

Women and Hispanic Claims Program Talking Points September 6, 2012

General message on USDA and civil rights

We remain committed to resolving cases involving allegations of past discrimination by individuals, including Hispanic and women farmers and ranchers, as well as ensuring that every farmer and rancher is treated equally and fairly. We have made significant progress on addressing the United States Department of Agriculture's ("USDA") civil rights record and look forward to providing substantial relief to Hispanic or women farmers and ranchers who prove discrimination in an expedited manner.

- The USDA under the Obama Administration has made civil rights a top priority, part of which is taking definitive actions to move USDA into a new era as a model employer and premier service provider.
- The Obama Administration has made it a priority to resolve all of the large civil rights cases at USDA. We entered into a settlement with black farmers that provides \$1.25 billion to address pending claims. Additionally, we settled a lawsuit filed by Native American farmers and ranchers that provides \$760 million in relief.
- We have established a voluntary claims process that turns the page on the old discrimination claims of Hispanic and women farmers and ranchers which will provide compensation to a final group of individuals who may have faced discrimination.
- We believe that every farmer and rancher should be treated equally and fairly and we are committed to resolving all cases involving allegations of past discrimination by individuals, including Hispanic and women farmers.
- As we move through this claims process, we will continue our work so that fairness and inclusion serve as the foundation of everything we do at

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USDA, and that each employee and customer is treated fairly and equitably, with dignity and respect.

- Never again should hard-working Americans be forced off a farm their family has tilled for generations because they can't get the help they deserve to make it through a bad harvest, or are denied a loan to repair a broken tractor when they have met the criteria for a loan. The American people deserve no less.

Background on the Claims Process

- In recent years, Federal courts decided not to certify the lawsuits brought by Hispanic and women farmers as class actions. This means that the individual farmers were left with one option: to take their claims individually through the federal court system.
- Having to rely on the courts might discourage many farmers from seeking redress because of the significant financial and time resources required for an individual lawsuit. The claims process will help folks resolve their claims more simply.
- Claimants will have 180 days from the opening date of the Claims Period, to be announced by the USDA, within which to file a complete Claims Package.
- As part of this claims process, USDA will continue to conduct extensive outreach and notice efforts to Hispanic and/or women farmer communities so that all eligible farmers and ranchers learn about this option and are provided an opportunity to participate.

Additional background on proposal to resolve Hispanic and Women Farmer discrimination complaints:

- The USDA and Department of Justice (“DOJ”) have provided Hispanic and women farmers and ranchers an alternative to litigation that will resolve their claims in a just and efficient manner. The broad outline of the framework is as follows:
 - Under our unified non-judicial claims process, the United States will make available more than \$1.33 billion from the Judgment Fund, plus \$160 million in debt relief, and under certain tiers, tax relief.

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- Successful claimants will be eligible for a cash award and debt relief on eligible farm loan debt. Claimants must elect to proceed under one of the following tiers, each of which has different proof requirements and potential awards. Claimants under two of the tiers will also be eligible for tax relief as described below.

- Tier 2 Payments
 - Certain documentation is required, and the substantial-evidence standard applies.
 - Prevailing claimants will receive a \$50,000 cash award, plus some tax relief, and some debt relief on eligible farm loans.
 - There is no limit to the number of claimants under Tier 2 and there is no cap on the total dollar amounts paid to prevailing claimants under Tier 2.
 - Claimants who fail to prove their Tier 2 claims will automatically be reviewed under Tier 1(a).

- Tier 1(a) Payments
 - The substantial-evidence standard applies.
 - Prevailing claimants will receive a cash award of up to \$50,000, plus some tax relief, and some debt relief on eligible farm loans.
 - Total amounts paid under Tier 1(a) are subject to a \$1.13 billion cap. This cap may be adjusted up to 1.33 billion if the full amount of funds available for other tiers are not paid, and awards may be reduced on a pro-rata basis from \$50,000 depending on the number of successful claimants.

 - Claimants who were discouraged from applying for farm loans or loan servicing may submit a claim under Tier 1(a) only and must provide evidence that they attempted to apply and complained about the incident to a Government official.

- Tier 1(b) Payments
 - Documentary evidence admissible under the Federal Rules of Evidence is required, and the preponderance-of-the-evidence standard applies.

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- Prevailing claimants will receive a cash award of up to \$250,000 for proven actual damages, plus some debt relief on eligible farm loans. No tax relief is available.
 - Total payments under Tier 1(b) are subject to a \$100 million cap, and awards may be reduced on a pro-rata basis depending on the number of successful claimants and the total dollar amounts of their actual damages.
- This claims process is available to Hispanic farmers who farmed, or attempted to farm, between January 1, 1981 and December 31, 1996 or between October 13, 1998 and October 13, 2000, as well as women farmers who farmed, or attempted to farm, between January 1, 1981 and December 31, 1996, or between October 19, 1998, and October 19, 2000. This claims process includes extensive outreach and notice efforts to Hispanic or women farmer communities so that all eligible farmers and ranchers learn about this option and are provided an opportunity to participate.
 - For those claimants who chose not to participate in this unified claims process, the option of utilizing the federal court system still remains.
- All potential claimants must request a Claims Package to participate in the claims process. A claims package can be requested 1 of 2 ways, either by 1) calling 1-888-508-4429 between 8:00 am and 8:00 pm Central Time, or by 2) going to www.farmerclaims.gov and submitting your information online.
 - Claimants will have 180 days from the opening date of the Claims Period, to be announced by the USDA, within which to file a complete Claims Package.



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Hispanic and Women Farmer and Rancher Claim Process - Questions and Answers

How many farmers will be part of this unified claims process?

It is not clear how many farmers will choose to take part in this process. It is worth noting that the most pertinent numbers are bounded by the number of people that farmed during the claims period (1981 to 1998 or 2000) and that actually allege discrimination. We simply do not know how many farmers will allege discrimination. Some of the incorrect numbers we have seen advanced refer to the current number of female and Hispanic farmers in the United States, as opposed to those that have ever claimed to have farmed during the relevant period or alleged that they suffered discrimination.

How did the Government arrive at the \$1.33 billion for both Hispanic and women farmers when it has agreed to over \$2 billion for black farmers?

Each case and each group of claimants has a different set of circumstances.

It is important to recognize that there is no cap on the \$1.33 billion figure – so the final amount may exceed or be less than that number. In the case of *Pigford II*, we don't know how many folks will be successful in their claims – so it is possible that the full amount will not be reached.

That said, the United States believes that this figure presents a responsible solution for the taxpayer and a fair resolution for claimants. The bottom line is that each case and each group of claimants has a different set of circumstances, and we have worked to find a fair and equitable solution for American farmers and ranchers given the differing circumstances.

The United States believes that this figure presents a responsible solution for the taxpayer and a fair resolution for claimants. Because the process is voluntary, claimants who believe that they can get a better deal through litigation may decline to participate in the claims process and instead pursue their preferred course.

What happens if the claims process results in many more farmers than is anticipated such that the claimants receive small amounts of awards?

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Our settlement process does not impose a \$1.33 billion cap. We will continue to use that figure as a reference point, as we are making at least \$1.33 billion available for claims.

The process that the United States has proposed is based on the best information currently available and is designed to produce a fair and expeditious resolution.

How is this going to be paid for?

The monies that will go toward damages and tax relief will be paid from the Judgment Fund. Other costs related to debt relief, outreach and the administrative claims process will be paid for by other sources.

How will Hispanic and women farmers be treated relative to black farmers under *Pigford*?

Just as in *Pigford II*, successful claimants in this process will be eligible for up to \$250,000 award, along with possible debt relief and tax relief. Also similar to *Pigford II*, the final number will depend on the number of successful claimants.

Why are the application provisions different - and perhaps more stringent - for this process than in *Pigford II*?

There will be a number of slight differences between the resolutions reached in the various farmers civil rights cases. Each case is in a different posture - from *Pigford I*, where a settlement was reached without legislation, to *Pigford II*, where Congress revived claims that had expired, to these cases, where class certification was denied, to *Keepseagle*, where class certification was granted as to injunctive relief only- and so the particular resolutions in those cases will be slightly different.

We think the various cases present fair resolutions, and we expect that the constructive application process provided here will ensure that legitimate claimants succeed and fraudulent claimants are not able to take funds that should go to others.



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Why are claimants in this process required to provide proof of identification?

The Administration takes concerns about fraud very seriously. Fraud diverts money from those who deserve it, and takes money from the taxpayers. The identification requirement in the Hispanic and Women Farmer and Ranchers Claims Process imposes a minimal burden on claimants. The requirement is consistent with other USDA loan and benefit programs that are required to verify identity for eligibility purposes.

Was there an ID requirement in *Pigford I*, *Pigford II*, or *Keepseagle*?

Proof of identity was not required in the first *Pigford* case. After the *Pigford* process closed, the Department of Justice investigated a few instances of fraud involving the *Pigford* claims process and secured criminal convictions.

In *Pigford II*, each class member was either included on the Court's official "late claimant" list or was required to provide evidence that he or she met the class definition before they received a Claim Form from the Claims Administrator. As a result, the Administrator was required to verify that each Class Member filed a late claim request as defined by the district court's procedures before the individual could file a claim.

In *Keepseagle*, all claimants were required to provide evidence of Native American status, usually in the form of a tribal affiliation document, to be eligible to participate in the claims resolution process.

What other provisions are in place to prevent fraudulent claims?

The claims process has been set up to combat and limit fraudulent claims. An independent, neutral third party administrator will make all determinations on whether claimants have met their burden of proof to receive an award.

In addition, the USDA will take whatever actions it deems appropriate to review, audit, and monitor the proceedings, and the Department of Justice may monitor proceedings as it deems appropriate.

Random reviews will be conducted at a reasonable rate to deter and identify fraud, identity theft, and other possible criminal activities. The USDA will

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request that the Inspector General of the Department of Agriculture conduct a performance audit based on a statistically significant estimate obtained through a randomized sample of adjudicated claims to determine if controls over the claims review process are adequate and functioning as prescribed so that funds are distributed only to eligible applicants. Audits will be provided to the Secretary of Agriculture and the Attorney General.

Finally, either upon his own initiative or at USDA's request, the Comptroller General of the United States may evaluate the internal controls created to carry out the Claims Process, and may report to Congress on the results of this evaluation.

Why won't USDA enter into a class action settlement with the Garcia or Love plaintiffs?

That's a legal question that is best left to the lawyers to discuss. My understanding is that the courts refused to certify the case as a class action. Beyond that, I can't answer questions about the pending litigation or the legal decisions that were made. I can tell you that USDA and DOJ are trying to use this Claims Process to provide an option to farmers who allege discrimination.

Why has it taken so long to open the claims window when this process was announced in February 2011?

USDA and DOJ could not begin the claims process until it entered into a contract with a Claims Administrator and Adjudicator, which will process the claims, determine whether claimants prevail, and decide what relief prevailing claimants will receive. The contracting process is governed by statute and took longer than expected. We were bound by the statutory requirements of the contracting process.



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How do I sign up for the claims process?

- You may request a claims package in 1 of 2 ways, either by 1) calling 1-888-508-4429 between 8:00 am and 8:00 pm Central Time, or by 2) going to www.farmerclaims.gov and submitting your information online. USDA will issue a notification of when the 6-month time period for submitting claims will begin and the deadline by which claimants must do so.
- I can't give you legal advice. You may want to consider hiring your own lawyer.
- Go to www.farmerclaims.gov for additional information.

How soon will folks receive payment?

We cannot know exactly. We are working as quickly as possible to appoint a Claim Administrator to run the claims process. This neutral party will accept claims for 180 days before completing a review and final determination of whether individuals are eligible to recover payment.



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General Guidelines for Answering Questions about Love/Garcia & the Claims Process

- Stick to the facts about the claims process.
 - Do not advocate for the claims process or try to convince anyone that they should participate.
 - Do not provide any legal advice; instead tell people they may hire a lawyer or contact a legal service provider if they need legal advice.
- Avoid discussing the pending *Garcia*, *Cantu* or *Love* litigation or any other lawsuit.
 - It is always fair and very appropriate to say that we don't comment on pending litigation.
 - It is always fair and very appropriate to say that you would need to refer a legal question to a lawyer.
- Try to avoid getting into a debate about whether the Garcia or Love litigants have been treated fairly by the government.
 - Remind the audience that you are not able to discuss pending litigation.



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USDA Cultural Transformation TPs

USDA is a great organization. The work we do here makes a positive impact on the lives of the American people every single day. But, the truth is, in the areas of diversity, inclusion and performance, USDA can always do better for our customers and our employees.

Secretary Vilsack, his leadership team, and USDA employees across the country are committed to making the Department an even-higher performing organization. We want to be open and responsive; more collaborative, inclusive and effective. We have set a goal to truly live up to our potential as a premier organization and model employer. We know that to best serve the American people, we need a workforce that looks like, reflects the values, and understands the broad range of Americans we serve.

To reach that goal, Secretary Vilsack launched a cultural transformation at USDA in September 2009. This process is helping our employees and the Department become a better workplace and service provider, and preparing us to meet future challenges.

Since 2009, we have reached out to get input from thousands of USDA employees on how to improve the organization. We hosted town halls and employee listening sessions both at headquarters and in the field and launched a website to engage USDA employees.

The result was the development of a strategic plan and business plan for cultural transformation across the Department.

In a relatively short time, we have pursued these plans for cultural transformation, working to create a workplace where all employees and customers are treated with dignity and respect, and provided with the opportunity for success.

- We created a ‘Roadmap to Diversity’ - a report that will help hold us all accountable and ensure that USDA takes pro-active steps to create a diverse and inclusive workforce. And we’ve identified Diversity Officers to work within each agency to ensure that issues of diversity and inclusion are addressed.

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- To make USDA a better place to work, we have simplified the process for teleworking to allow appropriate employees to work from home. And we are renewing our commitment to Individual Development Plans - which provide employees with the opportunity to improve their skill sets and ensure that they are meeting their career goals.
- Because nearly a third of USDA employees are within 5 years of being eligible for retirement, we are working to improve and streamline our student internship program to help recruit top candidates for our future workforce, and we've created a mentoring program to strengthen our existing workforce.
- Across our agencies, we are looking at improving various systems with the goal of eliminating redundancy or streamlining processes.

Employees are seeing some of these changes improve their daily lives and work at USDA. We have been impressed and excited by the commitment that the USDA workforce has shown to this process.

And moving forward, we know that our continued efforts will help make USDA employees more satisfied in their jobs as we become more effective in our efforts to serve the American people. Through cultural transformation, we are building a stronger USDA, ready to meet the challenges of the 21st century.



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