United States Department of Agriculture

OFFICE OF INSPECTOR GENERAL

In re Black Farmers Discrimination Litigation - Adjudicated Claims

50601-0003-21

September 2015

In re Black Farmers Discrimination Litigation—Adjudicated Claims

Audit Report 50601-0003-21

What Was OIG's Objective

The Claims Resolution Act of 2010 required OIG to conduct a performance audit based on a statistical sample of adjudicated *BFDL* claims. Our objective was to conduct an audit to determine if awards were granted to eligible claimants.

What OIG Reviewed

We statistically selected and tested 100 adjudicated Track A claims from a universe of 33,345 adjudicated claims as of December 17, 2013. We statistically selected and tested 40 adjudicated Track B claims from a universe of 77 adjudicated claims as of February 13, 2014. We evaluated if awards were granted to eligible claimants and if the issues identified in our prior audit were addressed. We also performed data analytics on adjudicated Track A claims to compare data such as claimant Social Security Number, address, and name.

What OIG Recommends

We did not make any recommendations because we concluded that *BFDL* awards were granted in accordance with the settlement agreement.

OIG conducted a performance audit of the completed claims process for the *BFDL* settlement based on statistical samples of adjudicated claims.

What OIG Found

We concluded awards were granted to eligible claimants in accordance with the *In re* Black Farmers Discrimination Litigation (*BFDL*) settlement agreement. Nothing came to our attention to indicate that the Claims Administrator (CA) and the Track A and B Neutrals did not implement the claims process in accordance with the settlement agreement.

We also confirmed the Track A Neutral and CA implemented sufficient actions to mitigate the concerns identified in our first *BFDL* audit (Audit Report 50601-0001-21, Dec. 2013). The prior audit found the following three issues:

- The Neutral's adjudicators reached different conclusions for claims that essentially contained the same information. For claims that were similar, they approved some and denied others. We identified 8 such claims in our statistical sample of 100 claims.
- The CA had not identified all instances where multiple claims may have been filed for a single farming operation or an individual class member. We identified 7 such claims in our statistical sample of 100 claims.
- The Neutral had provisionally approved at least 20 persons who were potentially ineligible for a *BFDL* award because they participated in the *Pigford v. Glickman* (*Pigford*) settlement.

To mitigate these issues, the Neutral implemented measures to revise decisions that were inconsistent with its guidelines. The CA performed searches of all adjudicated claims to detect multiple claims possibly filed for a single farming operation or an individual class member, and provided these results to the Neutral. The CA also matched *BFDL* claimants against the *Pigford* participant list to identify and deny *Pigford* participants.

United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250

DATE: September 9, 2015

AUDIT NUMBER: 50601-0003-21

TO: Thomas J. Vilsack
Secretary
U.S. Department of Agriculture

ATTN: Krysta Harden
Deputy Secretary of Agriculture

FROM: Phyllis K. Fong
Inspector General

SUBJECT: *In re* Black Farmers Discrimination Litigation - Adjudicated Claims

This is to advise you that we have completed our second audit of the *In re* Black Farmers Discrimination Litigation claims process in accordance with the Claims Resolution Act of 2010 (Public Law 111-291). The Claims Resolution Act of 2010 prescribes that we provide a copy of our final report to your office and to the Attorney General. In addition, we have distributed the report to Class Counsel, the Claims Administrator, and the Neutral. No further action is required by any of the parties as there are no recommendations in the report.

Should you have any questions, please do not hesitate to contact me at (202) 720-8001, or have a member of your staff contact Mr. Gil H. Harden, Assistant Inspector General for Audit, at (202) 720-6945. A similar letter is being sent to the Attorney General.

cc: (w/attachment)
Jeffrey Prieto, General Counsel, Office of the General Counsel
Michael Scuse, Under Secretary, Farm and Foreign Agricultural Services
Dr. Joe Leonard, Jr., Assistant Secretary for Civil Rights
Val Dolcini, Administrator, Farm Service Agency
Brandi Peters, Senior Counsel, Office of the General Counsel
Tamra Moore, Trial Attorney, U.S. Department of Justice

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Background and Objectives

Background

Pigford v. Glickman

In 1997, a group of African American farmers brought suit against the Department of Agriculture (USDA) in the Pigford *v. Glickman*[1] (*Pigford*) case for alleged discrimination on the basis of race when allocating farm credit, credit servicing, and non-credit farm benefits. On April 14, 1999, the U.S. District Court for the District of Columbia (the Court) approved a Consent Decree that created a non-judicial process for class members who did not opt-out[2] to resolve their discrimination claims. Approximately 20,000 individuals filed claims within the 180-day timeframe, which ended on October 12, 1999. The *Pigford* Consent Decree allowed individuals to file a late claim, but only if they demonstrated they were unable to submit a timely claim due to extraordinary circumstances beyond their control.[3] By September 15, 2000, approximately 61,000 individuals petitioned to file late claims. Approximately only 2,700 of the 61,000 individuals that petitioned to file late claims were allowed to participate in *Pigford*.[4] Between September 16, 2000 and June 18, 2008, over 30,000[5] additional individuals unsuccessfully sought to participate in *Pigford*.

In re Black Farmers Discrimination Litigation (*BFDL*)

The 2008 Farm Bill[6] created a new cause of action for unsuccessful late *Pigford* filers[7] by designating $100 million to pay claims. The Claims Resolution Act of 2010[8] (the Act) authorized an additional $1.15 billion to carry out the terms of the settlement agreement for the 23 lawsuits that were consolidated into a single case called *BFDL*.[9] The Court approved the *BFDL* settlement agreement[10] on October 27, 2011.[11]

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[1] *Pigford* v. *Glickman*, No. 97-1978 (D.D.C.).
[2] Individuals who wished to pursue their claims against USDA in court were permitted to opt-out of the resolution process.
[3] Acceptable extraordinary circumstances included ill health or the effects of Hurricane Floyd.
[4] More than 22,700 complete claims were submitted in *Pigford* and approximately 16,000 received awards. The 22,700 completed claims consisted of approximately 20,000 claims submitted by the deadline and 2,700 claims accepted after the deadline.
[5] Our prior audit report (*In re* Black Farmers Discrimination Litigation, 50601-0001-21, Dec. 2013) stated over 28,000 individuals unsuccessfully sought to participate in *Pigford*. At the time of that audit, the CA had made provisional class membership determinations. Therefore, we approximated the total number of unsuccessful individuals for that report. For our current report, we used a more precise calculation to determine the actual number of individuals that unsuccessfully sought to participate in *Pigford* because the CA had made final determinations on class membership.
[6] Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 14012.
[7] There were over 89,000 late filers as of January 20, 2012.
[8] Pub. L. No. 111-291, Tit. II, § 201(b).
[9] Misc. No. 08-mc-0511 (PLF).
[10] The term "settlement agreement" used throughout this report refers to the *In re* Black Farmers Discrimination Litigation Settlement Agreement, dated February 18, 2010 (revised and executed as of May 13, 2011). The settlement agreement resolved all discrimination claims pending against USDA in the *BFDL* case.
[11] U.S. District Court Judicial Order and Opinion, Misc. No. 08-mc-0511 (PLF) (Oct. 27, 2011).

Class Counsel, which represented the class, and the Department of Justice (DOJ), which represented USDA, negotiated the settlement agreement's terms for almost 2 years. The Court evaluated the settlement agreement to assess whether it was fair, reasonable, and adequate.[12] A key factor in the Court's review was a comparison between the settlement agreement's terms and the likely recovery that plaintiffs would realize if the case went to trial. The Court found the benefits offered to plaintiffs were fair and reasonable when compared to the likely outcome if their claims were decided through the judicial process. Overall, the Court concluded that Class Counsel and DOJ proposed an adjudication system that would subject each claim to careful and rigorous review while keeping costs in check.[13]

Class Membership Requirements to Participate in *BFDL*

In order for an individual to participate in the *BFDL* settlement, he or she needed to meet two requirements for class membership. The first requirement was that an individual must have submitted a late-filing request in *Pigford* on or after October 13, 1999, and on or before June 18, 2008.[14] The "*Pigford* Timely 5(g) List" documents individuals[15] who are considered to have submitted a late-filing request after October 12, 1999, and on or before September 15, 2000. Individuals not on the "*Pigford* Timely 5(g) List" must have provided independent documentary evidence that they submitted a late-filing request.

The second requirement for class membership was that an individual must not have obtained a determination on the merits of his or her discrimination complaint.[16] The "*Pigford* Participants List" [17] and the "*Pigford* Opt-Out List"[18] included over 24,000 people who were considered ineligible to participate in *BFDL* because they were deemed to have obtained a determination on the merits of their discrimination complaints. In addition, individuals who obtained a judgment from a judicial or administrative forum on the basis of their discrimination claim were not considered eligible for *BFDL* class membership.

Award Tracks for *BFDL*

The *BFDL* settlement agreement provided class members with a choice of two different tracks to file a claim—Track A or Track B.[19] Under Track A, individuals needed to establish the necessary elements based on the substantial evidence standard. The settlement agreement defined substantial evidence as "evidence that a reasonable person might accept as adequate to

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[12] Ibid.
[13] The Court also evaluated motions to modify the settlement agreement subsequent to its initial approval.
[14] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at § V.B.4.a.
[15] This included over 58,000 individuals as of January 20, 2012.
[16] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at § V.B.4.b.
[17] The "*Pigford* Participants List" identifies those individuals who (1) submitted a claim under the *Pigford* Consent Decree on or before October 12, 1999, or (2) submitted a late-filing request under section 5(g) of the *Pigford* Consent Decree after October 12, 1999, which was determined by the *Pigford* Arbitrator to satisfy the "extraordinary circumstances" requirement.
[18] The "*Pigford* Opt-Out List" documents the individuals who chose not to participate in the *Pigford* Consent Decree.
[19] See Exhibit B for a copy of the *BFDL* claim form.

support a conclusion after taking into account other evidence that fairly detracts from that conclusion."[20] Track A filers needed to establish each of the following elements.[21]

1) They are African American;
2) They farmed, or attempted to farm, and applied, or constructively applied, for a specific farm credit transaction(s) or non-credit benefit(s) at a USDA office between January 1, 1981, and December 31, 1996;
3) They owned or leased, or attempted to own or lease, farm land;
4) If claimants applied for a loan or non-credit benefit, they were denied; provided the loan or benefit late; approved for a lesser amount than requested; encumbered by a restrictive condition; or USDA failed to provide an appropriate loan service;
5) If claimants constructively applied, they made a *bona fide* effort to apply, and USDA actively discouraged the application;[22]
6) They suffered economic damage as a result of USDA's treatment; and
7) They complained of discrimination to a U.S. government official on or before July 1, 1997, regarding USDA's treatment in response to their application.

Successful Track A filers were awarded up to $62,500[23] for credit claims and/or up to $3,750[24] for non-credit claims.[25] In addition, USDA's Farm Service Agency received payments on successful claimants' behalf to reduce eligible outstanding debts. In total, over $1.087 billion was paid out through Track A awards and more than $646,000 was paid out for outstanding debt.

Claimants who elected Track B had to satisfy the necessary elements based on the higher preponderance of the evidence standard. The settlement agreement defined this standard as "such relevant evidence as is necessary to prove something is more likely true than not true."[26] Track B filers also needed to support each element with independent documentary evidence. To be successful under Track B, claimants must have applied for a loan and met the same elements as Track A with one exception.[27] In addition, Track B claimants were required to provide support for their economic damages and to show that USDA's treatment of their application was less favorable than a specifically identified, similarly situated white farmer. Track B filers could have received the amount of the actual damages they incurred, up to $250,000. However, all Track B claims were denied.

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[20] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at § V.C.1.
[21] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at §§ V.C.1-2.
[22] "Active discouragement" included statements by a USDA official that there were no funds or applications available, or that USDA was not accepting or processing applications.
[23] The $62,500 payment amount consisted of up to a $50,000 monetary award to the claimant and up to a $12,500 payment to the Internal Revenue Service to offset the monetary award's tax liability.
[24] The $3,750 payment amount consisted of up to a $3,000 monetary award to the claimant and up to a $750 payment to the Internal Revenue Service to offset the monetary award's tax liability.
[25] Track A awards were set at these amounts and did not vary based on a claimant's alleged economic damages.
[26] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at § V.D.1.
[27] Constructive application was not permitted under Track B.

Administrative Entities for *BFDL*

There were three main entities that carried out the settlement agreement's terms. The first entity, Class Counsel, was responsible for the settlement agreement's overall coordination and implementation. Class Counsel communicated with class members and others who sought information about the settlement agreement and claims process. Class Counsel conducted more than 380 group meetings in 23 States and the District of Columbia where they helped more than 13,000[28] individuals complete claim forms. When a Class Counsel attorney completed a claim, he or she was required to declare that it was supported by existing law and the factual contentions had evidentiary support to the best of his or her knowledge, information, and belief.[29] Individuals were also able to contact Class Counsel by telephone, and the attorneys provided substantive claims assistance to more than 3,400 class members telephonically.

The second entity, the Claims Administrator (CA), was approved by the Court and hired by Class Counsel to prepare, send, and receive all claims correspondence. The CA received and processed over 42,000 claims for *BFDL*.[30] When the CA received claims, it determined[31] if the claims were submitted before the filing deadline, if they were complete, and if they were submitted by class members. The CA denied late claims and claims submitted by individuals who were determined not to be class members. If a claim was incomplete, the CA informed the claimant which areas were missing required information. The claimant had 30 days to re-submit a completed claim or it would be denied. In addition, the CA maintained a database that recorded all claim information and determinations and operated a *BFDL* informational call center that received more than 805,000 phone calls.[32]

Finally, Class Counsel hired one firm,[33] approved by the Court, to serve as the Track A and B Neutrals. The firm employed adjudicators,[34] who determined the merits of timely and complete claims submitted by class members. The group of adjudicators, comprised of retired judges and attorneys, took an oath administered by the Court that they would determine each claim faithfully, fairly, and to the best of their ability.

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[28] Our prior report (*In re* Black Farmers Discrimination Litigation, 50601-0001-21, Dec. 2013) listed this total as almost 12,000 submitted claims. However, that total only included provisionally adjudicated Track A claims whereas the total in this report includes all claims signed by a Class Counsel attorney.
[29] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at § V.A.1.c.
[30] The period to submit claims began on November 14, 2011, and ended on May 11, 2012. A September 14, 2012, court order allowed specific groups of claimants to submit claims until October 12, 2012. The CA determined that 33,345 Track A and 77 Track B claims were timely, complete, and submitted by class members. An April 7, 2014, court order allowed one additional Track A claim to be adjudicated as a result of a U.S. Postal Service error, bringing the total adjudicated Track A claims to 33,346.
[31] We use "determine" and "decide" throughout the report to refer to conclusions reached by the CA or the Track A and B Neutrals.
[32] This is the total as of June 12, 2015.
[33] The firm is a provider of alternative dispute resolution services including claims adjudication and arbitration.
[34] According to the "Track A Adjudication Guidelines," an adjudicator is an individual responsible for granting or denying claims pursuant to the settlement agreement.

Track A Claims Adjudication for *BFDL*

Before Track A claims were sent to the Track A Neutral for adjudication, they underwent an "initial review" performed by a law firm[35] where a reviewer recommended a determination for each claim. A quality control team within the law firm then examined claims and independently made a second recommended determination. The law firm's review was also an opportunity to detect potential fraud. The Neutral's[36] adjudicators then reviewed the claims and made a provisional decision. The law firm's "initial review" conclusions were available to adjudicators when they evaluated claims, but the adjudicators were not bound to arrive at the same determinations. The Neutral implemented additional quality control measures[37] before the decisions were finalized and claimants were informed of the results.[38]

The law firm and the Neutral performed other roles beyond determining if individual claims should be approved or denied.[39] For instance, the settlement agreement established that there should only be one award payment for each farming operation[40] or class member.[41] The law firm and the Neutral evaluated claims and limited awards, as needed, to adhere to this requirement. In addition, the law firm identified groups of claims that exhibited significant commonalities and categorized them into patterns based on their similarities. The Neutral reviewed the different patterns and associated claims and determined whether they should be denied because the significant similarities undermined their individual and collective credibility.

Track B Claims Adjudication for *BFDL*

The Lead Track B Neutral reviewed all 77 eligible Track B claims. The Lead Neutral evaluated all parts of the claim that documented Track A claim responses, as well as a section that contained questions specifically required for Track B claims. This section included questions about USDA's treatment of the claimant compared to its treatment of a similarly situated white farmer, and the amount of the claimant's economic damages. The Lead Neutral evaluated whether a claimant established all the necessary elements by a preponderance of the evidence and through independent documentary evidence.

Unlike the Track A claim adjudication process, Track B claims did not receive an "initial review" by an outside law firm. Rather, one adjudicator performed a quality control review of all the Lead Neutral's determinations. The Lead Neutral's determination did not change for any claim based on this quality control measure. The Lead Neutral denied all 77 Track B claims.[42]

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[35] The Track A Neutral retained the service of a law firm devoted to mass claims resolution, litigation management, and claims administration.
[36] The term "Neutral" used throughout the report will specifically refer to the Track A Neutral.
[37] These measures are discussed in more detail in Section 1.
[38] Claims were first sent to the Neutral in January 2012, and the adjudication process was completed in August 2013.
[39] These additional roles are discussed in more detail in Section 1.
[40] The settlement agreement did not define a farming operation. The Neutral defined it as two or more individuals or entities that collectively raise and/or cultivate crops, livestock, fish, timber, or other farm commodities to be sold for profit.
[41] Individuals were able to submit claims on behalf of deceased or mentally or physically limited class members.
[42] The settlement agreement did not allow denied Track B claims to be evaluated again under Track A requirements.

Responses to the Draft Report

We provided a draft report to the administrative entities and representatives from DOJ and USDA on August 10, 2015, and asked for their comments. We revised the report, as necessary, based on comments we received in response to the draft report.

Objective

Our objective was to conduct an audit of the completed *BFDL* claims process to determine if awards were granted to eligible claimants.[43] We selected a statistical sample of adjudicated claims to accomplish our objective.

[43] For the purposes of our objective, we considered the claims process completed when Class Counsel filed a motion with the Court that finalized claims adjudication. The Court approved the motion on August 23, 2013.

Section 1: *BFDL* Audit Requirements and Previous Audit Results

This section discusses the analyses and conclusions reached in prior audits that USDA's Office of Inspector General (OIG) and the Government Accountability Office (GAO) performed of the *BFDL* claims process. These audits were performed before the claims process was complete and identified issues that needed to be addressed prior to final adjudication. Our current audit included tests to verify that the CA and the Neutral took appropriate action to mitigate OIG's previous audit's findings.

Audit Requirements

The Act established requirements that OIG and GAO conduct audits of the *BFDL* claims process. The Act stated OIG "shall, within 180 days of the initial adjudication of claims, and subsequently, as appropriate, perform a performance audit based on a statistical sampling of adjudicated claims."[44] In addition, the Act stated GAO "shall evaluate the internal controls (including internal controls concerning fraud and abuse) created to carry out the terms of the settlement agreement."[45]

Previous OIG Audit Results

We initiated our first *BFDL* audit[46] in January 2012 to gain an understanding of the claims process and to prepare for the statistical selection of adjudicated claims as required by the Act. During the audit, we learned that the entities implementing the *BFDL* settlement agreement agreed to make preliminary (provisional) adjudications that would be subject to change until the end of the claims process. The entities also informed us that final adjudications were expected to occur in late summer or early fall of 2012. Based on this timeframe, we performed audit tests of the entities' claims process and we selected a statistical sample[47] of provisionally adjudicated claims in June 2012.[48] However, the Neutral did not finally adjudicate the claims in the fall of 2012, as expected, because the CA and the Neutral needed to complete additional quality control measures.

In the fall of 2012, the CA and the Neutral began performing more widespread quality control measures. The timing of these measures gave us the opportunity to ensure that the process was functioning adequately and that claimants were treated fairly. In our first *BFDL* audit, nothing came to our attention to indicate that the CA and the Neutral were not adequately implementing the claims process in accordance with the *BFDL* settlement agreement. However, we identified three issues at the time of our review that needed to be addressed prior to final adjudication. The CA and the Neutral developed written procedures and provided us with preliminary results to

[44] Claims Resolution Act of 2010, P.L. No. 111-291, Tit. II, § 201(h)(2)(A).
[45] Claims Resolution Act of 2010, P.L. No. 111-291, Tit. II, § 201(h)(1)(A).
[46] *In re* Black Farmers Discrimination Litigation (50601-0001-21, Dec. 2013).
[47] We developed a random statistical sample and used a random sample design. We use "statistical" to describe this type of sample throughout the report.
[48] We selected statistical samples of 100 provisionally adjudicated Track A claims and 32 provisionally adjudicated Track B claims.

support actions taken to resolve our concerns. We did not test the effectiveness of their efforts at that time. Our findings from the prior report are summarized as follows:

Finding 1—Inconsistent Provisional Adjudication of Claims

Our review found that the Neutral's adjudicators reached different conclusions for claims that essentially contained the same information. Specifically, the adjudicators approved some of the similar claims, but denied others. From our statistical sample of 100,[49] there were a total of 8 claims with inconsistent decisions.[50] The inconsistent decisions occurred due to the different perspectives and judgments of the adjudicators who examined the claim forms. Also, at the time we performed our analysis, the Neutral's quality control reviews had no method to detect the inconsistencies.

The Judicial Order and Opinion[51] that approved the settlement agreement stated that the adjudication process needed to ensure that awards go to those who "were victims of USDA's discrimination." The Judicial Order and Opinion stated that numerous measures were established to warrant fair, reasonable, and adequate decisions. To ensure fair results, the Neutral conducted training for the adjudicators, provided written guidance to each adjudicator, and put in place quality control measures prior to making claim decisions.

We compared the written responses included on the claims from our statistical sample to the settlement agreement's requirements and the written guidance the Neutral provided to its adjudicators. We identified eight claims with written responses that did not adequately state a complaint of discrimination, as required by the settlement agreement. However, six of the eight claims were approved by the Neutral. Based on our sample results, we expanded testing[52] to include all claims with a provisional adjudication. We again found instances where claims with similar answers received different determinations. The results from our sample and additional testing demonstrated that adjudicators were making inconsistent decisions that the Neutral's quality control process did not detect.

We presented our conclusions to the Neutral's officials, and they initiated an analysis to search for potential inconsistent decisions. The Neutral's officials also provided updated procedures and results for the quality control process to address our concerns. For example, the Neutral developed over 130 search terms based on the examples of inconsistent decisions we identified and presented to them. The Neutral designed the searches to be broad and deliberately made them over-inclusive to capture all claims that presented a fact pattern similar to the inconsistent sample claims we identified during our audit tests. The CA ran the searches against the universe of claims and found nearly 4,000 claims with potential inconsistencies. The CA refined the

[49] We selected a statistical sample of 100 claims from a universe of 17,124 provisionally adjudicated Track A claims, as of June 11, 2012.
[50] We were 95 percent confident there were between 446 (2.6 percent) and 2,294 claims (13.4 percent) with inconsistent decisions in the universe of 17,124 provisionally adjudicated claims that had been submitted, as of June 11, 2012.
[51] U.S. District Court Judicial Order and Opinion, Misc. No. 08-0511 (PLF) (Oct. 27, 2011).
[52] We used automated and manual techniques to search for claims with answers similar to claims from our statistical sample.

search results, and the Neutral reexamined over 2,000 provisionally adjudicated claims. Prior to re-deciding a claim, the Neutral reviewed the initial Track A reviewers' conclusions and comments,[53] the adjudicator's provisional decision and comments, the claim responses, and any other information provided by the claimant. To ensure reasonable consistency in adjudications, the Chief Adjudicator changed decisions on over 200 claims when he determined that the provisional decisions were sufficiently inconsistent with adjudication guidelines.

The Neutral implemented other quality control procedures to ensure consistent decisions. One important measure was that provisionally denied claims were reviewed a second time by one of four adjudicators.[54] The second reviewer determined whether or not the denial was reasonably consistent with the adjudicator guidelines. Denied claims were therefore reviewed four times.[55] When a second reviewer concluded a denied claim should be changed to approved, the Chief Adjudicator reviewed the decision and made the final determination. The Neutral reviewed over 12,600 claims under this quality control measure and changed 170 decisions from denied to approved.

Another significant quality control measure that assisted in promoting consistent determinations was that the Chief Adjudicator reviewed claims where the adjudicator's decision differed from the law firm's initial decision. The Chief Adjudicator evaluated these claims based on the substantial evidence standard and adjusted decisions when he determined that the provisional outcome could not be reasonably justified under the adjudication guidelines. The Neutral reported that over 1,400 claims were reviewed under this measure, and the Chief Adjudicator changed decisions on over 700 claims.

The Neutral also monitored each adjudicator's provisional decision statistics to evaluate if the provisional outcomes were reasonably consistent across adjudicators before the determinations became final. The Neutral contracted with statisticians to conduct periodic analyses to assess if each adjudicator's decisions were within statistically accepted parameters. The statisticians' analyses identified five adjudicators whose decisions were outside of the normal approve/deny counts. The Neutral assigned an experienced adjudicator to evaluate a random selection of approximately 900 claims initially reviewed by these five adjudicators.[56] Based on this review, the Neutral changed 99 provisional decisions in instances where they were not in conformance with the adjudication guidelines.

Overall, the Neutral made reasonable efforts to ensure fair, consistent, and equitable decisions. The Neutral searched for the inconsistencies we discovered and implemented additional steps to identify other cases in the universe of all adjudicated Track A claims. We tested the Neutral's actions in our current audit and concluded that they were effective.[57]

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[53] In a database used to document the Neutral's review, initial reviewers and adjudicators could include comments about their findings.
[54] According to the Neutral, the team of adjudicators included individuals who had demonstrated strong abilities and had extensive experience in *BFDL* and *Pigford*.
[55] The four reviews included two by the law firm and one by the Neutral prior to the denial review.
[56] The five adjudicators reviewed over 11,000 Track A claims.
[57] See Section 2 for information on the work we performed in this audit.

Finding 2—Multiple Claims Filed for Individual Farming Operations and Class Members Not Detected

The CA had not identified all instances where multiple claims may have been filed for the same farming operation or individual class member. From our statistical sample of 100 claims, a total of 7[58] had additional related claims.[59] We attributed this, in part, to oversights by the CA's analysts when they manually searched the universe of submitted claims to identify related claims. Also, the CA performed internal quality control reviews of the manual search process, but those reviews did not include a comparison of all submitted claims. Thus, there was an increased risk of overpayments per farming operation or class member.

The settlement agreement stated that each farming operation or class member with a successful claim was entitled to one award payment of up to $62,500.[60] If multiple individuals filed a claim for the same farming operation, each approved claim was eligible to receive only a portion of one award for the farming operation—that is, the individuals would split the total award. Similarly, only one claim was eligible to receive an award when more than one individual filed a claim on behalf of the same class member. The Neutral determined if multiple claims were filed for the same farming operation and/or individual class member and, if so, allocated award payments among approved filers. The CA assisted the Neutral by identifying instances where multiple claims may have been filed on behalf of a single farming operation or one class member.

To test the CA's procedures to identify related claims, we used the CA's criteria[61] to identify related parties in our statistical sample of 100 claims. We compared our results to the CA's results and identified seven claims where the CA had not detected all related claims. Our finding raised a concern that, while the criteria and procedures used by the CA officials appeared adequate, the CA's implementation of the procedures was inadequate.

We presented our finding to the CA and the Neutral, and they provided us with documentation of the final procedures they implemented to address our concern. In order to identify claims potentially filed for the same farming operation or class member, the CA developed automated searches that it performed on all adjudicated Track A claims. The CA conducted searches based on Social Security Number (SSN), address, farm location description, and related claim comments in the database. These searches were designed to be broad in an attempt to identify all possible overlapping claims. The CA conducted these searches after the claims submission deadline in October and November 2012, and again in June 2013.

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[58] We were 95 percent confident that between 330 (1.9 percent) and 2,067 (12.1 percent) claims had other related claims not identified by the CA in the universe of 17,124 provisionally adjudicated claims that had been submitted as of June 11, 2012.

[59] The CA and Neutral considered claims to be "related" or "related parties" when there were significant similarities in claim information, such as name, Social Security Number (SSN), address, or farming location. Claims could also be considered related for other reasons, such as when multiple claims were submitted for the same late-filing request.

[60] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), at §§ V.A.3-5.

[61] The CA's criteria included searches based on claimant names, SSNs, and addresses.

The CA provided the database search results to the law firm that assisted the Neutral with the initial review of the Track A claims. The law firm evaluated all claims identified by the SSN search because the likelihood of finding claims filed for the same farming operation or class member was high based on that particular criterion. For other searches, the number of returns was so great that the law firm applied additional filters[62] before it reviewed each claim to determine its relationship to others with similar characteristics. The law firm attempted to conclude whether the claims in a group were filed for the same farming operation or class member. Overall, the firm reported that it evaluated over 5,200 groups, comprised of over 13,500 claims, to initially determine which sets of claims were filed for the same farming operation or class member.

After the law firm's initial review, the Neutral evaluated claim groups where the law firm concluded there were multiple claims filed for the same farming operation or class member. The Neutral also made the final decisions for groups where the law firm could not make a conclusion.[63] The Neutral applied the substantial evidence standard when it reviewed these groups, in that each individual claim should receive a full award if a reasonable person might find, under the evidence presented, that each claimant filed for a separate farming operation.

The CA and the Neutral implemented reasonable procedures to identify related claims for further evaluation. The search parameters were broad and identified claims with matches in key areas which indicated the claims were potentially filed for the same farming operation or class member. The claims then underwent multiple reviews before the Neutral made the final award determination. Overall, the Neutral concluded that approximately 1,400 claims were filed for the same farming operation or class member. We tested procedures to identify and review related claims in our current audit and concluded that they were effective.[64]

Finding 3—*Pigford* Participants Applied for *BFDL* Awards

We determined that the Neutral's adjudicators had provisionally approved at least 20 individuals who participated in *Pigford* to receive awards in the *BFDL* settlement. The CA was responsible for determining whether claimants were eligible to participate in *BFDL*, but at the time of our analysis, the CA had not always identified and removed ineligible *BFDL* claimants prior to provisional adjudication. The improper payment of awards to *Pigford* participants could have reduced the funds available to claimants eligible to receive payments through the *BFDL* settlement.

The settlement agreement stated that claimants must not have obtained a determination on the merits of their discrimination complaints in order to be considered class members in *BFDL*.[65] The CA was responsible for making this determination, and the settlement agreement required the CA to utilize the "*Pigford* Participants List" and the "*Pigford* Opt-Out List" as a part of this

[62] The filters included narrowing the address search results to only those groups of five or more claims sharing the same address and narrowing the farm location description to groups where the matched description started with a number or "Route" or "Rte."
[63] The law firm could not make a conclusion on these groups because of ambiguous similarities between the claims.
[64] See Section 2 for information on the work we performed in this audit.
[65] *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), § V.B.4 (b).

process. The settlement agreement stated that if a claimant appeared on either of these lists, he or she is deemed to have obtained a determination on the merits of his or her discrimination complaint. Claimants also must have submitted a late-filing request in order to be considered a class member in *BFDL*. To make this determination, the settlement agreement stated the CA was to review the "*Pigford* Timely 5(g) List," which lists individuals considered to have submitted a late-filing request. If a claimant was not on the "*Pigford* Timely 5(g) List," the claimant could still be allowed to participate in *BFDL*, provided that he or she could establish by a preponderance of the evidence that he or she submitted a late-filing request in *Pigford*.

To determine whether the CA completed its responsibilities in accordance with the settlement agreement, we compared information, such as name and address data, from the "*Pigford* Participants" and "*Pigford* Opt-Out Lists" to the same information on the "*Pigford* Timely 5(g) List." We then reviewed the matches to determine if any successfully submitted claims were adjudicated. We identified 20 provisionally approved claims that were submitted by individuals listed on the "*Pigford* Participants List." If these claims were paid, awards would have been distributed to claimants identified as *Pigford* participants.

We discussed our concern that ineligible *Pigford* participants could receive *BFDL* awards with CA officials. The CA officials acknowledged the issue and implemented an automated SSN verification procedure that compared *Pigford* participant and *BFDL* claimant SSNs. The CA officials subjected claims with a matched SSN to a *Pigford* participant to an in-depth verification.[66] The verification included a review of all documents and notes in the CA's database as well as the associated *Pigford* claim form to determine if the *BFDL* claimant identified by the SSN match, or by other means,[67] also participated in *Pigford*. Overall, the CA denied over 580 claims[68] from individuals who were *Pigford* participants. We tested the CA's actions to identify *Pigford* participants in our current audit and concluded that they were effective.[69]

Additional OIG Analyses

We conducted analyses beyond our Track A statistical sample reviews to evaluate other important aspects of the *BFDL* claims process. For example, we selected and analyzed a statistical sample of 32 provisionally adjudicated Track B claims[70] in order to comply with the Act. We found that all of the sample claims were processed in accordance with the settlement agreement.

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[66] The CA stated in its response to our report that it also checked the participant list for the *Keepseagle v. Vilsack* settlement. The CA stated that it did not check the participant list for the Hispanic and Women Farmers and Ranchers Claims Resolution Process, as that claims process was still ongoing and no final determinations were issued at the time.

[67] Matches identified by other means include those found during claims processing or by the Neutral during adjudication.

[68] This total includes both Track A and B claims.

[69] See Section 2 for information on the work we performed in this audit.

[70] We selected our Track B sample as of December 6, 2012, when there were 80 claims in the universe. After we selected our sample of Track B claims, the CA denied claims due to the lack of class membership, untimely filing, or because the claims were incomplete. As a result, the number of adjudicated Track B claims decreased to 77.

We also performed analysis on a group of claims the Neutral intended to deny because of potential fraud concerns. We became aware of these claims in October 2012 when the Neutral informed us that it identified more than 3,000 claims that raised fraud concerns due to suspicious filing patterns. The patterns were established based on commonalities across multiple claim forms, such as similar language, handwriting, structure, phraseology, and geographic location. The Neutral concluded that these patterns undermined the claims' credibility because of the similarities among large numbers of claims. The CA used characteristics from each pattern to search the universe for other claims with matching attributes. The Neutral performed an additional review of these claims and denied approximately 2,500 because they presented sufficient fraud concerns. The Neutral stated that, when read together, "a reasonable person would conclude that the claims are too similar in both form and content to have individual merit and, therefore, are not supported by substantial evidence."

We analyzed over 200 of the more than 3,000 fraud concern claims identified by the Neutral based on these filing patterns. Our review encompassed 8 of the 50 fraud concern patterns[71] that the Neutral identified. We assessed whether the Neutral's suspicious pattern definitions were reasonable, and whether the identified claims actually contained the questionable attributes associated with the patterns. We generally agreed that the Neutral's stated patterns were reasonable, and that the suspicious claims did include the specified attributes.

GAO Audit Results

The Act required GAO to perform an audit to "evaluate the internal controls (including the internal controls concerning fraud and abuse) created to carry out the terms of the Settlement Agreement […]." In a December 2012 report, GAO stated that it examined: (1) the internal controls created to identify and deny fraudulent or otherwise invalid claims under the settlement agreement; and (2) the extent to which the internal control design and operation provide reasonable assurance that fraudulent or otherwise invalid claims are identified and denied.[72] GAO stated that, while the internal control design of the *BFDL* claims process generally provided reasonable assurance that fraud or invalid claims could be identified and denied, certain weaknesses in the control design could expose the claims process to a risk of an improper determination. GAO noted that constraints were imposed by the settlement agreement (for example, the settlement agreement did not require that claimants submit supporting documentation for Track A claims), and those constraints could not be modified, as they were agreed to by all parties.

GAO also reported the CA had not established agreed upon procedures, beyond consulting the participant lists of two other discrimination settlements, for checking whether applicants had already obtained a judgment on a discrimination case in a judicial or administrative forum. Lastly, because the internal control design was not fully implemented, GAO was unable to determine if the remainder of the design would operate as intended.

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[71] At the time of our analysis, the Neutral had provided definitions for 8 of the 50 fraud concern patterns.
[72] GAO-13-69R: *Civil Rights: Additional Actions in Pigford II Claims Process Could Reduce Risk of Improper Determinations*, Dec. 2012.

Section 2: Current Audit Results

We initiated an audit of the completed *BFDL* claims process in November 2013 to determine if awards were granted to eligible claimants. The results of that audit are the basis for this section of the report. As with our previous audit,[73] we selected and examined two statistical samples of adjudicated Track A and B claims. We also conducted tests beyond our statistical samples to evaluate other parts of the settlement process, such as class membership determinations and identification of fraud concerns. Based on our statistical samples and additional tests, we concluded that the CA and Track A and B Neutrals ensured that *BFDL* awards were granted to eligible claimants in accordance with the settlement agreement. The work we completed to arrive at this conclusion is discussed in the sections below.

Adjudicated Track A and B Claims Universe Validations

In order to select the statistical samples, we first obtained and validated universe files from the CA that reported all adjudicated Track A and B claims. We traveled to the CA's location in Beaverton, Oregon, in December 2013, and obtained a file that contained all adjudicated Track A claims to use for our statistical sample selection. While on site, we observed the process the CA used to extract the data from the claims database to ensure that the file included complete and valid information. We compared the file to: queries that we ran in the claims database, status reports[74] the CA provided to us, and source data used to generate the file. In addition, we had multiple conversations with CA officials to obtain a thorough understanding of the information they provided to us. For instance, CA officials explained the different adjudicated claim categories and how we could reconcile data to their status reports. As a result of our analysis, we concluded that the universe file as of December 17, 2013, was valid and contained all 33,345 adjudicated Track A claims.[75] We then used this file to select a statistical sample of 100 adjudicated Track A claims.[76]

We also obtained a file of all 77 adjudicated Track B claims as of February 13, 2014, to use to select a Track B sample. We compared this file to information in the claims database to ensure that the data were consistent. In addition, we performed analyses to ensure that no adjudicated Track B claims were omitted from the file and that the data were consistent with other CA reports. We concluded that the file correctly contained all 77 adjudicated Track B claims. Therefore, we used the file to select a statistical sample of 40 adjudicated Track B claims.[77]

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[73] *In re* Black Farmers Discrimination Litigation (50601-0001-21, Dec. 2013).
[74] The status reports included information such as the number of approved and denied Track A and B claims.
[75] An April 7, 2014 court order allowed one additional Track A claim to be adjudicated after we obtained our universe file. This claim was not included in our file because it was originally determined to be untimely as a result of a U.S. Postal Service error.
[76] See Exhibit A—Statistical Plan.
[77] See Exhibit A—Statistical Plan.

Track A Sample Claim Review Results

We tested the Track A claims in our statistical sample for compliance with key steps in the claims process and to identify or rule out the presence of issues reported in our prior audit.[78] For each sample claim, we verified that it was timely, complete, and submitted by an eligible class member based on the CA's processing guidelines and the settlement agreement. We then validated that the Neutral's adjudication decision was consistent with its guidelines[79] and the settlement agreement. Finally, we performed searches in the database to identify and assess related claims that may have been filed for a single farming operation[80] or class member. We did not identify any sample claims that were not processed in accordance with the applicable guidelines and the settlement agreement.[81]

The first step in our Track A sample review process was to verify that the claim was timely and complete. The CA received all claims and was responsible for the timely filing determination. The CA stamped claims with the date they were received and retained the mailing envelope, which documented the postmark date. We obtained date information from the claims database and confirmed that each sample claim was submitted before the deadline.[82] In addition, the CA was responsible for ensuring that a claim was complete before it went to the Neutral for adjudication. We used the CA's processing guidelines[83] to assess if all the necessary information was included in each sample claim.[84] We did not identify any late or incomplete claims in our sample.

Next, we performed multiple tests to validate that each Track A sample claimant was a class member. For each sample claim we searched the "*Pigford* Timely 5(g)" and "Untimely 5(g)"[85] lists to determine if the claimant was recorded as having submitted a late-filing request in *Pigford*.[86] We then accessed the claimant's file in the claims database to identify if a late-filing request was submitted during the established timeframe. Similar to the claims, the late-filing requests were date stamped when they were received and included the mailing envelope with the postmark date. We verified that a late-filing request was submitted between October 13, 1999, and June 18, 2008. Based on our sample reviews, we did not identify any claims with missing late-filing requests.

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[78] *In re* Black Farmers Discrimination Litigation (50601-0001-21, Dec. 2013).
[79] The Neutral's "In re Black Farmers Track A Adjudication Guidelines" provided additional instructions to adjudicators on how to evaluate whether claims met certain settlement agreement requirements.
[80] In our prior report, we referred to these instances as claims filed for the same farming operation.
[81] Based on our results, we are 95 percent confident that less than 3 percent of the claims in the Track A universe may have been decided in error.
[82] The period to submit claims began on November 14, 2011, and ended on May 11, 2012. A September 14, 2012, court order allowed specific groups of claimants to submit claims until October 12, 2012.
[83] The CA developed "Claims Processing Guidelines" that documented how it determined if a claim was timely, complete, and submitted by a class member.
[84] Claimants had the opportunity to provide necessary information if their initial submission was incomplete. *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), § V.B.2.
[85] Individuals on the "*Pigford* Timely 5(g)" list submitted late-filing requests on or between October 13, 1999, and September 15, 2000. Individuals on the "Untimely 5(g)" list submitted late-filing requests on or between September 16, 2000, and June 18, 2008.
[86] We searched the lists based on the claimant's name and/or address.

We performed additional analyses on our Track A sample claims to identify if the claimants participated in *Pigford* and were ineligible to receive an award in *BFDL*. This step in our review allowed us to follow up on the third finding in our previous audit and to test the CA's procedures to deny claims filed by *Pigford* participants. We compared the names and addresses of the sample claimants to the same information on the "*Pigford* Participants" and "*Pigford* Opt-Out" lists. Our comparison identified six claims with an address match and eight claims with a name match to individuals on the "*Pigford* Participants List."[87] We then compared the 14 *BFDL* claimants' SSNs to the "*Pigford* Participants List" to refine our results.[88] As a result of these analyses, we identified one sample claimant that was a possible *Pigford* participant.

This *BFDL* claimant was listed as a spouse[89] on a *Pigford* claim. In this type of situation, the CA's policy was to review the *Pigford* and *BFDL* claim responses to determine if the language indicated that the *Pigford* claimant and spouse farmed together. We examined the *Pigford* claim and found that it did not mention the *BFDL* sample claimant in any of the answers. In addition, we noted significant differences between the loan types, farm location, and acreage when we compared the *Pigford* and *BFDL* claims. We concluded that this claim and all the claims in our sample were submitted by eligible class members.

The next step in our Track A sample claim review was to validate that the Neutral's decision was consistent with the adjudication guidelines and the settlement agreement. This analysis also allowed us to assess the measures the Neutral implemented to address the first finding in our prior report.[90] For approved claims, we reviewed the claimant's responses to verify that there was support for the Neutral's conclusion that all settlement agreement requirements were met. For denied claims, we confirmed that the Neutral's decision was consistent with the information provided in the claims. During our audit, we considered all the information on each claim since a requirement could have been addressed across multiple sections of the claim form. In addition, we referred to the Neutral's adjudication guidelines to determine if claims were decided in accordance with these criteria. We did not identify any claims that were adjudicated contrary to the settlement agreement or the Neutral's guidelines. This result demonstrated that the Neutral successfully implemented corrective actions to address the finding in our prior audit, and to ensure consistent decisions regarding approval and denial of claims.

We conducted additional tests to identify if other claims were submitted for a single farming operation or the same class member as those in our sample. This work assisted us in evaluating the measures the CA and the Neutral implemented to address the second finding in our prior report. For each sample claim, we conducted searches in the CA's database based on: claimant last name, city, and State; address; SSN; and telephone number. In some instances, we performed an additional search based on farming location.[91] We used these criteria, in part, because the CA also performed searches based on address, SSN, and farming location to identify

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[87] We did not identify any name or address matches as a result of our "*Pigford* Opt-Out List" comparison.
[88] We did not have SSNs for *Pigford* participants when we first performed our name and address matches.
[89] The *Pigford* claim form included one field for the farmer's name and a second field for his or her spouse's name. The sample claimant's name appeared in this second field.
[90] *In re* Black Farmers Discrimination Litigation (50601-0001-21, Dec. 2013).
[91] Claimants were not required to provide a specific address for where they farmed/attempted to farm. Therefore, we could only perform this search in instances where the claimant included an address.

related claims. When the searches identified approved claims with matching information, we expanded our review to compare responses[92] across claims to evaluate if they were submitted for a single farming operation or the same class member. We did not identify any additional claims filed for a single farming operation or the same class member in our sample claims that should have been detected by the CA's search criteria. We concluded that the CA and the Neutral implemented effective measures to identify claims filed for single farming operations or the same class members.

We also tested the Neutral's fraud concern evaluation process as a part of our Track A sample reviews. We first compared our statistical sample to the list of over 2,500 claims that the Neutral denied due to a fraud concern. This comparison revealed that the Neutral denied seven sample claims because of fraud concerns.[93] Next, we reviewed these sample claims to determine if each displayed the distinguishing markers[94] associated with the particular pattern. We found that all seven sample claims contained markers consistent with their respective patterns. As a result, we concluded that the Neutral's determination to deny the claims due to a fraud concern were reasonable.

In order to identify other indications of potential fraud, we tested our Track A sample claims by comparing claimant SSNs against the Social Security Administration's Death Master File (DMF).[95] This comparison would have identified potential instances where a living claimant improperly used a deceased individual's SSN. Our analysis identified 21 sample claims with an SSN on the DMF. We determined that all 21 sample claims were submitted on behalf of deceased class members and were supported by death certificates submitted with the claims.

We performed detailed reviews on all 100 Track A claims in our statistical sample to validate that awards were granted to eligible claimants. Our work also covered the three findings we presented in our prior audit to assess if the CA and the Neutral sufficiently addressed these issues. Nothing came to our attention to indicate that the CA or Neutral did not implement the claims process in accordance with the applicable guidelines and the *BFDL* settlement agreement.

Track B Sample Claim Review Results

We evaluated the final Track B process through a statistical sample of 40 claims from a universe of 77 adjudicated Track B claims. We followed the same steps for the Track B sample that we performed for the Track A sample to validate that each claim was timely, complete, and submitted by an eligible class member. Since there were no Track B awards, we assessed if the reason(s) for denial were consistent with the claim information and the settlement agreement. We did not identify any issues with the sample claims, and we concluded that all were processed in accordance with the settlement agreement.[96]

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[92] We reviewed and compared claim responses related to farm and loan information.
[93] The seven sample claims represented four different fraud patterns.
[94] These markers included similar language, handwriting, and structure.
[95] The DMF contains more than 85 million records of deaths reported to the Social Security Administration from 1936 to present. We used DMF data as of March 2014 in our analysis.
[96] Based on our results, we are 95 percent confident that less than 5 percent of the claims in the Track B universe may have been decided in error.

We also performed searches in the database for each Track B sample claim based on: claimant last name, city, and State; address; SSN; and phone number. Since all Track B claims were denied, there was no potential for overpayments due to undetected related claims. However, these searches could have detected potential indications of fraud, such as a large number of claims submitted from the same address, or different individuals using the same SSN. We did not identify any claims that presented a fraud concern based on our sample claim searches.

Data Analyses Performed on Adjudicated Track A Claims

In addition to the tests we performed on the claims in our statistical sample, we performed data analyses on all adjudicated Track A claims. This work allowed us to test for potential fraud concerns that were not identified by the Neutral. The different analyses we performed and our conclusions are discussed below.

One analysis we performed to detect possible fraud was to identify the top 50 most frequently used SSNs across all adjudicated Track A claims.[97] High numbers of claims that shared a common SSN may have been submitted for a single farming operation, the same class member, or as part of a fraud pattern. We matched data across 6 different SSN fields[98] and sorted the results to identify the top 50 most common SSNs. Of the 161 claims that were associated with these SSNs, 100 were denied because they did not meet the settlement agreement's requirements and 34 were denied due to a fraud concern. We reviewed the remaining 27 claims that were approved by the Neutral and concluded that they did not represent fraud concerns.

Another analysis we performed identified the 10 most frequently used addresses and their associated claims so that we could assess if they represented an unidentified fraud pattern. We compared data from 5 different address fields and identified the 10 most frequently used addresses and the associated 413 claims. Next, we matched our results to a list of claims the Neutral denied due to fraud concerns. We found that claims from 9 of the 10 addresses were denied because of fraud concerns. The one remaining address belonged to a law firm that assisted individuals in completing their claim forms, which explained why it appeared so frequently. Ultimately, we did not detect any unidentified fraud patterns as a result of our address analysis.

We also used address data in conjunction with population data to test for potential fraud indications. We first analyzed all adjudicated Track A claims to determine the number of claims submitted per town. To refine this list, we obtained population data from the 2010 United States Census to identify the top 10 towns[99] with populations under 5,000 people that had the most claims submitted. We looked at smaller towns because an unusually high number of claims relative to a town's population could indicate a fraud pattern was prevalent in that area. Next, we compared the 3,058 claims submitted from these towns to the list of claims the Neutral denied due to fraud concerns. This comparison revealed that 479 claims submitted from 9 of the

[97] An individual's SSN could appear on different claims if he or she was a legal representative on behalf of multiple deceased or limited class members.
[98] Our analysis included four different claim form SSN fields (see Exhibit B, on pages 27 to 29 of the report) and two SSN fields from the CA's database.
[99] Of the 10 towns included in our analysis, 5 were located in Alabama and 5 were located in Mississippi.

10 towns were denied because of a fraud concern. The 1 town not associated with a fraud pattern had the lowest percentage of the population that submitted a claim out of the 10 towns included in our analysis. Furthermore, the towns where a higher proportion of the population submitted a claim had a lower approval percentage compared to the overall approval rate.[100] We did not detect any additional fraud concerns based on our analyses of addresses.

To further test for potential fraud, we analyzed all adjudicated Track A claims and identified the 10 most commonly used names. We reviewed the 123 claims that had a top-10 name, and focused on comparing the SSN, birthdate, and address fields. Our comparison of these fields allowed us to assess if claims with matching names were submitted by the same individual. As a result of our review, we did not find any indications among the 123 claims that raised a fraud concern that the same individual submitted multiple claims.

In addition to the analysis we conducted to highlight potential fraud concerns, we tested all adjudicated Track A claims to identify individuals who were clearly ineligible for awards because of their dates of birth or death. The settlement agreement required that successful claimants must have farmed, or attempted to farm; owned or leased, or attempted to own or lease farm land; and applied or attempted to apply for a specific farm credit transaction(s) or non-credit benefit(s) at a USDA office between January 1, 1981, and December 31, 1996. Accordingly, a claimant that died before 1981 or was born after 1996 could not meet these settlement agreement provisions. Our additional tests did not detect any claims that should have been denied because of a claimant's date of birth or death.

Claimant Participation in Prior Settlements

We performed additional analyses beyond our Track A and B samples to evaluate if the CA prevented individuals who participated in the *Pigford* or *Keepseagle v. Vilsack*[101] (*Keepseagle*) settlements from receiving payments in *BFDL*. In order to identify claimants who possibly participated in *Pigford*, we compared SSNs from all adjudicated Track A claims to all SSNs on the "*Pigford* Participants" and "Opt-Out" lists. The CA also performed this analysis, and subjected matches to further review[102] in order to determine if a *BFDL* claimant was a *Pigford* participant.

To test the effectiveness of the CA's actions, we compared our results to the CA's matches to identify discrepancies. This comparison detected 11 *BFDL* claims that had a SSN match to the "*Pigford* Participants List," but were not included in the CA's test results. We reviewed *BFDL* and *Pigford* information for these 11 claims, and our analysis verified that 5 of these claimants were not *Pigford* participants.[103] We asked CA officials to explain how they determined the other six claimants were *BFDL* class members. The CA's response discussed the matched

[100] The overall approval rate for Track A claims was approximately 55 percent.
[101] *Keepseagle v. Vilsack*, No. 1:99-CV-03119 (D.D.C). This lawsuit claimed the USDA discriminated against Native Americans by denying them equal access to credit in the USDA Farm Loan Program.
[102] The CA reviewed all documents and notes in the *BFDL* database as well as the associated *Pigford* claim form.
[103] We did not follow up on these five claims because we determined that the matching SSNs belonged to legal representatives in *BFDL* or *Pigford* and not the actual claimants.

Pigford claims' status[104] and explained that the *BFDL* claimants were designated as class members because they had submitted late-filing requests. We also obtained the *Pigford* claims for five of the six filers.[105] We evaluated the CA's response along with the *Pigford* claims and concluded that three of the six *BFDL* claimants were *Pigford* participants. All three claimants received awards in *BFDL*, but none of them were paid in *Pigford*.[106] We concluded that these 3 claims do not represent a significant issue because they were the only *Pigford* participants we identified in our analysis, which tested over 33,000 adjudicated Track A claimants.

In response to our previous audit, CA officials stated that they also checked for individuals who participated[107] in *Keepseagle*. To test the CA's work, we compared all adjudicated Track A claimants' SSNs to *Keepseagle* participants' SSNs. We identified 14 *BFDL* claims that had a SSN match to a *Keepseagle* participant. We concluded that the matching SSNs for nine claims belonged to legal representatives in *BFDL* or *Keepseagle* and not the actual claimants. As with the *Pigford* participant claims, we asked CA officials to explain how they determined that the remaining five claimants were *BFDL* class members. The CA officials again responded with information on each *Keepseagle* claim's status and how they concluded each claimant was a class member based on their late-filing requests. However, we concluded that one *Keepseagle* participant received an award in *BFDL*, but we note that this individual did not receive an award in *Keepseagle*.[108] This one claim does not represent a significant issue because it was the only instance we identified where a *Keepseagle* participant received a *BFDL* award based on our testing of all adjudicated Track A claims.

Overall, the CA implemented effective measures to prevent non-class members from receiving *BFDL* awards. We did not find any non-class members in our Track A and B sample claims, and our universe-wide data analyses only detected 4 instances where prior participants were paid out of over 33,000 *BFDL* claims.[109] These four claims do not represent a material deviation from the settlement agreement's terms and demonstrate that the CA adequately identified and denied ineligible claimants.

Fraud Concern Claims Analysis

During our prior audit, the Neutral provided us with a list of approximately 2,500 Track A claims it intended to deny due to fraud concerns. At that time, the Neutral's decisions were not final. Accordingly, we performed tests to determine if the Neutral denied all the claims on the list. To do so, we identified the claims included on the Neutral's fraud concern list in a file that contained all adjudicated Track A claims and reviewed their final determinations. We found that 5 claims were approved out of the approximately 2,500 claims that the Neutral intended to deny due to fraud concerns. Of the five claims that were approved, four were paid awards. The one other claim was submitted on behalf of a deceased claimant and the CA was holding the check

[104] The CA's response indicated if each matched *Pigford* claim was untimely, incomplete, or denied on its merits.
[105] The CA informed us that the sixth individual did not have a *Pigford* claim on file.
[106] The claims were denied in *Pigford* because they were incomplete.
[107] Individuals who had their claims approved, denied, or rejected because they were incomplete are included in this category.
[108] The four other claims were denied during the adjudication process.
[109] We note that none of these four claims was a part of our Track A sample.

until the claim submitter provided sufficient documentation that she was the deceased claimant's legal representative.

We sent a letter to Neutral officials that discussed these five claims and asked them to confirm their denial decisions or to describe why their conclusions changed.[110] In response, a Neutral official confirmed the denial determinations, and stated that the approval of the five claims appeared to have been in error. The Neutral official stated that he believed that an updated list of claims to be denied was sent to the CA so that determinations would be updated in the database. However, the Neutral was unable to provide documentation to support that it informed the CA that the five claims should be denied. We confirmed with CA officials that they had no record of receiving instructions to deny these five claims.

After we identified these five claims and issued our letter, the Court approved a court order, proposed by Class Counsel, that amended the settlement agreement to appoint the Track B Neutral to review Track A claims with fraud allegations that were not yet paid by the CA.[111] The Track B Neutral was allowed to overrule a prior adjudication if he concluded that the preponderance of the evidence demonstrated that the claim was fraudulent. The Track B Neutral reviewed and denied one of the five claims we identified, which had not been paid as a part of this process.

Overall, these five claims do not represent a significant issue with the claims process. Our analysis revealed that the issue was limited to just 5 claims, which is not a significant number in relation to a universe of over 33,000 adjudicated claims. In addition, Class Counsel took appropriate action so that the one unpaid claim could be reviewed again and addressed. We concluded that the Neutral's process to identify and evaluate claims with possible fraud concerns was reasonable. At the completion of our work, we referred the four paid claims, as well as all other claims the Neutral denied due to fraud concerns, to the Federal Bureau of Investigation in accordance with an agreement between OIG and DOJ.

Summary

We conducted extensive analysis to determine if awards were granted to eligible claimants. When we reviewed our Track A and Track B statistical samples, we confirmed that all claims were timely, complete, and submitted by class members. We also verified that the Neutral's adjudication decisions were supported by the information on the claims and were consistent with the settlement agreement's terms. In addition, we performed data analyses on all adjudicated Track A claims to test if non-class members and potentially fraudulent claims were adequately identified. Based on our statistical sample reviews and data analyses, we concluded that the CA and Neutral's actions effectively addressed the issues we identified in our prior audit. Overall, nothing came to our attention to indicate that the claims process was not implemented in accordance with the *BFDL* settlement agreement.

[110] We also provided this letter to officials at the CA, Class Counsel, and USDA Office of the General Counsel.
[111] U.S. District Court Judicial Order, Misc. No. 08-mc-0511 (PLF) (Apr. 7, 2014).

Scope and Methodology

We conducted our audit of *BFDL* adjudicated claims by meeting with the CA in Beaverton, Oregon. We held telephonic conferences with the initial Track A reviewing firm, the Track A Neutral, the Track B Neutral, Co-Lead Class Counsel, as well as DOJ and USDA Office of the General Counsel officials. We selected statistical samples of 100 of the 33,345 adjudicated Track A claims and 40 of the 77 adjudicated Track B claims.[112]

To accomplish our objective, we performed the following procedures:

- Reviewed legislation, court documents, and the settlement agreement to obtain an understanding of the claims process.
- Evaluated the CA, initial Track A reviewing firm, Track A Neutral, and Track B Neutral's procedures for implementing the claims process.
- Used the CA's database to obtain information for each sample claim.
- Reviewed Track A and B sample claims to verify that they were timely and complete, and if class status was established. We also reviewed sample claim responses to validate the Neutral's adjudication decisions and to ensure that they were consistent with the settlement agreement and the Neutral's adjudication guidelines.
- Searched the CA's database to find claims potentially filed for the same class member or farming operation as those in our sample.
- Compared SSNs from all adjudicated Track A claims against the "*Pigford* Participants List" and the "*Pigford* Opt-Out List" to test the CA's process to deny claims submitted by non *BFDL* class members. We also performed analysis to identify adjudicated Track A claims submitted by *Keepseagle* participants.
- Analyzed the adjudication determinations for over 2,500 Track A claims the Neutral intended to deny due to fraud concerns. We further analyzed seven of the claims that were in our Track A statistical sample to determine if they exhibited identified fraud pattern characteristics.
- Performed data analyses on all adjudicated Track A claims to detect potential fraud concerns. We analyzed small towns with the most adjudicated claims and claimant names, addresses, and SSNs that appeared on multiple claims.
- Confirmed our understanding of the information systems used in the claims process and determined that their general and application controls were acceptable. In our previous audit, we reviewed a selection of general and application controls over the CA's information system to determine if they were present, complete, and valid. This review included an evaluation of application access, separation of duties, data input restrictions, and information technology backup and recovery procedures.

We performed audit fieldwork from December 2013 through July 2015. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective.

[112] The statistical sampling methodology is explained in Exhibit A—Statistical Plan.

The settlement agreement limited the volume of evidence available because Track A claims were evaluated using the substantial evidence standard. This burden of proof recognizes that most claimants cannot meet the evidentiary standards required in traditional litigation because the alleged incidents occurred long ago, and USDA failed to investigate civil rights complaints during the relevant time period.[113] As a result, the evidence used to conduct our audit primarily consisted of information provided by claimants, which generally did not include supporting documentation. Despite this limitation, we believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective.

[113] U.S. District Court Judicial Order and Opinion, Misc. No. 08-0511 (PLF) (Oct. 27, 2011).

Abbreviations

BFDL.....*In re* Black Farmers Discrimination Litigation
CA.....Claims Administrator
DOJ.....Department of Justice
DMF.....Death Master File
GAO.....Government Accountability Office
Keepseagle.....*Keepseagle v. Vilsack*
OIG.....Office of Inspector General
Pigford.....*Pigford v. Glickman*
SSN.....Social Security Number
The Court.....U.S. District Court for the District of Columbia
USDA.....Department of Agriculture

Exhibit A: Statistical Plan

Sampling Methodology for Audit Number 50601-0003-21
In re Black Farmers Discrimination Litigation—Adjudicated Claims

Objective

This sample is designed to support OIG audit number 50601-0003-21. The audit's objective was to review the completed *BFDL* claims process to determine if awards were granted to eligible claimants. To help achieve this objective, we developed representative random statistical samples for review.

Audit Universe

We worked with two universes—one consisted of all adjudicated Track A claims and the other consisted of all adjudicated Track B claims:

N1 = 33,345 Track A adjudicated claims
N2 = 77 Track B adjudicated claims

All statistical conclusions below are applicable to the respective universe totals.

Sample Design

Given the data structure diversity in the audit programs (data factors) and audit resource requirements (resource factors), we developed several design ideas to help us make informed decisions about which design would be feasible for the objective of this audit. We considered various sample designs - simple random, stratified, multi-stage selections, etc. To keep our sample sizes as low as possible, while still achieving statistical representation of the two universes, we decided to use two simple random samples for this audit.

<u>Track A Claims Sample</u>
A simple random sample of 100 Track A claims was selected in MS Excel. Each claim in the universe was assigned a random number using the function "randbetween." The universe was then ordered in ascending order of random numbers. The first 100 units were chosen for review. The sample size of 100 adjudicated claims was calculated based on the following factors:

- Audit Universe - consisted of 33,345 adjudicated Track A claims.
- Expected Error Rate - because we had no historical information about an expected error rate, we assumed a 50 percent value in attribute testing scenario, i.e. each unit tested has a 50/50 chance of a "pass" or a "fail." This is the most conservative assumption for this factor and leads to a higher sample size than any other assumed percentage.
- Precision - we wanted to be able to report our estimates with a +/-10 percent precision in an attribute testing scenario.
- Confidence Level - we are using a 95 percent confidence level for reporting our estimates.

Track B Claims Sample

A simple random sample of 40 Track B claims was selected in MS Excel. Each claim in the universe was assigned a random number using the function "randbetween." The universe was then ordered in ascending order of random numbers. The first 40 units were chosen for review. The sample size of 40 adjudicated Track B claims was calculated based on the following factors:

- Audit Universe - consisted of 77 adjudicated Track B claims.
- Expected Error Rate - because we had no historical information about an expected error rate, we assumed a 50 percent value in attribute testing scenario, i.e. each unit tested has a 50/50 chance of a "pass" or a "fail." This is the most conservative assumption for this factor and leads to a higher sample size than any other assumed percentage.
- Precision - we wanted to be able to report our estimates with a +/-10 percent precision in an attribute testing scenario.
- Confidence Level - we are using a 95 percent confidence level for reporting our estimates.

Results

Track A Claims

Our audit team found no issues with the processing of the 100 claims selected for review. Based on this result, we estimate that the claims in our universe have no processing errors. Since we did not review the entire universe of claims, but rather a random sample of 100, we can state that based on the 0 errors found, we are 95 percent confident that less than 3 percent of the claims in the universe may have been decided in error.

Track B Claims

Our audit team found no issues with the processing of the 40 claims selected for review. Based on this result, we estimate that the claims in our universe have no processing errors. Since we did not review the entire universe of claims, but rather a random sample of 40, we can state that based on the 0 errors found, we are 95 percent confident that less than 5 percent of the claims in the universe may have been decided in error.

Exhibit B: *BFDL* Claim Form

Below is the 15-page *BFDL* claim form.

In re Black Farmers Discrimination Litigation
CLASS ACTION CLAIM FORM
Civil Action No. 1:08-mc-0511 (PLF)

For questions regarding this Claim Form call toll-free at **1-877-810-8110** or email **questions@blackfarmercase.com**

Each Claim Form is identified by a unique Bar Code; only one Claim Form will be accepted per Claimant. PRINT ALL RESPONSES CLEARLY.

1 SECTION ONE: CLAIMANT INFORMATION

If you are the Claimant, please provide the information in this Section for yourself. If you are filing on behalf of a deceased Claimant or a Claimant who is unable to submit a claim for himself or herself due to a physical or mental limitation, provide the contact information for the Claimant on whose behalf you are filing in this Section and then provide the information about yourself in Section 4 (Deceased) or Section 5 (Physical or Mental Limitation).

First Name | MI | Last Name

Business Name, if applicable

Mailing Address, including apartment, unit or box number

City | State | Zip

SSN or Taxpayer ID Number | Date of Birth – – | Pigford Tracking Number, if known

Phone Number – – | Alternate Phone Number – –

Email Address (optional)

2 SECTION TWO: CO-CLAIMANT INFORMATION

If applicable, list all individuals who were, or would have been, co-applicants for the loan or other benefit which is the subject of this claim of unfavorable treatment. If you need to list more than one co-applicant, please do so in Section 11 ("Additional Information") on page 14 of this Claim Form.

First Name | MI | Last Name

Business Name, if applicable

Mailing Address, including apartment, unit or box number

City | State | Zip

SSN or Taxpayer ID Number | Date of Birth – – | Pigford Tracking Number, if known

Phone Number – – | Alternate Phone Number – –

Relationship to Claimant

Email Address (optional)

SAMPLE ONLY - DO NOT USE FOR FILING CLAIMS

Claims Administrator, PO Box 4028, Portland, OR 97208-4028 www.blackfarmercase.com
01-CA4120 J6761 v.15 10.06.2011 Page 1 of 15

3 SECTION THREE: ATTORNEY INFORMATION (IF APPLICABLE)

If applicable, provide information about the attorney assisting you in completing this Claim Form.

First Name | MI | Last Name

Firm or Business Name, if applicable

Mailing Address, including apartment, unit or box number

City | State | Zip

Phone Number – – | Bar Number | State (Where Admitted)

Email Address (optional)

4 SECTION FOUR: FOR DECEASED CLAIMANTS

If you are submitting a claim on behalf of a deceased Claimant, complete this Section with YOUR information, not the Claimant's. If you are **NOT** *submitting a claim on behalf of a deceased Claimant, skip this Section and proceed to Section 5.*

First Name | MI | Last Name

Mailing Address, including apartment, unit or box number

City | State | Zip

SSN or Taxpayer ID Number | Date of Birth – – | Relationship to Claimant

Phone Number – – | Alternate Phone Number – –

Email Address (optional)

If you are submitting a claim on behalf of a deceased Claimant, you must submit a copy of a death certificate with this Claim Form and answer the questions below.

4A Is the Claimant's death certificate included with this Claim Form? Yes ☐ No ☐

4B If an estate exists for the Claimant, please provide the Estate Taxpayer ID Number:

4C Have you been appointed by a Court as the Claimant's Legal Representative? Yes ☐ No ☐

4C.i If you checked "Yes," you must submit a copy of the Court order with this Claim Form. If you checked "No," explain below why you believe you will be appointed the Legal Representative of the Claimant's estate.

SAMPLE ONLY. DO NOT USE FOR FILING CLAIMS.

5 SECTION FIVE: FOR THOSE WHO ARE UNABLE TO SUBMIT A CLAIM DUE TO A PHYSICAL OR MENTAL LIMITATION

If you are submitting a claim on behalf of a person who is unable to do so because of a physical or mental limitation, complete this Section with YOUR information, not the Claimant's. If you are **NOT** *filing on behalf of a Claimant unable to file for himself or herself because of a physical or mental limitation, skip this Section and proceed to Section 6.*

First Name | MI | Last Name

Mailing Address, including apartment, unit or box number

City | State | Zip

SSN or Taxpayer ID Number | Date of Birth – – | Relationship to Claimant

Phone Number – – | Email Address

5A Have you been appointed by a Court as the Claimant's Legal Representative? Yes ☐ No ☐

5A.i If you checked "Yes" above, you must submit a copy of the Court order with this Claim Form. If you checked "No," you must explain below why the Claimant is unable to submit a claim on his or her own behalf and why you believe you will be appointed the Legal Representative of the Claimant.

SAMPLE ONLY
DO NOT USE
FOR FILING CLAIMS.

THIS AREA INTENTIONALLY LEFT BLANK

6 SECTION SIX: CLASS MEMBERSHIP

TO BE ELIGIBLE FOR AN AWARD, YOU MUST CHECK THE BOX AT THE END OF THIS SECTION ACKNOWLEDGING THAT YOU UNDERSTAND THE REQUIREMENTS FOR CLASS MEMBERSHIP LISTED BELOW.

A. Class Membership Requirement #1: To be a member of the Class, the Claimant must have submitted a "late-filing request" under Section 5(g) of the *Pigford* Consent Decree on or between October 13, 1999 and June 18, 2008 to the Court, the *Pigford* Facilitator, the *Pigford* Monitor, the *Pigford* Adjudicator, or the *Pigford* Arbitrator. ("Late-filing requests" sent to the USDA or a lawyer are not sufficient). The Claims Administrator has a list of many of the farmers who filed "late-filing requests" under Section 5(g) on or between October 13, 1999 and September 15, 2000. This list is called the "Timely 5(g) List." If the Claimant's name appears on this list, he or she has met Class Membership Requirement #1.

If the Claimant's name does ***not*** appear on the Timely 5(g) List, you must submit written records showing that the Claimant filed a "late-filing request" on or between October 13, 1999 and June 18, 2008. The Claims Administrator already has written records of some "late-filing requests" that will satisfy this requirement for some Claimants. If the Claims Administrator does not have written records of the Claimant's "late-filing request," you must provide such written records on your own to be eligible for relief.

To find out if the Claimant's name appears on the Timely 5(g) List or if the Claims Administrator already has other documentation of the Claimant's "late-filing request," call the Claims Administrator at 1-877-810-8110.

If the Claimant's name is not on the Timely 5(g) List maintained by the Claims Administrator, you must submit with this Claim Form all documents you have showing any "late-filing requests" the Claimant submitted in Pigford.

B. Class Membership Requirement #2: To be a member of the Class, the Claimant cannot already have received a decision on the merits of his or her discrimination complaint. A Claimant will be considered by the Claims Administrator to have received a decision on the merits of his or her discrimination complaint, and therefore be ineligible for relief, if:

- His or her name appears on the Claims Administrator's *Pigford* "Participants List," a list of all Claimants whose claims were considered in *Pigford*, or on the *Pigford* "Opt-Out List," a list of those Claimants who opted out of *Pigford*;
- He or she previously received a decision from a court or administrative forum on the race discrimination claim that is the basis of the discrimination complaint in this case; or
- The Claims Administrator otherwise determines that the Claimant already has received a decision on the merits of his or her discrimination complaint.

To find out if any of the above apply to the Claimant, call the Claims Administrator at 1-877-810-8110.

By checking the box to the right, I understand that the Claims Administrator will determine whether the Claimant is eligible to participate in the Class according to Class Membership Requirements #1 and #2 above. ☐

SAMPLE ONLY
DO NOT USE
FOR FILING CLAIMS

7 SECTION SEVEN: CLAIM INFORMATION

TO BE ELIGIBLE FOR AN AWARD, YOU MUST ANSWER EVERY QUESTION IN THIS SECTION, INCLUDING EVERY QUESTION ASKING FOR AN EXPLANATION OR DESCRIPTION.

IT IS IMPORTANT TO ANSWER EACH QUESTION FULLY AND COMPLETELY. IF YOU NEED ADDITIONAL SPACE, PLEASE USE THE SPACE FOR "ADDITIONAL INFORMATION" IN SECTION 11 (PAGE 14) OF THIS FORM.

7A Is the Claimant an African American? Yes ☐ No ☐

7B Did the Claimant farm or attempt to farm between January 1, 1981, and December 31, 1996? Yes ☐ No ☐

7B.i If Yes to Question 7B, check all that apply? Farmed ☐ Attempted to Farm ☐

7B.i(a) If you checked in Question 7B.i. that the Claimant both "farmed" and "attempted to farm," explain your answer. Otherwise, write "N/A".

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7B.ii If Yes to Question 7B, how many acres did the Claimant farm or attempt to farm (rounded to the nearest acre)?

Farmed ☐☐☐☐☐ Attempted to Farm ☐☐☐☐☐☐

7B.iii If Yes to Question 7B, describe the type of crops the Claimant farmed or attempted to farm and/or the type and number of livestock he or she raised or attempted to raise. If the Claimant both farmed and attempted to farm, please explain separately what crops and/or livestock the Claimant farmed and attempted to farm.

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7 SECTION SEVEN: CLAIM INFORMATION, *continued*

7C Did the Claimant own or rent, or attempt to own or rent, farm land? Yes ☐ No ☐

7C.i If Yes to Question 7C, check all that apply:

Owned ☐ Attempted to Own ☐ Rented ☐ Attempted to Rent ☐

7C.i(a) If you checked more than one box, explain your answer. Otherwise, write "N/A".

7C.ii If Yes to Question 7C, identify the location (for example, the full address, crossroads, and/or legal description) of each separate farm property that the Claimant owned or rented, or attempted to own or rent, which is the subject of this claim. If you checked more than one box in Question 7C.i, please explain your answer with respect to each separate farm property.

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7 SECTION SEVEN: CLAIM INFORMATION, *continued*

7D Did the Claimant submit a written application for a farm loan(s) or a non-loan benefit(s) at an office of the United States Department of Agriculture (USDA) between January 1, 1981, and December 31, 1996? Yes ☐ No ☐

7D.i If Yes to Question 7D, identify the type of farm loan(s) or non-loan benefit(s) for which the Claimant applied:

☐ Operating Loan ☐ Other Loan Program, Identify: ☐☐☐☐☐☐☐☐☐☐☐

☐ Farm Ownership Loan ☐ Non-Loan Program, Identify: ☐☐☐☐☐☐☐☐☐☐☐

☐ Emergency Loan

7D.ii If Yes to Question 7D, was the farm loan(s) or non-loan benefit(s) for which the Claimant applied denied, provided late, or approved for a lesser amount than requested; did it include a restrictive condition(s); did USDA fail to provide appropriate loan service; or, if the Claimant received a loan, did USDA fail to service it properly?

Yes ☐ No ☐

7D.ii(a) If Yes to Question 7D.ii, explain the reasons for your answer, including the type, amount, and purpose of the loan or non-loan benefit applied for, the year of the application, and USDA's response to the Claimant's application.

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FOR FILING CLAIMS.

2D

7 SECTION SEVEN: CLAIM INFORMATION, *continued*

7E **For Track A Claimants only** (See Section 8 for track selection): Did the Claimant attempt to apply for a farm loan(s) or non-loan benefit(s) between January 1, 1981 and December 31, 1996? Yes ☐ No ☐

7E.i If Yes to Question 7E, identify the type of farm credit transaction(s) or non-loan benefit(s) for which the Claimant attempted to apply:

☐ Operating Loan ☐ Other Loan Program, Identify: ☐☐☐☐☐☐☐☐☐☐☐

☐ Farm Ownership Loan ☐ Non-Loan Program, Identify: ☐☐☐☐☐☐☐☐☐☐☐

☐ Emergency Loan

7E.ii If Yes to Question 7E, describe the details of how the Claimant attempted to apply. The type of information that would be helpful includes:

- The year(s) the Claimant attempted to apply and the general time period within that year(s) (for example, late fall, March, etc.).
- The type and amount of loan(s) or non-loan benefit(s) for which the Claimant attempted to apply.
- How the Claimant's farming plans were consistent with farming operations in his or her county or area in that year(s).
- How the Claimant planned to use the loan funds (for example, what crops he or she wanted to plant, what equipment he or she wanted to buy or rent, what acreage he or she hoped to farm, etc.)

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SAMPLE ONLY - DO NOT USE FOR FILING CLAIMS

7E.iii If Yes to Question 7E, did USDA actively discourage the Claimant from submitting a written application for a loan(s) or non-loan benefit(s)? Yes ☐ No ☐

Examples of "active discouragement" include statements by a USDA official that, at the time the Claimant wanted to apply, (a) no funds were available; (b) no application forms were available; or (c) USDA was not accepting or processing applications.

7 SECTION SEVEN: CLAIM INFORMATION, *continued*

7F Did USDA's treatment of the Claimant's loan or non-loan benefit application(s) or his or her attempt to apply for a loan or non-loan benefit lead to economic loss* for him or her? Yes ☐ No ☐

** Examples of "economic loss" include lost money, lost income, inability to earn income that the Claimant otherwise would have been able to earn through farming, being forced to sell assets in order to farm or to continue farming, lower crop or livestock yields, higher interest rates charged by another bank that did give a loan, loss of land, or loss of opportunity to purchase land.*

7F.i If Yes to Question 7F, explain the type of economic loss the Claimant suffered as a result of USDA's treatment.

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7G Did the Claimant complain of discrimination to an official of the United States Government on or before July 1, 1997, regarding USDA's treatment of him or her in response to his or her application(s) or attempt(s) to apply? Yes ☐ No ☐

7G.i If Yes to Question 7G, explain when, how, and to whom the Claimant complained (including the title or position of the person if you know it), and what the Claimant complained about. Include in your answer any employee of the federal government to whom the Claimant made a complaint, regardless of the level or position they held.

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SAMPLE ONLY.
DO NOT USE
FOR FILING CLAIMS.

7 SECTION SEVEN: CLAIM INFORMATION, *continued*

7H Does the Claimant have eligible outstanding USDA/FSA Farm Loan program debt for which you seek relief? Yes ☐ No ☐

Eligible outstanding USDA/FSA Farm Loan Program debt is debt from a loan that: (1) is the basis of the Claimant's claim; (2) was part of the same loan program as the loan that is the basis of the Claimant's claim, originated at the same time or subsequent to the loan that is the basis of the Claimant's claim but prior to January 1, 1997, and has not been the subject of a final administrative decision against the Claimant or federal or state court judgement against the Claimant that has become final; OR (3) a new loan into which a loan described in Sections (1) or (2) has been consolidated or restructured.

7H.i If Yes to Question 7H, provide as much of the following information as possible about each eligible outstanding USDA / FSA Farm Loan Program loan:

USDA/FSA Account Number	Loan Program	Loan Number	Year Loan Obtained	USDA or FSA County Office Where Loan Obtained	Outstanding Loan Balance

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FOR FILING CLAIMS.

IF YOU ANSWERED YES TO QUESTION 7H, YOU MUST ALSO COMPLETE AN **AUTHORIZATION TO DISCLOSE DEBT INFORMATION FORM**, WHICH CAN BE OBTAINED FROM THE CLAIMS ADMINISTRATOR AT 1-877-810-8110 OR AT WWW.BLACKFARMERCASE.COM.

THIS AREA INTENTIONALLY LEFT BLANK

8 SECTION EIGHT: ELECTION OF TRACK A OR TRACK B

YOU MUST SELECT EITHER TRACK A OR TRACK B.

After reviewing the descriptions of Track A and Track B, check one box to select the Track you wish to pursue. Your selection is final and cannot be changed, except that persons selecting Track B may switch to Track A within thirty (30) days of being being notified by the Claims Administrator of the number of Track B elections.

Because this decision has important consequences, you are strongly encouraged to discuss these options with a lawyer.

DESCRIPTION OF TRACK A: To be eligible for relief under Track A, the Claimant must satisfy the elements of Track A (Questions 7A-7H in this Claim Form) by "substantial evidence" (a lower burden of proof than required for Track B).

If the Claimant satisfies the requirements for Track A, he or she is eligible for a cash payment of (1) up to $50,000 for claims based on discrimination in a loan program, regardless of the number of credit claims the Claimant has, and/or (2) up to $3,000 for claims of discrimination in a non-loan benefit program, regardless of the number of non-loan claims the Claimant has; an additional payment in recognition of outstanding USDA Farm Service Agency (USDA/FSA) Farm Loan Program debt, which will be paid directly to the USDA on the Claimant's behalf; and (3) an income tax payment worth 25% of the total of the cash payment plus 25% of the total of the principal amount of the loan award, which will be paid directly to the IRS on the Claimant's behalf. These amounts are subject to reduction, depending on the amount of funding available and the number of prevailing claims. No payments will be made until all claims have been evaluated.

To be eligible for relief under Track A, you must have filled out each and every question in Section 7 of this Claim Form, including requests for explanation and clarification.

DESCRIPTION OF TRACK B: To be eligible for relief under Track B, the Claimant must establish the elements of Track B (Questions 7A-7D, 7F-7H, and 9A-9C of this Claim Form) by a "preponderance of the evidence" (a higher burden of proof than required for Track A), by providing written records and other evidence which would be admissible in Court under the Federal Rules of Evidence. If the Claimant satisfies the requirements for Track B, he or she is eligible for a cash payment equal to the actual losses suffered up to $250,000. This amount is subject to reduction, depending on the amount of funding available and the number of prevailing claims. No payments will be made until all claims have been evaluated. Under Track B, the Claimant is not eligible for a loan award or tax award, which means the Claimant will be responsible for the full amount of the taxes due for any Track B award.

In addition to filling out each and every question in Section 7 (except Question 7E (attempted to apply), which is not permitted for Track B), to obtain relief under Track B, you must also:

- Respond to Questions 9A, 9B, and 9C.
- For Questions 7F and 9B, submit evidence to support the Claimant's claim of economic loss.
- Submit independent, documentary evidence admissible under the Federal Rules of Evidence for every Question in Section 7 (except Question 7E (attempted to apply), which is not permitted for Track B) of this Claim Form and for Questions 9A and 9B.
    - For Question 7G (complaint) and Question 9A (similarly situated white farmer), instead of written evidence or other documents admissible in Court under the Federal Rules of Evidence, you may provide a sworn written statement by an individual who is not a member of the Claimant's family describing his or her personal knowledge of the Claimant's complaint of discrimination or a specific white farmer in the Claimant's circumstances who was treated more favorably than the Claimant by USDA.
    - The USDA or FSA loan or servicing application(s) and any supporting documents that are the basis of the claim are deemed admissible under the Federal Rules of Evidence when accompanied by a sworn statement by you that the loan or servicing application(s) and supporting documents were submitted to USDA or FSA on or about the date of the application(s). USDA or FSA documents that were provided to the Claimant in response to the Claimant's loan or servicing application(s) are also deemed admissible under the Federal Rules of Evidence when accompanied by a sworn statement by you that the Claimant received the USDA or FSA documents in response to the Claimant's loan or servicing application(s).

Because of the above requirements, it may be very difficult to prevail on a Track B claim. You are strongly encouraged to consult with an attorney before selecting Track B.

8A After reviewing the descriptions above, select Track A or Track B by checking the appropriate check box:

Track A ☐ **Track B** ☐

Your selection is final and cannot be changed, except that persons selecting Track B may switch to Track A within thirty (30) days of being notified by the Claims Administrator of the number of Track B elections.

IF YOU SELECTED TRACK A, go to SECTION 10.

IF YOU SELECTED TRACK B, answer the following additional questions in SECTION 9 (which are not required for Track A).

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FOR FILING CLAIMS.

9 SECTION NINE: TRACK B QUESTIONS

ANSWER THE QUESTIONS IN THIS SECTION ONLY IF YOU HAVE SELECTED TRACK B.

9A Was the USDA's treatment of the Claimant less favorable than that of a similarly situated white farmer(s)? Yes ☐ No ☐

9A.i If Yes to Question 9A, (1) identify the similarly situated white farmer(s); (2) explain how the Claimant was similarly situated with respect to the Claimant's farm operations; and (3) describe how the white farmer was treated more favorably by USDA.

9B Provide the dollar amount of economic damages the Claimant is claiming: $ ☐☐☐☐☐☐☐ . ☐☐

Provide below any evidence or explanation supporting the amount of economic damages the Claimant is claiming. You are also required to submit with this Claim Form documentary evidence supporting your claimed amount of economic damages in addition to the explanation provided below. Because determining the amount of economic damages is often difficult, you are permitted to provide the written testimony of an expert witness you hire to help support the Claimant's damages claim.

9C If the Claimant's claim under Track B is approved, attorney's fees, costs, and expenses will be paid automatically to your attorney as a percentage of the award. The amount of this percentage is negotiated between you and your attorney, but may not exceed 8% of the cash award. The payment of a fee under Track B is contingent upon the success of the Claimant's claim.

Indicate the fee percentage (8% or less) that you have agreed with your attorney will be paid to him or her if the Claimant's Track B claim is successful. ☐ . ☐☐ %

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DO NOT USE
FOR FILING CLAIMS.

10 SECTION TEN: ACKNOWLEDGEMENTS

Before your claim can be considered, you must acknowledge that you have read and understand several requirements of the claims process. Please indicate your acknowledgement by checking the box at the right of each statement.

A. You will be bound by the Neutral's ruling on the Claimant's claim, and the Neutral's decision will be the final determination on the claims. You forever and finally give up the right to "appeal" or seek review of the Neutral's decision in any court (or before any other tribunal) and forever and finally release USDA from any and all claims raised that have been or could have been raised in *In re Black Farmers Discrimination Litigation*. ***Understand and Agree*** ☐

B. You will be bound by any ruling by the Claims Administrator on the Claimant's claim. You forever and finally give up the right to "appeal" or seek review of the Claims Administrator's decision(s) in any court (or before any other tribunal). ***Understand and Agree*** ☐

C. If you submit a claim under Track A and the Neutral concludes that it meets the requirements for an award under the Settlement, the Claimant may receive a payment to reduce or pay off eligible outstanding United States Department of Agriculture (USDA)/ Farm Service Agency (FSA) debt (See Question 7H earlier in Claim Form). This "loan" payment will be made directly to USDA/FSA on the Claimant's behalf. This payment may not fully pay off all of the Claimant's outstanding loans to USDA/FSA. Neither USDA/FSA nor the United States will forgive any debt(s) simply because of a determination in the Claimant's favor. Interest on the Claimant's loan will continue to accrue unless and until the debt is fully paid. USDA/FSA maintains any and all options for servicing and recovering outstanding debt, including, but not limited to, acceleration and foreclosure, except that no acceleration and foreclosure action will take place until the Claimant's claim is decided. ***Understand and Agree*** ☐

D. If you submit a claim under Track A and the claim is approved, the Claimant will receive a payment to reduce a portion of the income tax he or she may owe because of the amount paid to the Claimant (or the amount paid to USDA if a debt payment is made) as an award. This payment will be made directly to the Internal Revenue Service on the Claimant's behalf. This may not pay off all of the taxes that the Claimant will owe. The Claimant is responsible for complying with all applicable federal, state, and local tax requirements that arise as a result of any payment received on his or her claim. This includes payment of taxes for any cash payments, debt payments, or tax payments the Claimant may be awarded. If this tax payment more than covers the Claimant's tax obligation, the amount over what was owed is refundable to the Claimant. ***Understand and Agree*** ☐

E. Your failure to complete this Claim Form and/or provide any necessary documentation with this Claim Form as requested by the Claims Administrator will result in denial of the Claimant's claim. ***Understand and Agree*** ☐

As a reminder, in addition to this Claim Form, you will need to include the following additional documents for your Claim Package to be considered:

i. If you are filing on behalf of a deceased Claimant or someone who is unable to submit a claim due to a physical or mental limitation and you have been appointed by a Court as a legal representative of such a Claimant (Sections 4 and 5), you must submit written **Proof of Legal Representation.**

ii. If you are filing on behalf of a deceased Claimant (Section 4), you must submit a **copy of the death certificate for the deceased Claimant.**

iii. If the Claimant is not on the Timely 5(g) List, you must submit **written record(s) showing the Claimant filed a "late-filing request" under Section 5(g) of the *Pigford* Consent Decree on or between October 13, 1999 and June 18, 2008.**

iv. If you answered Yes to Question 7H, and the Claimant is claiming payment in recognition of outstanding debt (only available for Track A Claimants), you must complete and submit an **Authorization to Disclose Debt Information Form,** which can be obtained from the Claims Administrator at 1-877-810-8110 or at www.blackfarmercase.com.

v. If you are filing under Track B, you must submit **independent documentary evidence and, where permitted, sworn statements in support of the Claimant's claim.**

SAMPLE ONLY - DO NOT USE FOR FILING CLAIMS.

11 SECTION ELEVEN: ADDITIONAL INFORMATION

Provide any additional information that you believe is relevant to the Claimant's claim. If you are using this space to continue earlier answers for which there was insufficient space provided, please indicate the number of the Question you are continuing. You may enclose additional sheets with any information or evidence you believe is relelvant and would like to be considered in support of your claim.

SAMPLE ONLY.
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2D

12 SECTION TWELVE: DECLARATION AND SUBSTITUTE W-9

Review this Section, then sign and date below in the space provided. If the Claimant's claim is approved but you fail to complete the Substitute W-9, the award may be subject to backup withholding.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that (please check all that apply):

The answers made in this Claim Form are true and correct and all enclosures are true and correct copies. ☐

*The number provided in "**Section 1: Claimant Information**" is the correct Social Security Number or Taxpayer Identification Number for this Claimant.* ☐

The Claimant is NOT subject to backup withholding because: (a) the Claimant is exempt from backup withholding, or (b) the Claimant has not been notified by the Internal Revenue Service (IRS) that the Claimant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified the Claimant that he or she is no longer subject to backup withholding. ☐

The Claimant is a U.S. citizen or other U.S. person. ☐

The Internal Revenue Service does not require your consent to any provision of this document other than the above certifications required to avoid backup withholding.

Signature of Claimant or Submitter	*Date Signed*

13 SECTION THIRTEEN: DECLARATION OF ATTORNEY (IF APPLICABLE)

I swear, under penalty of perjury, that to the best of my knowledge, information, and belief formed after an inquiry reasonable under the circumstances, this claim is supported by existing law and the factual contentions have evidentiary support.

Signature of Attorney	*Date Signed*

Submit this form by <<CLAIM DEADLINE>> to:

Claims Administrator
PO Box 4028
Portland, OR 97208-4028

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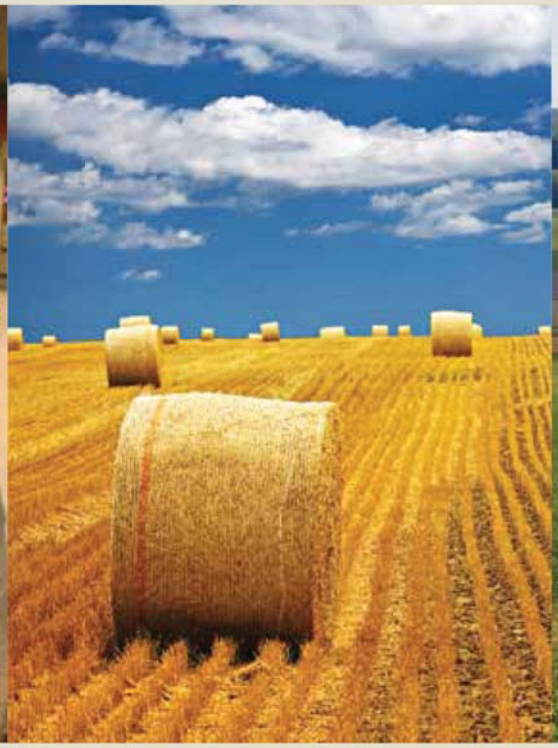
202-720-7257 (24 hours a day)



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