



United States Department of Agriculture

Office of Inspector General





In re Black Farmers Discrimination Litigation

Audit Report 50601-0001-21

What Were OIG's Objectives

The Claims Resolution Act of 2010 required OIG to conduct a performance audit based on a statistical sample of adjudicated claims for *BFDL*. This report reflects audit work that was performed prior to the final adjudication of claims. We plan to complete additional audit work on adjudicated claims.

What OIG Reviewed

We performed tests on 100 randomly selected claims from a universe of 17,124 provisionally adjudicated claims, as of June 11, 2012.

What OIG Recommends

The Neutral and the CA have taken action to address the concerns we brought to their attention during the course of our audit; therefore, we are making no formal recommendations at this time.

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

What OIG Found

Before the deciding official (known as the Neutral) finalized decisions regarding *In re* Black Farmers Discrimination Litigation (*BFDL*) claims, the Office of Inspector General (OIG) conducted audit work to evaluate the integrity and consistency of the processes applied to claimants. Overall, nothing came to our attention to indicate that the claims process was not implemented in accordance with the *BFDL* settlement agreement. However, we identified three findings:

- 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 random sample of 100 claims.
- The Claims Administrator (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 random sample.
- The Neutral had provisionally approved at least 20 persons who were ineligible for a *BFDL* award because they had participated in the *Pigford v. Glickman* settlement.

We discussed these issues with officials from the CA and the Neutral in June 2013. After our meeting, the CA and the Neutral provided us with documentation that supported the actions they had taken, demonstrated how they addressed each of our findings, and detailed additional actions they planned to take prior to the final adjudication of claims. Their stated actions should mitigate our audit findings. We plan to test the effectiveness of the actions in a subsequent audit.



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



DATE: December 4, 2013

AUDIT
NUMBER: 50601-0001-21

TO: Thomas J. Vilsack
Secretary

FROM: Phyllis K. Fong
Inspector General

SUBJECT: *In re* Black Farmers Discrimination Litigation, 50601-0001-21

This is to advise you that we have completed our 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. Since we made no recommendations in the report, no further action is required by any of the parties.

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

Attachment

cc: (with attachment)

Krysta Harden, Deputy Secretary of Agriculture
Ramona Romero, General Counsel, Office of the General Counsel
Michael Scuse, Under Secretary, Farm and Foreign Agricultural Services
Dr. Joe Leonard, Assistant Secretary for Civil Rights
Juan M. Garcia, Administrator, Farm Service Agency
Brandi Peters, Senior Counsel, Office of the General Counsel
Michael Sitcov, Assistant Director, U.S. Department of Justice
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Background and Objectives

Background

Introduction

In response to the requirement set forth in the *Claims Resolution Act of 2010* (the Act), the Office of Inspector General (OIG) performed an audit of the *In re* Black Farmers Discrimination Litigation (known as *BFDL*) claims process. The Act states that 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.”¹

We initiated our audit in January 2012 in order to gain an understanding of the claims adjudication process and prepare for the statistical selection of adjudicated claims.² During the audit, we learned that the entities implementing the *BFDL* settlement, specifically Class Counsel, the Claims Administrator (CA), and the Track A and B Neutral, discussed in detail later in the report, 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 the late summer or early fall of 2012. Based on this timeframe, we continued to review the entities’ claims process and we selected a random sample of provisionally adjudicated claims in June 2012. We proceeded with our audit, based on the expectation that all claims would soon have final decisions. Once the decisions were final, we planned to update our first sample with any changes, so that we would have reviewed “adjudicated” claims, as specified in the Act. However, final adjudication did not occur in the fall, as expected, and the claims process at that time was not yet finished.³

Once the majority of the claims were provisionally adjudicated, the entities implementing the settlement agreement began performing more widespread quality control measures.⁴ The timing of these measures gave us the opportunity to ensure that the process was functioning adequately and that claimants were treated fairly. In connection with our audit, nothing came to our attention to indicate that the administrative entities were not adequately implementing the claims process in accordance with the *BFDL* settlement agreement. However, we identified issues at the time of our review that needed to be addressed prior to final adjudication. Therefore, we discussed our findings with the entities, and they described actions they have taken, or plan to take, to resolve our concerns. In addition, they provided us with written procedures and preliminary results to support these actions, but we have not tested the overall effectiveness of their efforts. We plan to test these areas in a subsequent audit.

¹ *Claims Resolution Act of 2010*, 111 Pub. L. No. 291, Tit. II, § 201(h)(2)(A).

² As noted in Exhibit A, we developed a random statistical sample and used a simple random sample design to help achieve our objective. We will use “random” to describe our sample throughout the report.

³ On August 6, 2013, Class Counsel filed a motion with the U.S. District Court for the District of Columbia that finalized the adjudication of claims. The judge approved the motion on August 23, 2013.

⁴ These quality control measures are discussed in more detail later in the report.

History of the BFDL Settlement

In 1997, a group of African-American farmers brought suit against the Department of Agriculture (USDA) for alleged discriminatory actions based on their race when they applied for or received farm credit, credit servicing, and non-credit farm benefits. This case was called *Pigford v. Glickman*⁵ (known as *Pigford*). On April 14, 1999, the U.S. District Court for the District of Columbia (the Court) approved the *Pigford* consent decree, which gave class members who did not opt out⁶ 180 days, until October 12, 1999, to submit claim packages. Approximately 20,000 individuals filed claims within the 180-day deadline. Later, a filing extension was approved for individuals who could show that their late-filing request was due to “extraordinary circumstances.”⁷ By September 15, 2000, there were approximately 61,000 individuals who attempted to satisfy the “extraordinary circumstances” criteria, but only 2,700 were successful and allowed to participate in *Pigford*. Between September 16, 2000, and June 18, 2008, over 28,000 additional individuals unsuccessfully sought to participate in *Pigford*.

The *2008 Farm Bill*⁸ created a new cause of action for unsuccessful late filers in *Pigford* by designating \$100 million to pay claims. The *Claims Resolution Act of 2010* authorized an additional \$1.15 billion for *BFDL* claims. The Court granted final approval of the *BFDL* settlement agreement on October 27, 2011.⁹ Under the terms of the court order approving the settlement agreement, the period to submit claims began on November 14, 2011, and ended on May 11, 2012. Specific groups of claimants received an extension to submit claims until October 12, 2012.¹⁰

Terms of the Settlement Agreement

The settlement agreement’s terms were negotiated for almost 2 years by Class Counsel, which represented the class, and the Department of Justice (DOJ), which represented USDA. According to the Court, the settlement agreement was developed to balance the need for an accurate determination of claims against the practical reality that most class members would probably not be able to meet the stringent evidentiary standards required in traditional litigation to prove their claims.¹¹ When the Court evaluated the settlement agreement, it considered whether the structure of the settlement and the substantive relief were fair and reasonable when compared with the recovery those plaintiffs likely would have realized if their claims were decided through the judicial process. Based on this consideration, the judge concluded that the

⁵ *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999).

⁶ The “*Pigford* Opt-Out List” documents individuals who chose not to participate in the *Pigford* consent decree.

⁷ “Extraordinary circumstances” included the effects of Hurricane Floyd and lateness due to illness or disabilities that made individuals homebound and, therefore, unable to meet specified deadlines.

⁸ Food, Conservation, and Energy Act of 2008, P.L. No. 110-246, § 14012.

⁹ The term “settlement agreement” used throughout the report refers to the *In re* Black Farmers Discrimination Litigation Settlement Agreement.

¹⁰ On September 14, 2012, a filing extension was granted by the judge for individuals in different categories who generally: (1) requested a claim form prior to May 11, 2012, but were sent a form after May 1, 2012; or (2) submitted a late filing request for *Pigford* prior to June 18, 2008, that did not get evaluated and, therefore, did not receive a claim form. In addition, applicants who previously filed incomplete claims were given another opportunity to complete their claims.

¹¹ See the U.S. District Court Judicial Order and Opinion approving the settlement agreement filed October 27, 2011, Misc. No. 08-0511.

settlement was fair, adequate, and reasonable, and the adjudication process would subject each claim to a careful and rigorous review, while keeping costs in check.

The settlement agreement also explains the requirements for obtaining a claim determination. Claimants had to choose one of two different approaches to file a claim: Track A or Track B. Track A claims required a substantial evidence¹² standard of proof, and will award successful claimants a payment of up to \$62,500¹³ for credit claims and/or up to \$3,750¹⁴ for non-credit claims.¹⁵ However, all Track A awards may be proportionally reduced based on the total number of approved claims.¹⁶ In addition, Track A claimants may also receive reductions of outstanding debt owed to USDA's Farm Service Agency (FSA). Track B filers had to meet a higher standard of proof, called preponderance of the evidence.¹⁷ If this higher standard of proof is met, successful claimants will receive the amount of their actual damages, up to \$250,000. Attorney fees, in addition to the award payment, will be paid for approved claimants under both tracks as part of the settlement.

In addition, the settlement agreement requires each individual to be a class member.¹⁸ To be a class member, an individual must have submitted a late-filing request in *Pigford* and have not obtained a determination on the merits of his or her discrimination complaint. The *Pigford* Timely 5(g) List,¹⁹ which includes the names and addresses of more than 89,000 people, identifies individuals who submitted late-filing requests under *Pigford*. Individuals who "participated" in the *Pigford* settlement are prohibited from participating in the *BFDL* settlement.²⁰ Participation is defined as having obtained a determination (approved or denied) on their discrimination claim in *Pigford*;²¹ having opted out of *Pigford*; or having obtained a

¹² The *BFDL* settlement agreement, dated February 18, 2010 (revised and executed as of May 13, 2011), page 23, states that substantial evidence is such evidence that a reasonable person might accept as adequate to support a conclusion, after taking into account other evidence in the record that fairly detracts from that conclusion. Substantial evidence is a lower standard of proof than a preponderance of the evidence.

¹³ The \$62,500 payment amount consists 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 tax liability of the monetary award.

¹⁴ The \$3,750 payment amount consists 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 tax liability of the monetary award.

¹⁵ Credit claims reflect situations where individuals applied for credit programs, such as operating loans, which must be repaid. Non-credit claims reflect situations where individuals applied for non-credit benefit programs, such as crop insurance, which if received, do not need to be repaid.

¹⁶ If the amount of funding available is sufficient to fully pay Track A and Track B awards, no reductions will be applied. However, if the funds available are insufficient to fully pay Track A and Track B awards, the settlement agreement provides that Track B awards will first be reduced proportionally until their sum equals the Track B cap. If necessary, awards to be paid to claimants who submitted late-filing requests in *Pigford* after September 15, 2000, will then be reduced by up to 30 percent. If funds are still insufficient, all awards will be proportionally reduced until the total of all awards equals the amount of funds available.

¹⁷ The settlement agreement defines preponderance of evidence as evidence "as is necessary to prove something is more likely true than not true."

¹⁸ The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 15, section V.

¹⁹ The "*Pigford* Timely 5(g) List" identifies those individuals who submitted late-filing requests under Section 5(g) of the *Pigford* Consent Decree after October 12, 1999, and on/or before September 15, 2000.

²⁰ The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 3, 2011), pages 20-21, section V.B.4(b).

²¹ As noted in the CA's response to this report (see Exhibit C), timely submitted *Pigford* claims that were rejected because they were incomplete are also considered to have obtained a determination.

judgment from a judicial or administrative forum on the basis of their discrimination claim.²² If a person appears on either the *Pigford* Participants List²³ or *Pigford* Opt-Out List,²⁴ which consist of over 24,000 names and addresses, he or she will be considered ineligible to participate in *BFDL*.

Administrative Entities

There are three main entities charged with carrying out the terms of the settlement agreement. The first entity, Class Counsel, is responsible for the overall implementation of the settlement agreement. Class Counsel initiated actions to inform the class members about the settlement agreement and helped them complete and submit their claims. Class Counsel held more than 380 Claim Form Assistance Meetings, during which assistance was provided to help claimants complete and file almost 12,000 of the nearly 40,000 submitted claims.²⁵

The second entity, the CA, was hired by Class Counsel with the Court's approval to prepare, send, and receive all claims correspondence. The CA also determined whether each claim was timely and complete and whether each applicant was eligible to participate. The CA maintained a call center where operators received more than 620,000 phone calls to provide claimants information or to answer their questions. The CA also transferred over 27,000 phone calls to a Class Counsel phone assistance line.

Finally, Class Counsel hired one firm,²⁶ approved by the Court, to serve as the Track A and Track B Neutrals. The firm employed adjudicators²⁷ who determined the merits of the claims submitted under the tracks. Prior to reviewing any claims, each adjudicator received training and took an oath administered by the Court that he or she would determine each claim faithfully, fairly, and to the best of his or her ability.

Track A Claims Adjudication

The CA sent timely, complete, and eligible Track A claims to a law firm²⁸ that supported the Track A Neutral in the adjudication process for an "initial review." A quality control team within the law firm then examined every eligible claim a second time. The law firm formulated a conclusion on every eligible claim, which served as the first quality control measure of the

²² The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), pages 20-21, section V.B.4 (a-b).

²³ 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 5(g) of the *Pigford* Consent Decree after October 12, 1999, which was determined by the *Pigford* Arbitrator to satisfy the "extraordinary circumstances" requirement.

²⁴ The "*Pigford* Opt-Out List" documents the individuals who chose not to participate in the *Pigford* Consent Decree.

²⁵ The CA had received almost 40,000 claims as of July 12, 2013.

²⁶ This firm is a provider of alternative dispute resolution services, including claims adjudication and arbitration.

²⁷ According to the Track A Adjudication Guidelines, an adjudicator is an individual responsible for granting or denying individual claims pursuant to the settlement agreement. There were 17 adjudicators who reviewed Track A and B claims.

²⁸ The Neutral retained the services of a law firm which specializes in claims resolution and data management.

adjudication process. Each claim, along with the law firm’s conclusions regarding it, was then sent to the Neutral.²⁹ The Neutral reviewed the claim and made a provisional adjudication decision. The Neutral was not bound to adjudicate the claims consistent with the law firm’s “initial review” and conclusions. Claims underwent additional reviews by more experienced adjudicators³⁰ and the Track A Chief Adjudicator as a result of quality control procedures the Neutral implemented, which are discussed in the Implementation of Quality Control Procedures section below and later in the findings.

Track B Claims Adjudication

The CA sent eligible claims to the Chief Adjudicator of Track B, who reviewed all the claims submitted for this track.³¹ To make adjudication determinations, the Chief Adjudicator evaluated all parts of the claim form required for Track A. In addition, the Chief Adjudicator reviewed a section on the claim form containing additional questions specifically required for Track B (see Exhibit B, page 38 of the report). 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 Chief Adjudicator evaluated all sections of the claim form to determine whether a claimant established each necessary element through independent documentary evidence.

Unlike the Track A 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 Chief Adjudicator’s determinations. None of the Chief Adjudicator’s decisions changed based on the quality control review. We selected and analyzed a random sample of 32 provisionally adjudicated Track B claims,³² and found that all of them were processed in accordance with the terms of the settlement agreement.

Implementation of Quality Control Procedures

The CA and the Neutral applied quality control measures throughout the claims process to ensure payments would be made to eligible claimants. The Neutral’s quality control process included additional tests and reviews, which could change the provisional decision on each claim. For instance, the Neutral had its quality control team perform a second review of all denied claims. The Neutral also contracted with statisticians to perform periodic analyses of the approved/denied counts of each adjudicator to determine if the provisional outcomes were reasonably consistent across adjudicators.

The CA also implemented quality control measures to oversee its process and determinations. For instance, the CA performed periodic secondary reviews to monitor whether its staff

²⁹ The term “Neutral” used throughout the report will specifically refer to the Track A Neutral.

³⁰ This senior team of adjudicators gained their extensive experience from participating in the claims review process of *Pigford*.

³¹ As of July 12, 2013, the Track B universe consisted of 77 claims.

³² 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 Track B claims decreased between December 6, 2012, and July 12, 2013.

processed claims correctly before they were sent to the Neutral for adjudication. The CA conducted a second review of all incomplete claims before letters requesting necessary information were sent to claimants.

Fraud Concerns

The Neutral identified more than 50 suspicious filing patterns. Patterns were established based on commonalities across multiple claim forms, such as similar language, handwriting, format, phraseology, and geographic location. The Neutral concluded that these patterns could undermine the claims' credibility, due to similarities among large numbers of claims. These patterns were provided to the CA, which searched the entire universe for claims with matching attributes, and identified approximately 4,000 matching claims. The Neutral performed an additional review of these claims and determined that approximately 2,500 presented fraud concerns sufficient to merit the denial of the claim.

We analyzed over 200 of the approximately 4,000 claims the CA identified based on the Neutral's patterns. Our review encompassed 8 of the 50 fraud concern patterns³³ that the Neutral identified as "suspicious." Our analysis consisted of determining whether the Neutral's definitions of the suspicious patterns 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.

Government Accountability Office (GAO) Oversight

The Act also required GAO to perform an audit of the administration of the *BFDL* settlement agreement. GAO evaluated the internal controls (including internal controls concerning fraud and abuse) created to carry out the terms of the settlement agreement. In a report issued in December 2012, GAO stated that, while the internal control design of the *BFDL* claims process generally provided reasonable assurance that fraud or invalid claims would be identified and denied, certain weaknesses in the control design could expose the claims process to a risk of an improper determination.³⁴ GAO noted that constraints were imposed by the terms of the settlement agreement (for example, the settlement agreement does not require that claimants submit supporting documentation for Track A claims), and these 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,³⁵ for checking whether applicants had

³³ At the time of our analysis, the Neutral had provided definitions for 8 of the 50 fraud concern patterns. We will review this area further in a subsequent audit.

³⁴ GAO-13-69R: "Additional Actions in *Pigford II* Claims Process Could Reduce Risk of Improper Determinations," December 2012.

³⁵ The two additional settlements are: (1) *Keepseagle*, which arose from the *Keepseagle v. Vilsack* (1999) case and (2) Hispanic and Women Farmers and Ranchers Claims Resolution Process, which arose from the *Garcia v. Vilsack* (2000) and *Love v. Vilsack* (2000) cases. The CA stated in its written response to the report that it checked participant lists for the settlements in *Pigford* and *Keepseagle*. The CA did not check the participant list for the

already obtained a judgment on a discrimination case in a judicial or administrative forum. Lastly, because the internal control design had not yet been fully implemented, GAO was unable to determine if the remainder of the design would operate as intended. For example, controls yet to be fully implemented include (1) the identification of duplicate and multiple claims submitted on behalf of the same farming operation or class member, and (2) the verification of the timeliness of claim determinations.

Responses to Official Draft Report

We provided an official draft report to the administrative entities on August 29, 2013, and requested they provide a written response to be included in the final audit report. The CA provided a written response on September 27, 2013 (see Exhibit C) that includes clarifications to information in the Background section of this report. Class Counsel did not provide a written response to the draft report, but verbally suggested revisions on October 24, 2013. The Neutral did not provide a written response to the draft report.

OIG Position

We appreciate the responses, and have adjusted the report, where appropriate, based on the provided information.

Objectives

The *Claims Resolution Act of 2012* required OIG to conduct a performance audit based on a statistical sample of adjudicated claims for *BFDL*.³⁶ This report reflects audit work that was performed prior to the final adjudication of claims. We plan to complete additional audit work on adjudicated claims.

Hispanic and Women Farmers and Ranchers Claims Resolution Process as the claims process was ongoing and final determinations had not been made at that time.

³⁶ We performed an audit of both Tracks A and B.

Section 1: Track A Claims

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. We selected a random sample of 100 claims from the universe of 17,124 provisionally adjudicated claims, as of June 11, 2012.³⁷ From our random sample of 100, there were a total of 8 claims with inconsistent decisions. For these eight claims, the claimant did not adequately describe a complaint of discrimination to a Government official. The inconsistent decisions occurred due to the different perspectives and judgments of the adjudicators³⁸ who examined the claim forms. Also, at the time we performed our analysis, the Neutral’s quality control reviews had no method to detect all the inconsistencies after they occurred. We estimated at the time of our analysis that there were 1,370 provisionally adjudicated claims with inconsistent decisions.³⁹ The Neutral has since taken actions to ensure all claims will be evaluated consistently, which are explained later in this finding.

The Judicial Order and Opinion⁴⁰ approving the settlement agreement states that the adjudication process needs to ensure that awards go to those who “were victims of USDA’s discrimination.” The Judicial Order and Opinion states 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,⁴¹ and put in place quality control measures prior to making claim decisions. Adjudicators’ decisions were based on requirements set forth in the settlement agreement, which stated that a class member (claimant) needed to establish six elements,⁴² such as the class member being an African-American, with substantial evidence.⁴³

According to the Neutral, claimants had difficulty describing their complaint of discrimination.⁴⁴ As of March 31, 2013, 96 percent⁴⁵ of total denied claims were denied on the basis that claimants did not prove a complaint of discrimination. For question 7G, the claim form asked claimants to check a “Yes” or “No” box to answer if they complained of discrimination to an official of the

³⁷ Exhibit A–Statistical Plan.

³⁸ There were 17 adjudicators responsible for examining claim forms.

³⁹ We are 95 percent confident there are 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.

⁴⁰ U. S. District Court Judicial Order and Opinion, October 27, 2011, Misc. No. 08-0511.

⁴¹ *In re* Black Farmers Track A Adjudication Guidelines, provided to OIG on February 13, 2012 (amended August 1, 2012).

⁴² The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 22, section V.C.1.

⁴³ According to the *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 23, section V.C.1, substantial evidence is such evidence that a reasonable person might accept as adequate to support a conclusion after taking into account other evidence in the record that fairly detracts from that conclusion.

⁴⁴ According to the *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 23, section V.C.1.f, the class member must establish a complaint of discrimination.

⁴⁵ As of March 31, 2013, there were 32,208 provisionally adjudicated claims and information from the CA’s database indicated that 11,896 of 12,337 total denied claims were denied on the basis that claimants did not prove a complaint of discrimination.

U.S. Government before January 1, 1997. In addition, for question 7G.i, each claimant was asked to explain: (1) when the complaint was made, (2) how he or she complained, (3) to whom in the U.S. Government he or she complained, and (4) what he or she complained about (a copy of the claim form is included as Exhibit B, and 7G.i can be seen on page 35 of this report).

We compared claimant answers for questions 7G and 7G.i on the claim forms from our random sample against the requirements of the settlement agreement and the written guidance the Neutral provided to its adjudicators. We identified eight claims with written responses that did not adequately state the complaint of discrimination. The claimant's answers for three claims only included the name or description of the U.S. Government official to whom they complained, and did not address components (1), (2), and (4), listed above—the Neutral had approved all three claims. We also noted that five other claims in our sample described the discrimination experienced, but did not specifically address the four components of the question (the Neutral approved three of these claims and denied two others).

Based on the results of our sample, we expanded testing to include all claims with a provisional adjudication. The sections below describe our analysis and results related to the 8 sample claims, as well as other claims in the universe of 17,124 claims (as of June 11, 2012).

Implications of Checking “Yes” in the 7G Question Box

The first part of question 7G asked the claimant to check “yes” or “no” in response to the following question: “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?” The next question, 7G.i, asked claimants to describe when, what, how, and to whom they made a complaint.

We found three claims in our sample where claimants’ written answers identified a U.S. Government official, but did not describe the circumstances of the complaint. The Neutral had provisionally approved all three claims. The adjudicators who approved the claims noted (both in our sample and in other similar approved claims) that, because the claimants had checked “yes” to the question, it inferred or implied that the other three requirements of the question were present (i.e., when, how, and what the claimant had complained about). No claims in our sample were denied due to this issue.

The Neutral’s written guidance states that if a claimant checked “yes” for question 7G, it can be inferred that a complaint was made timely and, therefore, a written response was not necessary to answer the question of when the complainant had made the complaint. However, the Neutral’s written guidance did not state that the other three components (i.e., what, how, and to whom) could also be inferred from a “yes” answer to the question. Still, in one of the three random sample claims, the adjudicator wrote, “It can be inferred that during his conversations with the county supervisor and his reference to USDA that he was making a complaint of discrimination.” The adjudicator provisionally approved this claim, based on an inference of when and a definite answer as to whom the claimant complained, but the claim lacked information on what the complaint was about or how it was made.

To understand more about the adjudicators' decision-making process on this issue, we decided to expand our review into the universe of claims.⁴⁶ We used both automated and manual techniques to search for claims with brief answers to the question on discrimination, which could be similar to the three claims from our random sample.⁴⁷ We discontinued our search after identifying 75 claims where the claimant only wrote a short description of the discrimination or provided only the name of the person to whom they complained. For the 75 claims, we found that adjudicators approved 25 claims, but denied 50 claims due to insufficient evidence. The results of our review of 75 claims, along with the results of our random sample, led us to the conclusion that additional questionable claims existed in the universe of provisional claims.

We selected 20 of the 75 claims that, in our opinion, were similar to those in our sample because the claimants only indicated to whom they complained.⁴⁸ Our review of the claims in their entirety⁴⁹ disclosed that, although they were similar, the adjudicators had approved 10 of the claims and denied the other 10 claims. Therefore, if the Neutral does not review these claims for consistency, some claimants could be treated unfairly by the Neutral's final decisions. The following example from two claims we analyzed illustrates our position. In both claims, the claimants answered "yes" to question 7G. For Claim 1, the adjudicator provisionally approved the claimant to receive up to \$50,000. However, for Claim 2, the adjudicator provisionally denied the claim. (The adjudicators for the two claims were different). If the Neutral does not review these claims, one claimant will receive a monetary award and the other claimant will receive nothing, even though the two claimants submitted very similar claims. The claimants' complete written responses to question 7G.i were as follows:

- Claim 1: "The USDA official in Covington County."
- Claim 2: "He complained to the people in the USDA office in Collins, MS."

In the remarks section,⁵⁰ the adjudicator said that Claim 1 was approved because it had "an affirmative response to this section" and "this response is sufficient to meet the substantial evidence standard." However, the adjudicator that reviewed Claim 2 noted, "the claimant does not describe a complaint." We presented these issues to the officials representing the Neutral, who explained that each claim is decided based on the discretion or judgment of the adjudicator and that both decisions, although different, were made in accordance with guidance established by the Neutral.

⁴⁶ We selected additional claims from a file the CA provided us that contained 17,124 claims with provisional adjudications by the Neutral, as of June 11, 2012. We also had "read only" access to the CA's system of records that we used to review claims, conduct additional research, and update our sample materials, as needed.

⁴⁷ We applied basic computer analytics, such as filters, sorts, and matches to the data. Additionally, we manually searched for short answers in length, keywords, and phrases similar to claims in our random sample.

⁴⁸ Ten different adjudicators established provisional decisions on these 20 claims.

⁴⁹ We reviewed the entire claim, and did not note significant differences. Also, we did not find evidence in the claim form or any attached materials that covered the components of question 7G.i.

⁵⁰ In a database used to document the Neutral's review, adjudicators could include any additional information about their findings.

Treatment of Active Discouragement

Adjudicators reached different conclusions for claims where the claimants' answers described how they were actively discouraged by USDA personnel, but did not directly state that they complained to a U.S. Government official. We identified five claims in our random sample with this specific condition. The adjudicators approved three of the claims, but denied two other claims. The adjudicators who approved the claims in our sample and other similar approved claims in the universe included remarks that indicate they believed a discrimination complaint was established because the claimants described their discouraged experience. However, the adjudicators who denied similar claims left remarks that indicated there was not sufficient evidence of a complaint.

The settlement agreement states that the Neutral must determine if there is evidence of active discouragement when the claimant "constructively applied" for a loan or non-credit benefit. The settlement agreement also provides examples of active discouragement.⁵¹ These include statements from USDA officials that no funds were available, no applications were available, or that USDA was not accepting or processing applications at that time. The settlement agreement does not address active discouragement's relation to the discrimination complaint, or whether active discouragement is sufficient to establish a complaint. However, some adjudicators used active discouragement as sufficient evidence to establish a discrimination complaint, while others did not use active discouragement as sufficient evidence to establish a discrimination complaint.

We expanded our review beyond the random sample to the universe of provisional claims to determine if there were additional claims of this type. We searched for these claims using key words in the adjudicators' comments.⁵² We discontinued our search after identifying 23 additional claims with active discouragement mentioned in the adjudicators' comments. The adjudicators approved 12 of the 23 claims and denied the other 11 claims. We concluded that more claims with this type of inconsistency exist because we stopped our analysis before searching the more than 17,000 provisional claims in the universe.

We reviewed 14 of the 23 claims that, in our opinion, were similar to our sample claims, and reviewed these claims in their entirety.⁵³ Our review disclosed that although the 14 claims described active discouragement and did not state that a complaint was made, the adjudicators had denied 10 and approved 4 of the claims. For example, one adjudicator remarked that a written answer "described active discouragement, but not a complaint" and, for that reason, denied the claim. Another adjudicator remarked that the

⁵¹ The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 24, section V.C.2 (b) (1-3).

⁵² First, we used a filter to identify only claims that checked "yes" to question 7G. Next, we manually searched for adjudicators' comments that indicated active discouragement was used to describe the claimants' complaint. Adjudicators were not always required to provide comments, but we found that adjudicators often left comments to support the reason for their decision.

⁵³ Eight different adjudicators provided provisional decisions on these 14 claims.

claimant “was denied the opportunity to apply (active discouragement)” and approved the claim because such a statement was “sufficient to meet the standard of proof.”

There was one claim from our random sample that most clearly illustrated the lack of consistency. The claim shared almost the exact same language used in the written answers of six other claims in the universe.⁵⁴ The adjudicators treated these cases of active discouragement differently, denying three claims and approving four claims.⁵⁵ The Neutral’s officials agreed that when the seven claims were presented together, it made a compelling case to perform more work to ensure consistency of claim decisions.

Officials representing the Neutral stated that the treatment of active discouragement cases was often discussed during the periodic meetings they held with adjudicators. As a result of these discussions, the Neutral revised its written guidance for adjudicators to include more detailed instructions about how to handle the narrative answers on discrimination complaints. The officials stated that claims with active discouragement would be reexamined under the more current guidelines.

Based on the results from our sample and subsequent searches in the universe, we determined that adjudicators were making inconsistent decisions that were not detected by the Neutral’s quality control process. We presented our conclusions to the Neutral’s officials in October 2012. We discussed our concerns with the Neutral before decisions were finalized to allow time to consider our results, implement additional actions, and ensure claimants received the fairest treatment possible. We proposed that the Neutral take additional action by searching the universe of provisional claims for inconsistent decisions. Following our discussions in the fall of 2012, the Neutral initiated an analysis to search for potential inconsistent decisions and address our concerns by applying analytics, and conducted additional reviews. The Neutral provided written procedures to support its preliminary reviews in March 2013.

In June 2013, the Neutral provided updated procedures and results for the quality control process designed to address our concerns. This information illustrated that the Neutral developed over 100 search terms to run against the universe of claims, based on the examples of inconsistent decisions we presented. The Neutral’s searches identified nearly 4,000 claims with potential inconsistencies. After further refining the search results, the Neutral reexamined over 2,000 provisionally adjudicated claims and changed over 200 provisional decisions to ensure more consistency in the claims process.

The Neutral also provided information about three additional quality control measures that were implemented to oversee the difficult process of adjudicating thousands of claims. For instance, if the Neutral’s provisional decision did not agree with the law firm’s initial conclusion, a different adjudicator reviewed the claim again. The Neutral also implemented a quality control measure that included periodic analyses by statisticians to determine if provisional decisions among adjudicators were reasonably consistent. If an adjudicator’s overall approval and denial

⁵⁴ In other words, these claims were basically identical and, if identified, the similarities should have alerted the Neutral to review multiple claims filed for one farm operation (see Finding 2) or raised a potential fraud concern.

⁵⁵ To identify these six claims, we used automated matching and manual searches, based on keywords and unique phrases.

percentages were outside of an expected range, the statisticians selected a random sample of the adjudicator's claims for additional review. Lastly, the Neutral designated a quality control team to review all denied claims a second time because denied claimants have no further rights to appeal the Neutral's final decisions.⁵⁶ According to documentation the Neutral provided, over 15,000 claims were reviewed as a result of these 3 quality control measures, which resulted in changes to more than 1,000 provisional decisions.

To address our concerns, the Neutral took actions that demonstrate reasonable efforts to ensure fair, consistent, and equitable decisions. In addition, we did not find anything other than the inconsistent provisional adjudication of claims to indicate that the Neutral⁵⁷ was not adequately implementing the claims process. After reviewing the Neutral's written procedures and examining the results of its quality control measures, it appears that the Neutral designed quality control measures to ensure a fair claims process. We plan to test the effectiveness and implementation of the Neutral's actions to address inconsistent decisions in a subsequent audit.

⁵⁶ The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 18, section V.A.8 states that determinations are final and not reviewable.

⁵⁷ The two other findings in this report relate to CA responsibilities.

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 operation⁵⁸ or individual class member.⁵⁹ We attributed this, in part, to oversights by the CA's analysts when they manually searched the universe of submitted claims to identify multiple claims that may have been filed for one farming operation or class member. Also, while the CA performed internal quality control reviews of the manual search process, those reviews did not include a comparison of all submitted claims. From our random sample of 100 claims, a total of 7 had additional related claims. We estimated at the time of our analysis that there were at least 1,199 additional related claims.⁶⁰ Thus, there was an increased risk of overpayments per farming operation or class member, which—depending on the number of claims submitted—could have reduced the amount of funds available for eligible claimants, and could have resulted in improper payments. The claims process was not complete at the time of our analysis, and the CA has since implemented reasonable procedures to identify related claims, which we explain later in this finding.

The settlement agreement states that each farming operation or class member with a successful claim is entitled to one award payment of up to \$62,500.⁶¹ If multiple individuals file a claim for the same farming operation, each approved claim would be eligible to receive only a portion of one award for the farming operation—that is, the individuals would split the total award (up to \$62,500). Additionally, only one claim is eligible to receive an award when more than one individual files on behalf of the same class member. The Neutral will determine if multiple claims were filed for the same farming operation and/or individual class member and allocate award payments among approved claims. For the *BFDL* settlement, 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 determine how the CA identified multiple claims that may have been filed on behalf of an individual farming operation or class member, we evaluated the criteria and written procedures used by CA officials to search for related claims⁶² in the CA's universe of all submitted claims.

⁵⁸ 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.

⁵⁹ Individuals may submit claims on behalf of deceased or mentally or physically limited class members (see Exhibit B, on pages 28 and 29 of the report).

⁶⁰ We are 95 percent confident that between 330 (1.9 percent) and 2,067 (12.1 percent) claims have 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. The number of unidentified claims may be higher because more than one additional claim could be filed for the same farming operation or class member.

⁶¹ The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), pages 7-8, section II.KK-NN and page 15 section V, states that the \$62,500 award consists of \$50,000 paid to the claimant and \$12,500 paid to the Internal Revenue Service for the claimant's tax liability on the award. The claim amount can be reduced, due to limited funds. This amount does not include \$3,750 for a non-credit award or payments for outstanding FSA loans.

⁶² The CA and Neutral consider claims to be "related" or "related parties" when there are significant similarities in claim information, such as name, Social Security Number, address, or farming location. Claims can also be considered related for other reasons, such as when multiple claims are submitted for the same late-filing request.

These procedures were the only documented control the CA provided to us for related party claim identification at the time of our review. We concluded that the criteria used by CA officials (claimant names, Social Security Numbers (SSN), and addresses) were adequate to detect related claims submitted by individuals for the same farming operation or class member. To test the adequacy of the procedures used by CA officials to match related claims, we compared our random sample of 100 claims⁶³ to the CA's universe of claims.⁶⁴

Our comparison, using the CA's criteria, identified 30 claims in our random sample that had other related claims. When we compared our results to the CA's results, we found that the CA had detected all related claims for only 23 of the 30 claims we identified in our random sample. In three instances, CA officials did not identify any of the other related claims we identified in our comparison. In four instances, CA officials had identified some, but not all, of the related claims we identified in our comparison. For example, we identified four other related claims to one of the claims in our sample, but CA officials only identified two of the related claims. Our finding raised concern that, while the criteria and procedures used by CA officials appeared adequate, the CA's implementation of the procedures was inadequate.

We reviewed all of the claims related to these seven claims in more detail to determine if they were, in fact, multiple claims for the same farming operation or class member, or were legitimate individual claims. Our review of these claim forms included the comparison of specific narrative information, such as acreage farmed, the type of crops farmed, livestock, and farm location (see Exhibit B, page 31 and 32 of the report). We also examined class member SSNs and death certificates. Overall, we determined that three of the seven claims in our random sample would receive excess award payments if not identified and provided to the Neutral for proper adjudication.⁶⁵

One of the three claims in our random sample had four other related claims that had been submitted for the same farming operation. We identified these claims through searches using the class member and representative's names, SSNs, and addresses. At the time of our analysis, the CA had not identified a relationship among all of these parties. We reviewed the information on the claim forms and determined that, in our view, all five claims were filed for the same farming operation. The specific information that led us to this conclusion was that the claims all reported similar acreage and type of crops farmed at the same farm location. CA officials agreed with our conclusion and updated their records to recognize these as related claims. Because the five claims were submitted for the same farming operation, the amount awarded should be split among the approved claimants. If the CA did not identify all the claims as related, each one could have potentially received a full award, or \$312,500 in total awards, resulting in an overpayment of \$250,000.

The CA did not provide a specific reason for not identifying related party claims. However, we concluded that oversights by the CA's analysts during their manual search for multiple related

⁶³ The CA had 17,124 provisionally adjudicated claims in its universe of submitted claims on June 11, 2012, when we selected our sample (see Exhibit A—Statistical Plan).

⁶⁴ The CA had received almost 40,000 claims as of July 12, 2013.

⁶⁵ The four other sample claims and respective related claims did not have similar enough information for us to conclude that they were filed for the same farming operation or class member.

claims were the likely cause. To identify related party claims, a CA analyst would manually search the universe of claims using the name, SSN, and address fields on the claim. To perform the searches, the analyst typed the information from the claim into the database's search feature for each of the different fields and visually reviewed the results for matches. The analyst then manually entered the tracking number⁶⁶ of each claim with matching information into the database to record the possible relationship. We concluded that oversights when performing these searches—such as typographical mistakes when entering search information, overlooking related claims when reviewing search results, or not recording tracking numbers of identified related claims in the database—likely were the primary reasons why the CA's analysts had not identified the related party claims in our random sample.

The CA's internal quality control process did not examine every claim and was performed before the CA had received all claims. These limitations in the process also likely contributed to the lack of detection of related party claims. For example, three of the seven cases where the CA had missed a related party claim did not undergo a quality control review. Two other instances with unidentified related party claims were reviewed as part of the quality control process, but the review occurred before the CA received the related claims. The other two claims were reviewed after the unidentified related claims were submitted, but the review did not detect them. Therefore, we concluded that the quality control process would not be effective until the CA had received all claims. In addition, we determined that the CA needed to perform the searches again once all claims were submitted in order to sufficiently identify related party claims for the Neutral to review.

We met with CA officials in August 2012 to discuss our concern. The CA officials acknowledged that related claims were missed and stated that they will search for related claims again before award payments are made. The CA planned to perform searches using names, SSNs, and addresses, and planned to conduct additional tests, once it received all claims. The additional tests include searches to identify claims with similar farm location descriptions, co-borrowers identified in USDA loan information, and farm co-operators listed in narrative responses. The CA officials stated that these searches would be performed using an automated process, rather than relying on the manual search process. The results would be provided to the Neutral, who will determine if the related claims were filed for the same farming operation or class member.

We agree with the CA's proposed actions, and believe that those actions should be more effective than the CA's initial searches. The new searches will include more detailed information from the claim forms. In addition, the CA will perform automated analyses after it has received all claim forms, which should reduce the risk of errors from a manual process. We requested documentation of the CA's planned procedures and search results when we discussed this concern with CA officials in August 2012. This information would have further substantiated the CA's plans and would have allowed us to obtain a more comprehensive understanding of the intended search process. We received this information in June 2013.

⁶⁶ The tracking number is a unique identification number assigned to each claim.

After we discussed our concern with the CA officials, they completed the planned searches and sent the results to the law firm assisting the Neutral with Track A preliminary reviews. Prior to evaluating the results, the law firm first applied filters,⁶⁷ so that the search returns were more manageable. After applying the filters, the law firm reviewed over 5,200 scenarios, comprised of over 13,500 claims, to initially determine which groups of claims were filed for the same farming operation or class member. The law firm's results were provided to the Neutral to determine when multiple claims were filed for a single farming operation or class member. In March 2013, the Neutral provided us with preliminary results of the law firm's related party claim reviews.

The CA and Neutral provided additional written information to us in June 2013 about the related party claims identification and review processes they implemented. The CA provided written project plans for each of the automated searches conducted to identify related party claims. Each project plan included an objective and listed the searches that were performed across various data fields. The CA and the Neutral designed the searches to be broad in an attempt to identify all possible related claims. The project plans state that the automated searches were initially performed in October and November 2012, and again in June 2013. The CA provided results of the searches it performed, based on SSN, address, farm location description, and related claim comments in the database. The results also included instances where the CA identified co-operators in claim responses or in USDA loan information. The Neutral reviewed the search results and provided us with its review guidelines and related party claim determinations.

The information we received in June 2013 substantiates that the CA implemented reasonable procedures beyond the initial search process to identify related party claims for the Neutral to evaluate. This material also supports that the Neutral used the search results to determine when multiple claims were filed for the same farming operation or class member and to allocate awards based on these conclusions. We will test the effectiveness of the CA and Neutral's actions in a subsequent audit.

⁶⁷ 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."

Section 2: Class Membership Determination

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

Individuals who participated in the *Pigford* settlement were prohibited from receiving an award in the *BFDL* settlement. However, 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 would reduce the funds available to claimants eligible to receive payments through the *BFDL* settlement. Subsequent to our analysis, the CA provided us with a written plan to detect *Pigford* Participants who submitted claims for the *BFDL* settlement. We concluded that the CA’s plan, which we discuss later in this finding, was appropriately designed to detect such claimants.

The *BFDL* settlement agreement states that to be an eligible class member, a claimant cannot have participated in the *Pigford* settlement.⁶⁸ The settlement agreement also states that the CA is responsible for determining if *BFDL* claimants have previously obtained a decision on their discrimination complaints. Further, the CA is required to make this determination through the comparison of information provided on the *Pigford* Participants List⁶⁹ and *Pigford* Opt-Out List.⁷⁰ The *Pigford* Participants List identifies individuals who had their discrimination complaint heard in the *Pigford* settlement. The *Pigford* Opt-Out List identifies individuals who chose not to take part in the *Pigford* settlement and, thus, forfeited the right to file a claim in that settlement. If a claimant appears on either of those lists, the settlement agreement requires that the claimant be deemed ineligible. Another aspect of determining eligibility is that the CA shall verify that claimants are included on the *Pigford* Timely 5(g) List (which is referred to hereafter as the 5(g) List),⁷¹ which identifies individuals who properly submitted a late-filing request and are considered to be eligible *BFDL* class members.⁷² If a claimant was not listed on the 5(g) List, the claimant could still be allowed to participate in *BFDL*, provided that he or she

⁶⁸ The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 15, section V and pages 20-21, section V.B.4(b).

⁶⁹ The “*Pigford* Participants List,” received January 20, 2012, identified 23,986 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 5(g) of the *Pigford* Consent Decree after October 12, 1999, which was determined by the *Pigford* Arbitrator to satisfy the “extraordinary circumstances” requirement and, therefore, was allowed to participate in the *Pigford* settlement.

⁷⁰ The “*Pigford* Opt-Out List,” received January 20, 2012, identified 230 individuals who would not participate in the *Pigford I* Consent Decree. In addition, in response to GAO-13-69R *Pigford II*, the CA will determine if any claimant has received a separate non-*Pigford* related judicial decision on a discrimination case, which could render him or her ineligible for the *BFDL* settlement.

⁷¹ The “*Pigford* Timely 5(g) List,” received January 20, 2012, identified 89,579 individuals who submitted late-filing Requests under Section 5(g) of the *Pigford* Consent Decree after October 12, 1999, and on/or before September 15, 2000.

⁷² The *BFDL* settlement agreement dated February 18, 2010 (revised and executed as of May 13, 2011), page 20, section V.B.4(a).

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 critical information, such as name and address data, on the *Pigford* Participants and *Pigford* Opt Out Lists to the same information on the 5(g) List. We compared over 24,000 individual records on the *Pigford* Participants List and *Pigford* Opt-Out List to the more than 89,000 individual records on the 5(g) List. By definition, if an individual was listed on either the *Pigford* Participants or *Pigford* Opt-Out Lists, the individual should not have been on the 5(g) List as being eligible to participate in the *BFDL* settlement. However, our comparison identified 68 *Pigford* Participants whose names also appeared on the 5(g) List.⁷³ This finding, in our view, reduces the reliability of the 5(g) List as a source for making eligibility determinations.

The settlement agreement required the CA to use the *Pigford* Participants and 5(g) Lists to determine eligibility. We discussed our findings with CA officials, who stated that they were aware that there were duplicate records among the *Pigford* Participants and 5(g) Lists, as the lists were never intended to be used in another settlement. The CA officials explained that they created and maintained the lists, but did so at a time when they did not know that the *BFDL* settlement would occur and require the use of the *Pigford* Participants and 5(g) Lists. Thus, they took no action to ensure that individuals were not listed on both the *Pigford* Participants and 5(g) Lists.

The CA officials acknowledged that there are instances where individuals appear on both the *Pigford* Participants and 5(g) Lists, which could cause confusion when making eligibility determinations for the *BFDL* settlement. However, the officials did not intend to update or amend the lists to remove these conflicting records. Instead, they planned to complete additional procedures at the end of the claim process, which do not involve the lists, to eliminate ineligible *Pigford* Participants and ensure that only eligible *BFDL* claimants receive an award.

The CA officials planned to complete a SSN comparison of all *BFDL* claimants against those of all *Pigford* Participants. The CA has access to the SSN of all *Pigford* Participants, which will enable it to complete this procedure. If the CA identifies a match between the SSN of a *BFDL* claimant and a *Pigford* Participant, the claimant would be reviewed again for class membership eligibility. Those claimants identified as *Pigford* Participants will be deemed ineligible for the *BFDL* settlement.

The CA officials stated that these procedures will enable them to identify and remove ineligible *Pigford* Participants from the *BFDL* settlement. We agree that the additional procedures should be effective because the use of SSNs, which are unique to the individual, should enable CA officials to make exact matches and remove ineligible *Pigford* Participants. The CA should follow the procedures as described to ensure that *Pigford* Participants are removed from consideration for *BFDL* awards. If the CA does not perform the procedures, the 68 ineligible individuals that appear on both lists could receive improper payments.

⁷³ We did not identify any duplicate names between the *Pigford* Opt-Out List and 5(g) List.

To confirm our initial analysis of duplication between lists, we searched the CA's claimant database for each of the 68 *Pigford* Participants by name to determine if the CA had identified them as eligible or ineligible class members. Specifically, we set out to determine whether any of the 68 individuals had submitted a claim for *BFDL*, and, if so, whether the CA sent the claim to the Neutral for adjudication. We found that 37 of the 68 individuals submitted a *BFDL* claim, as of October 1, 2012, and the CA had sent 32 of those claims to the Neutral for adjudication.⁷⁴ The Neutral's adjudicators had provisionally approved 20 of those claims, which, if paid, would result in distributions to claimants identified as *Pigford* Participants.

To determine if there were other potential *Pigford* Participants on the 5(g) List, we used additional criteria to perform another comparison of the *Pigford* Participants and 5(g) Lists. Our criteria included business name, representative name, city, State, and zip code. We used the criteria to make 30 different comparison queries of the *Pigford* Participants and 5(g) Lists. Our comparisons identified another 330 possible matches between the lists, not including the original 68 noted above. Based on the fact that the CA acknowledged the issue and proposed satisfactory corrective action, we did not conduct additional research to confirm that the 330 matches were definitely claimants who had participated in the *Pigford* settlement. However, our analysis does indicate that additional cases above the confirmed 68 cases could exist.

We discussed our concern that ineligible *Pigford* Participants will receive *BFDL* awards with CA officials. They described a procedure intended to identify and deny ineligible claimants based on a SSN comparison of *Pigford* Participants and *BFDL* claimants. We agree that this procedure can effectively identify ineligible *BFDL* claimants. Therefore, the CA needed to compare the SSNs of all *BFDL* claimants and *Pigford* Participants and identify and remove *Pigford* Participants from consideration for *BFDL* awards.

In May 2013, CA officials provided us with preliminary review results that identified 67 *BFDL* claimants who were denied because they were *Pigford* Participants. The CA officials noted that additional claimants will be denied as they continue their analysis. We met with CA officials again in June 2013. After the meeting, the CA provided a documented plan to identify individuals who filed a claim in *BFDL*, but were also *Pigford* Participants. The CA's plan included an automated SSN verification procedure where *Pigford* Participant and *BFDL* claimant SSNs would be compared, and any matches would be subject to in-depth verification. The verification would include a review of all documents and notes in the CA's database to determine if a *BFDL* claimant identified by the SSN match, or by other means,⁷⁵ also participated in *Pigford*. The CA's verification guidelines state that claims determined to be submitted by *Pigford* Participants are not permitted to participate in the *BFDL* settlement.

⁷⁴ Five claims were not sent to the Neutral. The CA determined three claims were incomplete, and therefore did not forward the claims to the Neutral. Those three claimants received denial letters in January 2013. The CA identified the other two claimants as non-class members; therefore they were determined ineligible to participate in *BFDL*. Those two claimants received denial letters in August and December 2012, respectively.

⁷⁵ Matches identified by other means include those found during claims processing or by the Neutral during adjudication.

In July 2013, the CA provided us with an update on the process to identify *Pigford* Participants. The CA informed us that it completed preliminary SSN searches and identified 880 potential SSN matches. The CA reviewed these matches in detail and confirmed that 197 matches were *Pigford* Participants who submitted claims for *BFDL*. The CA stated that these claims are now denied. We will evaluate the effectiveness of the CA's completed process in a subsequent audit.

Scope and Methodology

We conducted our audit of *BFDL* by meeting with the CA in Beaverton, Oregon; the initial Track A reviewing firm in Glen Allen, Virginia; the Track A Neutral in San Francisco, California; and the Track B Neutral, Co-Lead Class Counsel, as well as DOJ, FSA, USDA Office of the General Counsel (OGC), and USDA departmental officials in Washington, D.C. We also traveled to Alabama, Mississippi, and North Carolina to meet with 19 claimants and contacted 8 additional claimants via telephone to discuss their claims.⁷⁶

The settlement agreement establishes that the Neutral shall make every reasonable effort to complete its adjudication determination within 30 days of receipt of a claim. In the course of our work, we learned that the Neutral had not made any final adjudication determinations. Rather, the Neutral evaluated the claims and made “provisional” decisions that it does not consider final until all claims have been submitted and all quality control measures have been completed. We did not have access to provisional adjudication information until June 8, 2012. We, therefore, selected a random sample of Track A claims with provisional adjudication decisions, as of June 11, 2012.⁷⁷ We expanded testing beyond our sample to the universe and judgmentally selected claims with provisional adjudications to further develop our audit findings.⁷⁸ We also randomly selected 44 Track B claims with provisional adjudication decisions as of December 6, 2012.⁷⁹ We limited our review to 32 claims, as we had no concerns with the Track B process or the Track B claims we reviewed. On August 6, 2013, Class Counsel filed a motion with the Court that finalized the adjudication of claims. The judge approved the motion on August 23, 2013.

This report presents results from our review of procedures used by the CA, initial Track A reviewing firm, and Track A and B Neutrals; analysis of our Track A and B sample claims; and the claimant visits we conducted in October 2012. We discussed our findings with the CA and Track A Neutral in August and October 2012, respectively, and in June 2013. At that time, the claims process was not complete and quality control measures were still being developed and performed. As a result, all quality control measures for the completion of the claims resolution process were not available for our review.

To accomplish our objectives, we performed the following procedures:

- Reviewed legislation, court documents, and the settlement agreement to obtain an understanding of the claims process.
- Met with the CA, initial Track A reviewing firm, Track A Neutral, and Track B Neutral to obtain and evaluate their procedures for the claims process.

⁷⁶ Class Counsel attorneys were present for all conversations with claimants.

⁷⁷ There were 17,124 claims with provisional adjudication decisions as of June 11, 2012. We chose a sample of 100 because we expected a moderate error rate and wanted the ability to report findings for attributes with a +/- 10 percent precision (confidence interval) at a 95 percent confidence level.

⁷⁸ We selected claims by applying basic computer analytics, such as filters, sorts, and matches to the data. Additionally, we manually searched for short answers in length, keywords, and phrases unique to claims in our sample.

⁷⁹ There were 80 Track B claims with provisional decisions as of December 6, 2012.

- Used the CA’s database to obtain information for each sample claim.
- Reviewed the CA’s process to determine if sample claims were timely and complete, and if class status was established. We also evaluated claim responses to identify if they met the necessary elements for approval.
- Searched the CA’s database to find claims potentially filed for the same class member or farming operation as those in our sample, and to determine if similar claims were adjudicated consistently.
- Interviewed Class Counsel, DOJ, FSA, and USDA OGC officials to obtain an understanding of the litigation that led to the settlement agreement.
- Gained an understanding of the information systems used in the claims process and assessed its controls. We also reviewed a selection of general and application controls over the CA’s information systems 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.
- Reviewed the *Pigford* Timely 5(g) List, *Pigford* Participants List, and *Pigford* Opt-Out List to determine if individuals were recorded on multiple lists.
- Analyzed over 200 claims from 8 of 50 fraud patterns the Neutral identified as “suspicious.”
- Communicated with GAO officials, who conducted an audit to examine and evaluate internal controls implemented to carry out the terms of the settlement agreement and to identify and deny fraudulent or otherwise invalid claims.

We performed audit fieldwork from January 2012 through July 2013. 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.

The settlement agreement limited the amount of evidence available because Track A claims are 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.⁸⁰ 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 findings and conclusions based on our audit objective.

⁸⁰ U. S. District Court Judicial Order and Opinion approving the settlement agreement filed October 27, 2011, Misc. No. 08-0511.

Abbreviations

<i>BFDL</i>	<i>In re</i> Black Farmers Discrimination Litigation
CA.....	Claims Administrator
DOJ.....	Department of Justice
FSA.....	Farm Service Agency
GAO.....	Government Accountability Office
OGC.....	Office of the General Counsel
OIG.....	Office of Inspector General
<i>Pigford</i>	<i>Pigford vs. Glickman</i>
SSN.....	Social Security Number
USDA.....	Department of Agriculture

Exhibit A: Statistical Plan

Sampling Methodology for Audit Number 50601-0001-21 *In re Black Farmers Discrimination Litigation*

Objective

This sample is designed to support OIG Audit 50601-0001-21. The audit objective is to conduct a performance audit based on a statistical sample of adjudicated claims. To help achieve this objective, we developed a representative random statistical sample for review. At the time of our sample, the Neutral had not made final adjudication decisions for any claims. Rather, the Neutral was making provisional decisions that are not considered final until all claims have been submitted and all quality control measures have been completed. The audit team, therefore, reviewed the sample of selected claims with provisional adjudication decisions and provided the results to an OIG statistician. The data were used to calculate estimates for tested criteria.

Audit Universe

The CA provided the audit team with the universe list, which consisted of 17,168 Track A claims with provisional adjudication decisions, as of June 11, 2012. After we selected the sample and started field work, we discovered that there were 44 claims, which did not have provisional adjudication decisions, as initially stated. To keep consistent with the definition of the audit universe, we excluded those 44 claims from our list. Hence, the total number of claims in our universe dropped to 17,124. All estimates are projected to this final universe total.

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 size as low as possible, while still achieving statistical representation of the universe, we decided to use a simple random sample for this audit. The sample size of 100 claims with provisional adjudication decisions selected for review was calculated based on the following factors:

- Audit Universe - consisted of 17,124 claims with provisional adjudication decisions.
- 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 the reporting our estimates.

Results

Data provided to the statistician were analyzed using the complex sampling module of the Statistical Package for Social Sciences program. Each sampled unit had a weight of 171.24; i.e., it represented approximately 171 claims in the universe. Results are projected to the audit universe of 17,124 claims. Achieved precision, which is indicated by the confidence interval, is reported for a 95 percent confidence level. All projections are made using the normal approximation to the binomial as reflected in standard equations for a simple random sample. All percentages indicated are from the universe of 17,124 claims; for example, 1,370/17,124 = 8.0 percent of the universe.

We note that at the time of review, the Neutral’s decisions were still provisional and could change in either direction (to approved or denied) as the adjudication process continued to evolve. In addition, quality control measures, which could affect adjudication, had yet to be fully implemented and reflected in claim decisions. When compiling our results, we used the conservative measures to project for each case. For example, the consistency issue we reported on affected multiple claims, as the Neutral’s review of a group of claims with similar responses could change multiple adjudication decisions. However, we are only projecting on one claim, even though multiple claims may be affected by the review.

The summaries below show the results for each criterion tested. Measures presented include the projected number of claims with exceptions. For each criterion estimate, we show the projected number (estimate), the upper and lower bounds at a 95 percent confidence level, the actual values observed in the sample, and the precision of each estimate. Interpretation of the results is shown below the table.

Criteria tested	Estimate	Standard Error	95 Percent Confidence Interval		Coefficient of Variation	Actuals found	Precision (Margin of Error) as a Percent of the Estimate	Precision as a Percent of the Universe
			Lower Bound	Upper Bound				
1. Consistency issue estimate	1,370	465.547	446	2,294	.340	8	67	5
2. Related party issue estimate	1,199	437.840	330	2,067	.365	7	72	5

Based on our sample results, we estimate that:

1. For 1,370 claims (8.0 percent) in the universe, at least one similar claim with an opposing adjudication decision exists. We are 95 percent confident that this estimate ranges between 446 (2.6 percent) and 2,294 claims (13.4 percent) of the audit universe.
2. For 1,199 claims (7.0 percent) in the universe, at least one related claim was not identified. We are 95 percent confident that this estimate ranges between 330 (1.9 percent) and 2,067 claims (12.1 percent) of the audit universe.

Exhibit B: BFDL Claim Form

Below is the 15-page BFDL claim form, which contains the questions for claimants referred to in our report.

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)		

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.

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.

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.

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".

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.

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.

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.

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.

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.

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

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 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).

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. . %

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.

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.

<i>Signature of Claimant or Submitter</i>	<i>Date Signed</i>

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.

<i>Signature of Attorney</i>	<i>Date Signed</i>

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

Claims Administrator
PO Box 4028
Portland, OR 97208-4028

**Response from
Epiq Class Action & Claims Solutions, Inc.**

MEMORANDUM

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General
U.S. Department of Agriculture

FROM: Epiq Class Action & Claims Solutions, Inc.

SUBJECT: Draft Official Report relating to the Settlement of *In Re Black Farmers Discrimination Litigation*

DATE: September 27, 2013

On August 29, 2013, the Office of Inspector General (“OIG”) for the United States Department of Agriculture provided an Official Draft Report, dated August 29, 2013, on the performance audit on the claims review process for Settlement of the *In Re Black Farmers Discrimination Litigation* (“BFDL”).

Epic Class Action & Claims Solutions, Inc. (“Epiq”) in its role as Claims Administrator for the Settlement of BFDL provides the following clarifications in response to OIG’s Official Draft Report.

Clarification regarding the Claims Administrator’s Role

The Official Draft Report occasionally confuses the roles and responsibilities of the Claims Administrator with those of the Neutral. Epiq was responsible for determining class membership, timeliness and completeness of the claims and maintaining the settlement claims database. Epiq was not tasked with approving or denying claims on the merits, identifying single farming operations or deciding claims based on a fraud concern. Those decisions rested solely with the Court-appointed Neutral, comprised of a panel of jurists and experienced attorneys at JAMS and BrownGreer. Epiq did not qualify the narrative answers provided in the claims. Epiq processed claims and passed them along to the Neutral for adjudication. Epiq provided assistance to the Neutral along the way, including conducting searches for key language in narrative answers based on criteria from the Neutral, matching or similar addresses, Social Security Numbers, and a host of other items designed to ensure the integrity of the claims and adjudication process. The Neutral then used that information in deciding claims on their merits.

Clarification regarding *Pigford* Timely 5(g) List

Page 5 of the Official Draft Report states the following:

If a person appears on the *Pigford* Timely 5(g) List, which includes the names and addresses of more than 89,000 people who submitted a late filing request under *Pigford*, he or she will be considered an eligible class member for *BFDL*.

Under Section V.B.4 of the Settlement Agreement, to be found by the Claims Administrator to be a Class Member (and therefore eligible to receive an award under the Settlement), a Claimant must have not

only submitted a Late-Filing Request (evidence of which is being on the *Pigford* Timely 5g list), but also cannot have obtained a determination on the merits of his or her discrimination claim. Section 6 of the Court-approved Claim Form explains that a claimant must satisfy both elements of Class Membership to qualify for an award under the Settlement, and each Claimant was required to acknowledge that they understood that the Claims Administrator would make a determination with respect to both of these elements of Class Membership. There were Claimants whose names were on the *Pigford* Timely 5g list but who were found by the Claims Administrator to have received a “determination on the merits.” These Claimants would not be considered Class Members and would not be entitled to receive an award under the Settlement. As a result, the *Pigford* Timely 5g list was not the sole indicator of whether a Claimant was a Class Member.

Clarification regarding Participation in *Pigford*

Page 5 of the Official Draft Report states the following:

Participation is defined as having obtained a determination (approved or denied) on their discrimination claim in *Pigford*; having opted out of *Pigford*; or having obtained a judgment from a judicial or administrative forum on the basis of their discrimination claim.

The above sentence implies that “participation” in *Pigford* is only if the claim was approved or denied by an adjudicator. However, participation in *Pigford* is somewhat broader. Specifically, individuals who submitted timely, but incomplete claims in *Pigford*, and who had their claims rejected by the *Pigford* Facilitator on completeness grounds, would be deemed to have received a “determination on the merits” of their claims and therefore would not be eligible for an award under the BFDL Settlement. This is because these Claimants did have an opportunity to participate in *Pigford*, even though their claim may not have been reviewed by an adjudicator because their claims were determined to be incomplete. The Settlement Agreement defines “determination on the merits” to include individuals who “submitted a claim” in the *Pigford* claims process and therefore were “*Pigford* Participants” even if their claims were rejected on grounds of incompleteness in that process. See Settlement Agreement §§ II.AA and V.B.4.b.

In addition, this explanation of a “determination on the merits” is reflected in the Long Form Notice that was part of the Notice Program approved by the Court. See Order Granting Preliminary Approval of Settlement Agreement, Certifying a Rule 23(b)(1)(b) Settlement Class, And For Other Purposes, Docket No. 175 (May 12, 2011) at ¶¶ 16-19; see also Plaintiff’s Motion for Preliminary Approval of Settlement, Certification of a Rule 23(b)(1)(B) Settlement Class, and for Other Purposes, Docket No. 161 (March 30, 2011) at Exhibit 5, Attachment 3, Appx. NP-5.

Clarification regarding Review of Prior Settlement Participants

Page 9 of the Official Draft Report states the following:

GAO also reported the CA had not established agreed upon procedures, beyond consulting the participant lists of two other discrimination settlements,³¹ for checking whether applicants already obtained a judgment on a discrimination case in a judicial or administrative forum.

31/ The two additional settlements are: (1) *Keepseagle*, which arose from the *Keepseagle v. Vilsack* (1999) case and (2) Hispanic and Women Farmers and Ranchers Claims Resolution Process which arose from the *Garcia v. Vilsack* (2000) and *Love v. Vilsack* (2000) cases.

The GAO Report (at page 26) stated:

The Claims Administrator is responsible for determining class membership, including that claimants have not obtained prior judgments on their complaints. To satisfy this requirement, it checks whether claimants appear in certain records—indicating they obtained judgments in, or opted out of, *Pigford I*—and plans to check the participant lists of two other settlements. It also asked USDA to check its records of judicial and administrative determinations. USDA has not yet responded to the request.

The Claims Administrator checked participant lists for the settlements in *Pigford* and *Keepseagle*. However, the Claims Administrator did not check the participants list for the Hispanic and Women Farmers and Ranchers Claims Resolution Process as that claims process is still ongoing and no final determinations have issued.

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