluated based solely on the information submitted by the claimants and, as a result, the adjudicator of these claims has no way of independently verifying that information," noted GAO.

Some Pigford critics say the controversy will never end until there is more "sun" allowed to shine on this case – providing information about who actually received the payments and for how much. But thus far, that's not happening.

I starting investigating the Pigford claims process in 2009 and in 2010, published one of the first Pigford reports. However, I was limited by USDA's refusal to provide zip codes or county level data on the award recipients. Our investigation indicated that the number of claimants per state had little or no correlation to the total number of African-American farmers living in several states.

In 1997, the U.S. Census identified only 18,451 Black farmers in the U.S. while counting one operator per farm. USDA did a recount with some multiple operators, and the number jumped up to 26,785. Under both Pigford I and Pigford II settlements, it appears that more than 30,000 individuals will receive payments. Δ

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