



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400

October 26, 2017

The Cotown Foundation, Incorporated
c/o Mr. Corey Lea
Arrington, Tennessee 37014
cowntownfoundation@gmail.com

Dear Mr. Lea;

Thank you for your correspondence regarding the Pigford, et. al v. Glickman (also known as “Pigford”) and the In re Black Farmers Discrimination Litigation (also known as “Pigford II”) claims processes, dated October 16, 2017. Your correspondence was forwarded to the U.S. Department of Agriculture’s (“USDA”), Office of the General Counsel, Civil Rights, Labor and Employment Law Division for response. We appreciate your patience in awaiting our response.

The following is some background information on the case. In 1997, a group of Black farmers brought a class action lawsuit against the USDA known as Pigford. The class as certified by the Court in the Pigford case is defined as follows:

All African American farmers who (1) farmed, or attempted to farm, between January 1, 1981, and December 31, 1996; (2) applied to the USDA during that time period for participation in a federal farm credit or benefit program and who believed that they were discriminated against on the basis of race in USDA’s response to that application; and (3) filed a discrimination complaint on or before July 1, 1997, regarding USDA’s treatment of such farm credit or benefit application.

In the context of this class action lawsuit, USDA entered into a settlement with the Black farmers, known as the Pigford Consent Decree. The Consent Decree includes a process for individuals to file claims for damages incurred as a result of alleged discrimination. USDA had no control over this process, and did not make decisions on claims.

Under the Consent Decree, claims for damages were sent to the independent Facilitator, formerly the Poorman-Douglas Corporation (currently known as Epiq Systems, Inc.), by October 12, 1999. By Stipulation and Order of July 14, 2000, petitions for filing late claims, also known as late 5(g) claims, had to be sent by September 15, 2000, to the Facilitator. The Consent Decree provided that late claim requests would be approved by the Arbitrator where “the claimant demonstrate[d] that his failure to submit a timely claim was due to extraordinary circumstances

beyond his control.” The Facilitator received 65,995, late 5(g) claims by the September 15, 2000, deadline.

Out of that number, 2,557, late 5(g) claims were approved by the Arbitrator to proceed through the Consent Decree process.

As a result of the Consent Decree implementation process for Pigford, the following cumulative milestones were reached, as of December 31, 2011:

1. Approximately 22,721, claimants were found eligible to participate in the claims process.
2. Approximately 22,552, claimants chose to resolve their claims through Track A. Approximately 15,645, (69 percent) prevailed in the Track A claims process.
3. Approximately 169 claimants chose to resolve their claims through Track B. Approximately 104 (62 percent) prevailed in the Track B claims process or settled their Track B claims and received a cash payment from the Government.
4. Approximately 5,848, claims were the subject of a petition for reexamination of a decision by the Facilitator (eligibility), Adjudicator (Track A), or Arbitrator (Track B). The Monitor directed reexamination of approximately 2,941, (50 percent) of the claims.
5. The Government provided a total of approximately \$1.06 billion (\$1,058,577,198) in cash relief, estimated tax payments, and debt relief to prevailing claimants (Track A and Track B).

In June 2008, Congress enacted legislation, Section 14012 of the Food, Conservation and Energy Act of 2008 (“Act”), which affords judicial recourse for “any Pigford claimant, who filed a late 5(g) claim, who has not previously obtained a determination on the merits of a Pigford Claim” in the United States District Court for the District of Columbia. The legislation further provided that the Secretary of USDA was to make \$100 million available for payments and debt relief in satisfaction of the claims filed pursuant to the Act.

The parties reached a settlement in principle on February 18, 2010. The Senate passed legislation on November 19, 2010, which appropriated an additional \$1.15 billion in monetary relief for the agreement, and the legislation was passed by the House of Representatives on November 30, 2010. President Barack Obama signed the bill into law, known as the Claims Resolution Act of 2010, on December 8, 2010.

On March 23, 2011, the Government executed a settlement agreement with the Class Members pursuant to the additional settlement terms mandated in the Claims Resolution Act of 2010. The claims period commenced on November 14, 2011, and ended on May 11, 2012.

The proposed settlement agreement for Pigford II arises from a class action lawsuit against USDA that alleges USDA discriminated against African-Americans who applied for or

attempted to apply for farm loans or other farm benefits between January 1, 1981, and December 31, 1996. The settlement applies only to African-American farmers who meet specific eligibility requirements, including the requirement that they previously submitted a request to file a late claim in the 1999 Pigford claims resolution program.

To receive an award in the Pigford II claims process, an individual first must be deemed eligible by the third party Claims Administrator as a Class Member. In order to be deemed eligible as a Class Member, the Claims Administrator must determine that the individual previously submitted a late 5(g) claim, also known as a petition for filing a late claim that demonstrated a claimant's failure to submit a timely claim was due to extraordinary circumstances beyond his/her control, in Pigford to either the Court, the Pigford Facilitator, the Pigford Monitor, the Pigford Adjudicator, or the Pigford Arbitrator; and did not receive a determination on the merits of his/her discrimination claim.

As of April 1, 2016, there have been about 33,346 total claims in Pigford II. About 18,310 have been approved, and about 15,036 have been denied. Pigford II Class Members have negotiated checks for about \$869,912,723.81. Payments to the IRS on behalf of Class Members have been about \$219,089,469.46. Debt relief awarded to Class Members has been about \$646,880.58. In total, payments to Pigford II Class Members, or to the IRS on behalf of claimants, has been about \$1,088,649,073.85. The parties further agreed that if any settlement funds remained after all Class Members had received the full compensation to which they were entitled, those unclaimed funds would be distributed to *cy pres* beneficiaries proposed by Class Counsel and approved by the Court.

USDA did not accept claims, nor did it determine the eligibility and/or validity of claims. An independent, neutral, third party Claims Administrator determined whether Class Members met their burden of proof to be deemed eligible and to receive an award. The Claim Determinations made as part of the Consent Decree are final and are not reviewable by USDA, the Claims Administrator, the Neutrals, the Court, or any other party or body, judicial or otherwise.

Please note, the Department of Justice acknowledges that settlement agreements are a useful tool to achieve the ends of justice at a reasonable cost to the taxpayer to compensate victims, redress harm and deter unlawful conduct. However, moving forward, the current Administration will no longer enter into settlement agreements that benefit various non-governmental, third party organizations, including but not limited to including *cy pres* beneficiaries, whom were neither victims nor parties to the lawsuits.

If you have further questions, we recommend that you consult with an attorney; consult with the Pigford Class Counsel, David Frantz, Conlon, Frantz & Phelan, LLP, 1818 N. Street, N.W., Suite 400, Washington, D.C. 20036, telephone: (866) 492-6200; consult with the Pigford II Claims Administrator at the following toll-free number: 1 (877) 810-8110; and/or visit the following

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website for additional information: www.blackfarmercase.com. You may also want to call the Pigford II Ombudsman at the following toll free number: 1 (866) 686-8682.

Thank you again for your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arlean Leland", followed by a long horizontal flourish.

Arlean Leland
Associate General Counsel
Civil Rights, Labor, and Employment Law Division