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The Rural Coalition is a vibrant alliance of more than 70 rural community-based organizations of African-American, Asian-American, American-Indian, Euro-American, Latino and women farmers, farmworkers and rural communities in the United States. Together, the Rural Coalition and its members work to ensure that organizations serving historically underserved farm communities in the food system have the opportunity to develop and support their own initiatives to improve equity in food and farm policy.

January 19, 2012

The Honorable Paul L. Friedman
United States District Court for the District of Columbia
E. Barrett Prettyman U.S. Courthouse
William B. Bryant Annex
Room 6012
333 Constitution Avenue NW
Washington, DC 20001

*In re Black Farmers Discrimination Litigation commonly referred to as
“Pigford II”*
Misc. No. 08-0511

Dear Judge Friedman:

The Rural Coalition and our diverse members, partners and allies are writing to inform the Court of numerous issues that have been raised by our members and constituents regarding the coordination and implementation of the Pigford II claims process by Class Counsel.

At the Pigford II Fairness Hearing held on September 1, 2011, several community-based organizations offered key recommendations to the Court regarding the proposed Settlement Agreement (the Settlement Agreement was later approved by the Court on October 27, 2011). The three recommendations included: Implementation of an Appeals Process, Extension of the 180-day claim period and Expansion of the Pigford II class to include all groups of farmers that were excluded from the “Section 5(g) Late Claims” negotiated agreement. Class Counsel opposed all of these recommendations. With respect to the expansion of the 180-day claim period and the implementation of the appeals process, Class Counsel further opined to the Court that these safeguard provisions were unnecessary and that Class Counsel would be able to provide legal assistance to all African-American claimants with their claim packages (based on public reports this number could possibly exceed over 60,000 potential claimants).¹

¹ The 2011 Congressional Research Service report provides insight into the discrepancies between the number of farmers reflected in farm Census data and the number of claimants under Pigford I and Pigford II. According to the report, prior to the 2002 Census of Agriculture only principal farm operators were counted. These statistics, however failed to recognize that many farms are operated by more than one farm operator. Consequently, the varying Census definitions of farm, farm operator and farm owner help elucidate why the number of initial claimants in the Pigford I case (approximately 94,000) was higher than the number of farms/farm operators enumerated by the Census of Agriculture between 1982 and 1997 and why the estimated number of potential Pigford II claimants may be greater than the number of farms/farm operators

Since the commencement of the 180-day claim period on November 14, 2011, Class Counsel has failed to implement a comprehensive claims process and outreach plan that will accommodate the thousands of potential African-American claimants. Our coalition has received recurring complaints on the following issues:

- (1) Inadequate number of attorneys assigned to assist claimants with their claim packages;
- (2) Lack of geographic diversity in the meetings scheduled for many of the designated states; and
- (3) Insufficient outreach efforts and coordination with community-based organizations.

Inadequate Number of Attorneys Assigned to Assist Claimants with their Claim Packages

As previously mentioned, the Pigford II claims process could involve over 60,000 potential claimants. Despite the enormity of the Pigford II claimant pool, Class Counsel has failed to assign a sufficient number of attorneys to assist claimants with their claim packages. According to the Pigford II website operated by Class Counsel, the primary means of outreach to potential African-American claimants is through the coordination of informational meetings throughout the country. At these meetings, Class Counsel provides potential claimants with general information regarding the case as well as legal assistance with the claimants' claim packages. Many of these informational meetings are by appointment only and walk-in appointments are strongly discouraged.²

We have received several reports from farmers that an insufficient number of attorneys have been assigned to assist claimants at the various informational meetings. For example, an African-American farmer who attended the informational meeting held in Oklahoma City, OK on December 10, 2011 reported that over 150 farmers showed up to receive legal assistance with their claim packages; however, only 3-4 attorneys were available to assist the claimants from the hours of 9:00 a.m. – 3:00 p.m. We have also received numerous reports that some attorneys were allocating only 15-20 minutes with each farmer due to the large number of farmers seeking legal assistance at the meetings. These issues call into question the quality of the legal assistance being provided to the farmers as well as the likelihood that the farmers' claims will not be adjudicated on the merits.

Moreover, the process in which Class Counsel determines how to allocate human resources does not correlate with the farm Census data regarding states with high concentrations of African-American farmers and ranchers. According to the 2007 Census of Agriculture, the states with the highest percentages of black farm operators are: Mississippi, South Carolina, Louisiana, Alabama and Georgia. Although numerous informational meetings have been scheduled in Alabama and Mississippi, only 5 meetings have been scheduled in Georgia and only 3 meetings in Louisiana. In two other states that comprise the Black Belt region, few meetings have been scheduled—in Florida only 2 meetings and in North Carolina only 9 meetings.

enumerated in those or subsequent Census counts. Cowan, T. and Jody Feder, *The Pigford Cases: USDA Settlement of Discrimination of Suits by Black Farmers*. Congressional Research Service (2011), available at nationalaglawcenter.org/assets/crs/RS20430.pdf.

² According to the website, <http://www.blackfarmercase.com>, walk-in appointments are very limited and there may be long wait times. Moreover, it is likely that walk-in appointments may not be assisted on the same day.

Lack of Geographic Diversity in the Meetings Scheduled for Many of the Designated States

The current Pigford II schedule developed by Class Counsel regarding dates and locations for the informational meetings lacks geographic diversity in many of the designated states.³ For example, in Oklahoma all 9 informational meetings are scheduled in only two cities: Oklahoma City, OK and Tulsa, OK. In South Carolina, all 36 informational meetings are scheduled in Florence, SC and Columbia, SC, and in Louisiana, the 3 informational meetings that have been held were in New Orleans, LA and Kenner, LA.

This lack of geographic diversity places undue hardship on many potential African-American claimants who will have to drive long distances in order to receive legal assistance with their claim packages. The community-based organization, the Oklahoma Black Historical Research Project, Inc., has received several calls from African-American farmers who complained of driving over three hours to the informational meetings in Oklahoma only to be turned away by Class Counsel because they had not called in advance to schedule appointments.

In order to ensure that outreach efforts are successful during the 180-day claims period, Class Counsel must revise the current schedule of informational meetings to include dates and locations in various rural communities with high concentrations of African-American farmers and ranchers in each designated state. Moreover, Class Counsel should contract with community-based organizations working with African-American farmers and ranchers in each designated state to confirm that the proposed schedule encompasses the various African-American farm communities in each state.

Insufficient Outreach Efforts and Coordination with Community-Based Organizations

In order to improve the current coordination and implementation of the claims process, Class Counsel should contract with community-based organizations that have roots in African-American farm communities for all outreach and education efforts, particularly in the targeted states where Class Counsel has arranged few meetings. To date, Class Counsel has used the internet as the primary method of communication with the potential claimants—specifically with regard to providing Pigford II schedule updates. Although the internet may be an effective tool for some of the claimants, it may be less effective with low-income claimants or claimants that live in remote areas that do not have access to the internet. Given due consideration to these realities, community-based organizations should serve as a critical component to the coordination and implementation process.

Immediate Appointment of an Independent Ombudsperson

We further urge the Court to immediately appoint an independent ombudsperson to address any future concerns regarding the implementation of the Settlement Agreement. The Court's authority to appoint an independent ombudsperson is derived from Section VI of the Settlement Agreement, which states that the Court may appoint an ombudsperson. Moreover, the section enumerates the duties of the ombudsperson:

1. Be available to Class Members and the public through a toll-free telephone number in order to address concerns about the implementation of the Settlement Agreement;
2. Attempt to address any concerns or questions that any Class Member may have with respect to the implementation of the Settlement Agreement;

³ The full schedule including dates and locations is available at <http://www.blackfarmercase.com/>.

3. Make periodic written reports (not less than every six months) to the Court, the Secretary, and Class Counsel on the good faith implementation of the Settlement Agreement;
4. Have access to the records maintained by the Claims Administrator and the Neutrals involved in the claims process; and
5. Make recommendations to the Court relating to the implementation of the Settlement Agreement.

We are entering into the third month of the 180-day claims period and yet the ombudsperson, a critical component of the Settlement Agreement, has not been appointed. We strongly believe that an independent ombudsperson is vital to ensuring that the Settlement Agreement is executed with good faith, integrity and accountability. Without the appointment of an ombudsperson, many of the issues that we have raised will not be addressed in a timely manner and will result in greater hardship for African-American farmers and ranchers in their attempts to receive monetary compensation under the Pigford II Settlement Agreement.

Furthermore, the appointment of an ombudsperson will ensure that Class Counsel is held accountable for their duties as defined by the Settlement Agreement. In carrying out his/her duties, the ombudsperson will be able to obtain comprehensive information from Class Counsel, such as the total number of claimants assisted in each state and at each informational meeting, the total number of attorneys working in each state to assist claimants, and common issues that arise in the successful completion of the claim packages.

The Rural Coalition and our members and allies support justice and equality for all those who have been discriminated against by the United States Department of Agriculture (USDA). We will continue to work with all the farmers and ranchers we serve until all the outstanding claims are settled for every producer who has been subjected to unfair treatment. *In re Black Farmers Litigation* signifies the last opportunity for many African-American farmers and ranchers to obtain monetary compensation for the immeasurable harm caused by the decades of discriminatory practices and institutional culture of the USDA. We urge the Court to consider our recommendations in your judicial task of rendering justice for African-American farmers and ranchers.

Sincerely,

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