

Discrimination Lawsuits

Summary: The U.S. Department of Agriculture (USDA) has been accused of discriminating against African American, Hispanic, American Indian and female farmers in various programs, but particularly in its Farm Service Agency loan programs. These groups have filed five lawsuits under the Equal Credit Opportunity Act (ECOA) and the Administrative Procedure Act (APA). *Pigford v. Glickman (and Pigford II)*, filed on behalf of African American farmers, is probably the most widely known, Native American and female farmers also filed suit in *Keepseagle v. Vilsack* and *Love v. Vilsack*, respectively. Finally, Hispanic farmers filed against USDA in October 2000 in *Garcia v. Vilsack*. The suits generally accused USDA of unlawfully denying loans, processing loan applications slowly, constructing unnecessary and burdensome barriers in the application process, and underfunding loan amounts. These actions caused an unnecessary financial hardship against various Classes of farmers.

African American Class Action Settlement (The Pigford Case I and II)

In 1997 and 1998, two class-action lawsuits entitled *Pigford v. Glickman* ("Pigford") and *Brewington v. Glickman* ("Brewington"), respectively, were filed on behalf of groups of African-American farmers. The consolidated *Pigford and Brewington* cases were settled by the parties in 1999 and became the largest civil rights settlement in history. The terms of the settlement were outlined in a Consent Decree entered by the Court on April 14, 1999, which stated that eligible claimants were required to file their claims with the case administrator by October 12, 1999. The Consent Decree also stated that claimants who could show "extraordinary circumstances" for missing this deadline could file by September 15, 2000.

While approximately 22,700 claimants filed claims before the October 12, 1999 claims deadline, approximately 61,000 additional individuals requested permission to file claims after the October 12, 1999 claims deadline but before the September 15, 2000 "late-filing" cut-off date. Fewer than 3,000 of the 61,000 "late-filers" demonstrated the required "extraordinary circumstances" for receiving extra time to file their claims. As a result, more than 58,000 "late" filers did not have their discrimination claims heard. In addition, thousands of additional potential claimants filed petitions after the September 15, 2000 late-filing cut-off, but before June 18, 2008, the date of final enactment of the 2008 Farm Bill (called Late-Late filers).

Congress passed, and on June 18, 2008, the President signed, a law providing claimants with a right to pursue their discrimination claims if they had petitioned to participate in Pigford, but did not have their petitions considered because they filed late. This law was passed as Section 14012 of the Farm, Conservation and Energy Act of 2008 (2008 Farm Bill).

The Farm Bill did not "re-open" the *Pigford* case. Instead, Congress provided a new right to sue, which is subject to the following specific conditions and limitations: if you are a Class Member (you are a Late Filer or a Late-Late Filer and did not receive a determination on the merits of your Pigford claim), the Court said you may be eligible for an award under the Settlement if you, or the person on whose behalf you are filing a claim, can meet **ALL** of the following criteria:

1. You are an African American;
2. You farmed or attempted to farm, owned or leased, or attempted to own or lease, farm land between January 1, 1981 and December 31, 1996;
3. Between January 1, 1981 and December 31, 1996, you applied or tried to apply to the USDA in a federal farm credit or benefit program(s) and believe you were discriminated against on the basis of race in the USDA's response;
4. You experienced one of the following :
 - a. Were denied participation in a federal farm credit or benefit program(s); or

- b. Participation was provided late, approved for a lesser amount than you requested, or burdened by restrictive conditions;
 - c. Received a loan with unfair terms; or
 - d. Did not receive appropriate loan service from the USDA;
5. You suffered economic loss as a result of the USDA's treatment of your application(s) for participation in a federal farm credit or benefit program(s) or as a result of inappropriate loan service by USDA; and
 6. You complained of discrimination to an official of the United States Government on or before July 1, 1997 regarding USDA's treatment of you.

An heir or legal representative of someone who died may file a claim for payment that would become part of the deceased person's estate.

The February 18, 2010 Settlement Agreement

Recognizing that \$100 million would almost certainly not be enough to all valid claims, after nearly two years of litigation, on February 18, 2010, attorneys for tens of thousands of farmers and attorneys for USDA entered into a Settlement Agreement that would require Congress to fund an additional \$1.15 billion for successful claimants (which would bring total funding for valid claims to \$1.25 billion).

The Current Status of the Case

Currently, 23 lawsuits have been filed on behalf of more than 35,000 African-American farmers seeking relief under the Farm Bill. All of these actions have been consolidated into a single case called *In re Black Farmers Discrimination Litigation*, 08-mc-0511 (D.D.C.), which has been preliminarily approved by Judge Paul L. Friedman on May 13, 2011 in the U.S. District Court for the District of Columbia.

Lawyers for the farmers and lawyers for USDA have incorporated the new provisions of the Claims Resolution Act of 2010 into the Settlement Agreement dated February 18, 2010, revised as of May 13, 2011 (the "Settlement Agreement"). Class Members are being notified about the Settlement, and on September 1, 2011, Judge Friedman will decide whether to grant final approval of the Settlement. If he grants final approval, **he will also set a claims-filing deadline.**

Claimants: Many potential class members will soon receive a postcard with further information and instructions. If a late filer does not receive a postcard by June 17, 2011, they should call 1-877-810-8110.

American Indian Farmer and Rancher Class Action Settlement (The Keepseagle Case)

The Keepseagle lawsuit was first filed in November 1999. After an extended legal process, USDA announced a \$760 million settlement on October 19, 2010 in the *Keepseagle v. Vilsack* class action lawsuit. Plaintiffs alleged that USDA discriminated against Native Americans in its farm loan and farm loan servicing programs.

The Class is all persons who are Native American farmers and ranchers who:

- (1) Farmed or ranched or attempted to farm or ranch, between January 1, 1981 and November 24, 1999 (excluded are those Class members experiencing discrimination between 1/1/1997 and 11/23/1997 or those complaining of discrimination between 7/1/1997 and 11/23/1997)
- (2) Applied to the USDA for participation in a farm loan program during that same time period, and
- (3) During the same time period, filed a discrimination complaint with USDA either individually or through a representative.

\$680 million is reserved for the payment of damages to successful Class members as well as attorney's fees to class counsel and service awards to class representatives. The Settlement can also include up to

\$80 million in USDA loan forgiveness. The Settlement Agreement also provides for an unprecedented level of programmatic relief that will benefit future generations of Native American farmers and ranchers. Claimants shall be deemed co-claimants, if the individuals would have been co-applicants to the loan application which is the subject of the claim.

The amount of money that successful claimants receive will depend on whether they file a claim under Track A or Track B and will also depend on the total number of claims that are filed and approved.

Track A – A claimant can receive payment up to \$50,000 plus an additional 25% of the final award to partially account for potential taxes on the payment received.

Track B – A claimant can receive up to \$250,000, but Track B requires extensive documentation and a more rigorous standard of proof than Track A

USDA Loan Forgiveness – Under both Track A and Track B, a claimant can receive forgiveness on part or all of eligible USDA farm loans.

The Claims Period: Opens on **June 24, 2011**. Claims will need to be filed by **December 24, 2011**

To Acquire a Claims Package: click on <http://www.indianfarmclass.com/> or call 888-233-5506

Hispanic (The Garcia Case) and Women Farmer Class Action Settlement Suit (The Love Case)

The *Garcia v. Vilsack* lawsuit involves allegations that USDA unlawfully discriminated against Hispanic farmers. The lawsuit, which was filed in the U.S. District Court for the District of Columbia in 2000 on behalf of all Hispanic farmers across the country. The bases of this suit were systematic discrimination against a Class of farmers regarding credit transactions and disaster benefits in violation of the Equal Credit Opportunity Act and the Administrative Procedure Act.

The lawsuit, *Love v. Vilsack*, Case No. 1:00CV02502 (U.S. District Court for the District of Columbia), was initially filed on October 19, 2000 by a number of women farmers against the U.S. Department of Agriculture for gender discrimination in the administration of the USDA's farm loan programs.

The dates that both these lawsuits cover were from 1981 to December 31, 1996 and from October 19, 1998 to the present.

Both *Garcia* and *Love* were initially heard by the same district court judge and were eventually consolidated on appeal. As a result, the litigation history for the two cases is very similar and the claims process and payment program are the same. The total amount of funds, which would come from the Justice Department Judgment Fund, is between \$1.23 and \$1.33 billion and depends on the number of successful claimants. The claimants would go through a streamlined process to have their claims resolved. The amount of awards would be capped at \$50,000, but debt relief (\$160 million total) and tax relief can be part of a successful award. Tax relief is 25% of the sum of the award and debt relief.

There are two tiers. If the claimant does not have complete documentation, they can be a first tier recipient and can receive a maximum of \$50,000. This amount is dependent on the number of successful claimants. A Tier 2 claimant has more complete documentation and is awarded \$50,000. Both tier groups will also receive the debt relief and tax relief described above.

Claims Period: The claims period is not set yet. It is waiting on the selection of a third party arbitrator to make determinations of successful and unsuccessful claimants and to place them in a tier group. Once the date is set, a claimant will have 180 days to make a claim.

Claims package: For a prospective claimant to register their name to receive a claims package, they can call 1-888-508-4429 or click on the following website www.farmerclaims.gov